

**BENICIA CITY COUNCIL  
REGULAR MEETING AGENDA**

**City Council Chambers  
April 21, 2015  
7:00 PM**

*Times set forth for the agenda items are estimates.  
Items may be heard before or after the times designated.*

**I. CALL TO ORDER (7:00 PM):**

**II. CLOSED SESSION:**

**III. CONVENE OPEN SESSION:**

**A. ROLL CALL.**

**B. PLEDGE OF ALLEGIANCE.**

**C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF PUBLIC.**

A plaque stating the fundamental rights of each member of the public is posted at the entrance to this meeting room per section 4.04.030 of the City of Benicia's Open Government Ordinance.

**IV. ANNOUNCEMENTS/PROCLAMATIONS/ APPOINTMENTS/PRESENTATIONS:**

**A. ANNOUNCEMENTS.**

**1. Announcement of action taken at Closed Session, if any.**

**2. Openings on Boards and Commissions:**

Arts & Culture Commission  
1 unexpired term  
Open until filled

Finance Committee

1 full term

Open until filled

Open Government Commission

1 unexpired term

Open until filled

SolTrans Public Advisory Committee

1 full term

Open until filled

Human Services Board

1 unexpired term

Open until filled

**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 746-4200.**

**4. Benicia Arsenal Update**

Update from City Attorney

**B. PROCLAMATIONS.**

**1. IN RECOGNITION OF LAW DAY**

**C. APPOINTMENTS.**

**D. PRESENTATIONS.**

**V. ADOPTION OF AGENDA:**

**VI. OPPORTUNITY FOR PUBLIC COMMENT:**

This portion of the meeting is reserved for persons wishing to address the Council on any matter not on the agenda that is within the subject matter jurisdiction of the City Council. State law prohibits the City Council from responding to or acting upon matters not listed on the agenda. Each speaker has a maximum of five minutes for public comment. If others have already expressed your position, you may simply indicate that you agree with a previous speaker. If appropriate, a spokesperson may present the views of your entire group. Speakers may not make personal attacks on council members, staff or members of the public, or make comments which are slanderous or which may invade an individual's personal privacy.

**A. WRITTEN COMMENT.**

**B. PUBLIC COMMENT.**

**VII. CONSENT CALENDAR (7:30 PM):**

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 THE MINUTES OF THE APRIL 7, 2015 CITY COUNCIL MEETING. (City Clerk)**

**B. APPROVE THE AGREEMENTS BETWEEN THE CITY OF BENICIA AND BENICIA PART-TIME UNIT OF THE BENICIA PUBLIC SERVICE EMPLOYEES' ASSOCIATION. (Assistant City Manager)**

The City recently concluded negotiations with BPSEA-PT. The City was notified on April 13, 2015 that the proposed agreement had been ratified by a majority of the unit's members.

**Recommendation: Adopt the resolution approving November 1, 2014 – October 31, 2017 Memorandum of Understanding (MOU) for Benicia Part-Time Unit of the Benicia Public Service Employees' Association (BPSEA-PT) and authorizing the City Manager to take the necessary administrative steps to implement the provisions of the agreement.**

**C. BENICIA INDUSTRIAL PARK BUS HUB PROJECT - APPROVAL OF A RESOLUTION CONFIRMING PROJECT DESIGN COMPLETED AND REQUESTING \$945,000 IN GRANT FUNDING FOR CONSTRUCTION. (Public Works Director)**

There is \$1.25 million in RM2 funding that has been earmarked for a Bus Hub park and ride facility at the intersection of Park Road and Industrial Way in the Benicia Industrial Park. The Bus Hub would serve the industrial park's work force and commuters traveling to and from Contra Costa and BART. The project would incorporate traffic circulation improvements requested during the initial public outreach process and attract future grant funding to the industrial park. As a condition to receiving \$945,000 for the construction phase of the project, MTC is requiring the City adopt a resolution confirming compliance with the RM2 grant requirements.

**Recommendation: Adopt a resolution confirming project compliance and adopting the updated initial project report for the Benicia Industrial Park Bus Hub Project, and authorizing the City Manager to submit an allocation request for Regional Measure 2 Funds (RM2) to the Metropolitan Transportation Commission (MTC) for construction.**

**D. APPROVE THE AMENDMENT TO THE CONTRACT SERVICES AGREEMENT BETWEEN THE CITY OF BENICIA AND MANAGEMENT PARTNERS. (Assistant City Manager)**

Staff is proposing to amend the contract with Management Partners for management consulting services for the Community Development Department.

**Recommendation: Adopt the resolution approving the amendment to the agreement with Management Partners for management consulting services for the Community Development Department.**

**E. APPROVAL OF AMENDED PROVISIONS OF LEASE AGREEMENT WITH CARTER RANKIN OF CARTER'S BIZ CAFÉ FOR THE COMMANDING OFFICER'S QUARTERS, 1 COMMANDANT'S LANE. (Economic Development Manager)**

On October 21, 2014 the City Council approved a lease agreement with Carter Rankin of Carter's Biz Café to utilize the COQ as a co-working venue. The intent was to execute the lease agreement on November 1, 2015; however, due to scheduling and financing delays of investors the execution of the lease has been postponed to April 22, 2015. As such, a few provisions have been modified to reflect this new timeframe. The proposed changes only alter the date, not the amount in which the security deposit and monthly rent become due.

**Recommendation: Approve the proposed amended provisions to the lease agreement for the Commanding Officer's Quarters (COQ), which was originally approved by the City Council on October 21, 2014.**

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

**VIII. BUSINESS ITEMS (7:45 PM):**

A public hearing should not exceed one hour in length. To maximize public participation, the council requests that speakers be concise and avoid repetition of the remarks of prior speakers. Instead, please simply state whether you agree with prior speakers.

**A. INTRODUCTION AND FIRST READING OF STORM WATER ORDINANCE TEXT AMENDMENT TO INCORPORATE REGULATIONS PERTAINING TO URBAN STORM WATER MANAGEMENT AND DISCHARGE CONTROL. (Public Works Director)**

The Federal Clean Water Act and the California State Porter-Cologne Water Quality Control Act have requirements to protect and enhance water quality in watercourses. The City is a Small MS4 permittee under the State's Phase II Storm water Permit. This requires the City to enact appropriate regulations to control pollutant discharges. To do this, the City must amend Benicia Municipal Code Chapter 15.64.

**Recommendation: Conduct a public hearing and introduce an ordinance updating and amending Benicia Municipal Code Chapter 15.64 (Storm Water Management and Discharge Control) to incorporate amendments adopted by the State Water Resources Control Board pertaining to urban storm water management and discharge controls.**

**B. STATUS OF MILLS ACT PROGRAM. (Community Development Director)**

The Mills Act Program, enacted by the State of California in 1972, encourages the restoration and preservation of qualified historic buildings through economic incentive and authorizes its implementation by local governments. In 2003, Council approved the City of Benicia Mills Act Program and assigned initial review and recommendation of Mills Act Contract applications to the Historic Preservation Review Commission (Resolution No. 03-12). The City has 37 active Mills Act Contracts. At the November 18, 2014 City Council meeting, the City Council approved two Mills Act Contracts which were anticipated to be the last two contracts approved under the program's current threshold that the program not cost the City (in staff time and reduced property tax revenue) more than \$35,000 annually. The Council directed staff to provide a status of the program along with an assessment of the benefits to the City of supporting a Mills Act Program.

**Recommendation: Review the status of the City of Benicia's Mills Act program, evaluate staff's recommendation for long-term sustainability of the Mills Act Program and provide direction to staff.**

**C. APPROVAL OF BENICIA LOCAL AGENCY PRIORITY PROJECTS TO BE LISTED IN THE SOLANO TRANSPORTATION AUTHORITY'S UPDATED COMPREHENSIVE TRANSPORTATION PLAN AND PROVIDE DIRECTION ON THE SOLANO RAIL FACILITIES PLAN UPDATE. (Public Works Director)**

At the request of the Solano Transportation Authority (STA), each local agency within Solano County will submit their list of local projects to be included in the

update to the STA's Comprehensive Transportation Plan (CTP). Staff is recommending the addition of six new projects and update of one project to the previous list in the 2009 CTP to be submitted to the STA for inclusion in the updated CTP for future federal and state funding consideration. Staff is also seeking direction on the Solano Rail Facilities Plan Update.

**Recommendation: Adopt a resolution approving the list of Benicia local agency priority projects to be listed in the Solano Transportation Authority's updated Comprehensive Transportation Plan and provide direction on the Solano Rail Facilities Plan Update.**

**D. Council Member Committee Reports:**

**(Council Member 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 the Council Members are made only by exception.)**

- 1. Mayor's Committee Meeting.  
(Mayor Patterson)  
Next Meeting Date: April 22, 2015**
- 2. Association of Bay Area Governments (ABAG)  
<http://www.abag.ca.gov/>.  
(Vice Mayor Hughes and Council Member Schwartzman)  
Next Meeting Date: TBD**
- 3. Finance Committee.  
(Vice Mayor Hughes and Council Member Strawbridge)  
Next Meeting Date: April 23, 2015**
- 4. League of California Cities.  
(Mayor Patterson and Vice Mayor Hughes)  
Next Meeting Date: June 29, 2015**
- 5. School Liaison Committee.  
(Vice Mayor Hughes and Council Members Strawbridge)  
Next Meeting Date: June 11, 2015**
- 6. Sky Valley Open Space Committee.  
(Vice Mayor Hughes and Council Member Campbell)  
Next Meeting Date: TBD**
- 7. Solano EDC Board of Directors.  
(Vice Mayor Hughes and Council Member Strawbridge)  
Next Meeting Date: May 14, 2015**

8. **Solano Transportation Authority (STA).**  
<http://www.sta.ca.gov/>  
(Mayor Patterson and Council Member Campbell)  
Next Meeting Date: May 13, 2015
9. **Solano Water Authority-Solano County Water Agency and Delta Committee.** <http://www.scwa2.com/>  
(Mayor Patterson, Vice Mayor Hughes and Council Member Campbell)  
Next Meeting Date: May 14, 2015
10. **Traffic, Pedestrian and Bicycle Safety Committee.**  
(Vice Mayor Hughes and Council Member Strawbridge)  
Next Meeting Date: TBD
11. **Tri-City and County Cooperative Planning Group.**  
(Vice Mayor Hughes and Council Member Schwartzman)  
Next Meeting Date: June 8, 2015
12. **Valero Community Advisory Panel (CAP).**  
(Council Member Campbell and Council Member Schwartzman)  
Next Meeting Date: TBD
13. **Youth Action Coalition.**  
(Mayor Patterson, Vice Mayor Hughes and Council Member Strawbridge)  
Next Meeting Date: April 22, 2015
14. **ABAG-CAL FED Task Force-Bay Area Water Forum.**  
<http://www.baywaterforum.org/> (Mayor Patterson)  
Next Meeting Date: TBD
15. **SOLTRANS Joint Powers Authority (Mayor Patterson, Vice Mayor Hughes and Council Member Campbell)**  
Next Meeting Date: May 21, 2015
16. **MARIN CLEAN ENERGY (MCE).**  
(Council Member Schwartzman and Council Member Strawbridge)  
Next Meeting Date: TBD

**IX. ADJOURNMENT (9:30 PM):**

## **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 or special Needs**

In compliance with the Americans with Disabilities Act (ADA) and to accommodate any special needs, if you need special assistance to participate in this meeting, please contact Anne Cardwell, the ADA Coordinator, at (707) 746-4200. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the 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](http://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. A complete proceeding of each meeting is also recorded and available through the City Clerk's Office.





# PROCLAMATION

IN RECOGNITION OF

## LAW DAY 2015

“American Democracy and Rule of Law”

**WHEREAS**, Law Day is an occasion of public acknowledgement of our Nation’s and California’s heritage of justice, liberty and equality under the law; and

**WHEREAS**, Law Day has been annually proclaimed by the president of the United States since Dwight D. Eisenhower proclaimed the first Law Day on May 1, 1958; and

**WHEREAS**, the year 2015 marks the 800<sup>th</sup> anniversary of a milestone in legal history, the sealing of Magna Carta at Runnymede, England, in 1215; and

**WHEREAS**, the American Bar Association has identified the 2015 Law Day theme as “Magna Carta: Symbol of Freedom Under Law”; and

**WHEREAS**, the Founders of our Nation drew upon the principles of Magna Carta in drafting our cherished documents of liberty, including the Declaration of Independence, United States Constitution and the Bill of Rights; and

**WHEREAS**, Magna Carta continues to be a source of inspiration in the international struggle to advance human rights.

**NOW, THEREFORE, BE IT RESOLVED THAT I**, Elizabeth Patterson, Mayor of the City of Benicia on behalf of the City Council, do hereby declare May 1, 2015 to be Law Day in Benicia, California.



\_\_\_\_\_  
Elizabeth Patterson, Mayor  
April 21, 2015



MINUTES OF THE  
REGULAR MEETING – CITY COUNCIL  
April 07, 2015

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

**I. CALL TO ORDER:**

Mayor Patterson called the meeting to order at 7:01 p.m.

**II. CLOSED SESSION:**

**III. CONVENE OPEN SESSION:**

**A. ROLL CALL**

All Council Members were present.

Council Member Campbell arrived at 7:04 p.m.

**B. PLEDGE OF ALLEGIANCE**

Mayor Patterson led the Pledge of Allegiance.

**C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC.**

**IV. ANNOUNCEMENTS/PROCLAMATIONS/APPOINTMENTS/PRESENTATIONS:**

**A. ANNOUNCEMENTS**

Brad Kilger, City Manager, introduced Christina Ratcliffe, the City's new Community Development Director.

**1. Announcement of action taken at Closed Session, if any.**

**2. Openings on Boards and Commissions:**

Arts & Culture Commission  
1 unexpired term  
Open until filled

Finance Committee  
1 full term

Open until filled

Open Government Commission  
1 unexpired term  
Open until filled

SolTrans Public Advisory Committee  
1 full term  
Open until filled

**3. Mayor's Office Hours**

**4. Benicia Arsenal Update**

Update from City Attorney

Heather McLaughlin, City Attorney, stated there was nothing new to report.

**B. PROCLAMATIONS**

**1. IN RECOGNITION OF NATIONAL LIBRARY WEEK**

**2. IN RECOGNITION OF NATIONAL VOLUNTEER WEEK - APRIL 12-18, 2015**

IN RECOGNITION OF VOLUNTEER OF THE YEAR - MIKE CAPLIN

**3. IN RECOGNITION OF NATIONAL PUBLIC SAFETY TELECOMMUNICATORS' WEEK**

**4. IN RECOGNITION OF THE NATIONAL MAYOR'S CHALLENGE FOR WATER CONSERVATION - APRIL 1-30, 2015**

**5. IN RECOGNITION OF STAND UP FOR TRANSPORTATION DAY - APRIL 9, 2015**

**C. APPOINTMENTS**

**1. Appointment of Alfred Ignacio to the Civil Service Commission for a full term ending January 30, 2019**

This item was pulled from the agenda.

**2. Appointment of Gary Montgomery to the Civil Service Commission for a full term ending January 30, 2019**

This item was pulled from the agenda.

3. **Appointment of Craig Snider to the Community Sustainability Commission for a full term ending January 30, 2019**

**RESOLUTION 15-22 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE MAYOR'S APPOINTMENT OF CRAIG SNIDER TO THE BENICIA COMMUNITY SUSTAINABILITY COMMISSION FOR A FOUR-YEAR TERM ENDING JANUARY 30, 2019**

On motion of Mayor Patterson Council adopted Resolution 15-22, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Schwartzman, Campbell, Hughes  
Noes: (None)

4. **Appointment of David Lindsey to the Community Sustainability Commission for an unexpired term ending July 31, 2017**

**RESOLUTION 15-23 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE MAYOR'S APPOINTMENT OF DAVID LINDSAY TO THE BENICIA COMMUNITY SUSTAINABILITY COMMISSION FOR AN UNEXPIRED TERM ENDING JULY 31, 2017**

On motion of Mayor Patterson Council adopted Resolution 15-23, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Schwartzman, Campbell, Hughes  
Noes: (None)

5. **Reappointment of John Potter to the Finance Committee for a full term ending January 30, 2019**

**RESOLUTION 15-24 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE MAYOR'S REAPPOINTMENT OF JOHN POTTER TO THE BENICIA FINANCE COMMITTEE FOR A FOUR-YEAR TERM ENDING JANUARY 30, 2019**

On motion of Mayor Patterson Council adopted Resolution 15-24, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Schwartzman, Campbell, Hughes  
Noes: (None)

6. **Appointment of Stacy Keyes to the Human Services Board for an unexpired term ending July 31, 2017**

**RESOLUTION 15-25 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE MAYOR'S APPOINTMENT OF STACY KEYES TO THE BENICIA HUMAN SERVICES BOARD FOR AN UNEXPIRED TERM ENDING JULY 31, 2017**

On motion of Mayor Patterson Council adopted Resolution 15-25, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Schwartzman, Campbell, Hughes  
Noes: (None)

7. **Reappointment of Ruth Workman to the Library Board of Trustees for a full term ending January 30, 2018**

**RESOLUTION 15-26 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE MAYOR'S REAPPOINTMENT OF RUTH WORKMAN TO THE BENICIA LIBRARY BOARD OF TRUSTEES FOR A THREE-YEAR TERM ENDING JANUARY 30, 2018**

On motion of Mayor Patterson Council adopted Resolution 15-26, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Schwartzman, Campbell, Hughes  
Noes: (None)

8. **Reappointment of Carol Nail to the Library Board of Trustees for a full term ending January 30, 2018**

**RESOLUTION 15-27 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE MAYOR'S REAPPOINTMENT OF CAROL NAIL TO THE BENICIA LIBRARY BOARD OF TRUSTEES FOR A THREE-YEAR TERM ENDING JANUARY 30, 2018**

On motion of Mayor Patterson Council adopted Resolution 15-27, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Schwartzman, Campbell, Hughes  
Noes: (None)

9. **Reappointment of George Oakes to the Planning Commission for a full term ending January 30, 2019**

**RESOLUTION 15-28 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY**

**OF BENICIA CONFIRMING THE MAYOR'S REAPPOINTMENT OF GEORGE OAKES, SR. TO THE BENICIA PLANNING COMMISSION FOR A FOUR-YEAR TERM ENDING JANUARY 30, 2019**

On motion of Mayor Patterson Council adopted Resolution 15-28, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Schwartzman, Campbell, Hughes  
Noes: (None)

**10. Appointment of Kari Birdseye to the Planning Commission for a full term ending January 30, 2019**

**RESOLUTION 15-29 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE MAYOR'S APPOINTMENT OF KARI BIRDSEYE TO THE BENICIA PLANNING COMMISSION FOR A FOUR-YEAR TERM ENDING JANUARY 30, 2019**

On motion of Mayor Patterson Council adopted Resolution 15-29, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Schwartzman, Campbell, Hughes  
Noes: (None)

**11. Reappointment of James Cook to the SolTrans Public Advisory Committee for a full term ending January 30, 2018**

**RESOLUTION 15-30 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE MAYOR'S REAPPOINTMENT OF JAMES COOK TO THE SOLTRANS PUBLIC ADVISORY COMMITTEE FOR A THREE-YEAR TERM ENDING JANUARY 30, 2018**

On motion of Mayor Patterson Council adopted Resolution 15-30, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Schwartzman, Campbell, Hughes  
Noes: (None)

**12. Reappointment of Dan Smith to the SolTrans Public Advisory Committee for a full term ending January 30, 2018**

**RESOLUTION 15-31 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE MAYOR'S REAPPOINTMENT OF DANIEL SMITH TO THE SOLTRANS PUBLIC ADVISORY COMMITTEE FOR A THREE-YEAR TERM ENDING JANUARY 30, 2018**

On motion of Mayor Patterson Council adopted Resolution 15-31, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Schwartzman, Campbell, Hughes  
Noes: (None)

**13. Appointment of Michael Boyle to the Parks, Recreation & Cemetery Commission for a full term ending January 30, 2019**

**RESOLUTION 15-32 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE MAYOR'S APPOINTMENT OF MICHAEL BOYLE TO THE BENICIA PARKS, RECREATION & CEMETERY COMMISSION FOR A FOUR-YEAR TERM ENDING JANUARY 30, 2019**

On motion of Mayor Patterson Council adopted Resolution 15-32, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Schwartzman, Campbell, Hughes  
Noes: (None)

**14. Reappointment of Ernie Gutierrez to the Parks, Recreation & Cemetery Commission for a full term ending January 30, 2019**

**RESOLUTION 15-33 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE MAYOR'S REAPPOINTMENT OF ERNEST GUTIERREZ TO THE BENICIA PARKS, RECREATION & CEMETERY COMMISSION FOR A FOUR-YEAR TERM ENDING JANUARY 30, 2019**

On motion of Mayor Patterson Council adopted Resolution 15-33, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Schwartzman, Campbell, Hughes  
Noes: (None)

**15. Appointment of Ann Brooner to the Parks, Recreation & Cemetery Commission for a full term ending January 30, 2019**

**RESOLUTION 15-34 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE MAYOR'S APPOINTMENT OF ANN BROONER TO THE BENICIA PARKS, RECREATION & CEMETERY COMMISSION FOR A FOUR-YEAR TERM ENDING JANUARY 30, 2019**

On motion of Mayor Patterson Council adopted Resolution 15-34, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Schwartzman, Campbell, Hughes

Noes: (None)

## **16. Additional Applications**

### **D. PRESENTATIONS**

- 1. PRESENTATION BY ARTS AND CULTURE COMMISSION OF THEIR ANNUAL REPORT**
- 2. WATER UPDATE AND QUARTERLY PRESENTATION**

Dan Jackson, Water Quality Supervisor, reviewed the staff report.

Council Member Campbell and Staff discussed concerns regarding Valero's water usage.

Vice Mayor Hughes and Staff discussed the State Water Board's water allocation for cities, the various tiers cities get placed in for allocation, Benicia's water supply and previous water purchases, and consideration of purchasing additional water before the cost goes up (if the drought continues).

Council Member Schwartzman and Staff discussed the possibility of purchasing additional water, and the opportunities for water conservation at the Valero refinery.

Mayor Patterson and Staff discussed the issue of the City having to decrease water usage by 25%, the need to focus on the gallons/person/day, the county-wide incentive program for replacing lawns with artificial turf, and the need for some options on what could be done as a county.

#### Public Comment:

1. Chris Howe, Valero Refinery - Mr. Howe discussed Valero's reduction in water use.

Council Member Campbell discussed the need for the City of Benicia to start thinking about banking water for the future.

Council Member Schwartzman discussed the need to address water leaks throughout the City.

Mayor Patterson stated that it was the consensus of the Council to look at a water purchase at a future Council meeting.

### 3. MARIN CLEAN ENERGY (MCE) PROGRAM UPDATE

Alex Porteshawver, Climate Action Plan Coordinator, introduced the staff report.

Allison Kirk, MCE, reviewed the update report and a PowerPoint presentation (copy on file).

Council Member Campbell and Ms. Kirk discussed enrollment statistics, and the need for clearer language regarding the opt out process.

Council Member Schwartzman and Ms. Kirk discussed enrollment statistics, including sample bills in the mailers, and the content of future brochures/mailers.

Council Member Strawbridge and Ms. Kirk discussed the need to make it clear to citizens that if they opt out, they would continue to be a customer of PG&E, the need for more information on what MCE customers should do if the power goes out, the reasons MCE is using 2-year old information from PG&E, how Benicia's opt-out numbers compare to other cities, and the possibility of having some testimonials in the brochures.

Council Member Hughes and Ms. Kirk discussed the need for enough balanced information in the brochures so the citizens could make informed decisions.

Council Member Campbell requested MCE provide the statistics on how Benicia compares to other cities.

Council Member Schwartzman and Ms. Kirk discussed where citizens could find MCE's financial information on their website.

#### Public Comment:

1. Dennis Lowry - Mr. Lowry discussed concern regarding the misleading language in the brochures being mailed out by MCE, the community meeting held by MCE, and the concerns of the members of 'Benician's Against Marin Clean Energy (BAM).

### V. ADOPTION OF AGENDA:

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

Ayes: Patterson, Strawbridge, Schwartzman, Campbell, Hughes  
Noes: (None)

**VI. OPPORTUNITY FOR PUBLIC COMMENT:**

**A. WRITTEN COMMENT**

Three items received (copies on file).

**B. PUBLIC COMMENT**

None

**VII. CONSENT CALENDAR:**

**A. APPROVAL OF THE MINUTES OF THE MARCH 17, 2015 CITY COUNCIL MEETING**

**B. CONTRACT FOR VEGETATION MANAGEMENT WITHIN THE CITY OF BENICIA**

**RESOLUTION 15-35 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING THE BIDS FOR THE VEGETATION MANAGEMENT CONTRACTOR, AWARDING THE CONTRACT TO APEX GRADING, IN THE AMOUNT OF \$67,700, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY**

**C. AUTHORIZE COMMUNITY DEVELOPMENT DEPARTMENT TO APPLY FOR A CERTIFIED LOCAL GOVERNMENT GRANT TO FUND AN UPDATE TO THE DOWNTOWN HISTORIC CONSERVATION PLAN**

**D. CALIFORNIA OFFICE OF EMERGENCY SERVICES (CAL OES) MUTUAL AID REIMBURSEMENT**

**RESOLUTION 15-36 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA IDENTIFYING THE TERMS AND CONDITIONS FOR FIRE DEPARTMENT RESPONSE AWAY FROM THEIR OFFICIAL DUTY STATION AND ASSIGNED TO AN EMERGENCY INCIDENT, IN COMPLIANCE WITH THE 2015 CALIFORNIA FIRE ASSISTANCE AGREEMENT**

**E. SALE OF SURPLUS EQUIPMENT**

**F. APPROVAL OF \$250,000 FUNDING AGREEMENT WITH SOLANO TRANSPORTATION AUTHORITY TO FUND THE CONSTRUCTION OF THE BENICIA INDUSTRIAL PARK BUS HUB PROJECT, CONFIRM PROJECT DESIGN AND AUTHORIZE SOLICITATION OF BIDS FOR CONSTRUCTION**

**RESOLUTION 15-37 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY**

**OF BENICIA APPROVING A \$250,000 LOAN AGREEMENT WITH SOLANO TRANSPORTATION AUTHORITY TO FUND A PORTION OF THE CONSTRUCTION OF THE BENICIA INDUSTRIAL PARK BUS HUB PROJECT WITH REPAYMENT TO BE MADE FROM REGIONAL TRAFFIC IMPACT FEES, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT WITH SOLANO TRANSPORTATION AUTHORITY, AND AUTHORIZING THE SOLICITATION OF BIDS**

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

**VIII. BUSINESS ITEMS:**

**A. GENERAL PLAN ANNUAL PROGRESS REPORT TO THE STATE OF CALIFORNIA**

Brad Kilger, City Manager, discussed the information received after the packet was produced. Council confirmed it was not substantial information and Staff could proceed with the report. He also discussed Mayor Patterson's questions submitted via email.

Amy Million, Principal Planner, reviewed the staff report.

Mayor Patterson requested Staff clarify the reference to the Bay Plan and SB375 so that it states that it is to reduce vehicle miles traveled. She discussed the need for hot links in the electronic version for the City ordinances.

Council Member Schwartzman and Staff discussed some of the Mayor's requests (submitted via email - copy on file). He asked Mayor Patterson to clarify #7 (water transportation and the train station).

Council Member Strawbridge and Mayor Patterson discussed the Mayor's request to add the reference to Art and Culture to the string of economic activities.

Public Comment:

None

On motion of Council Member Hughes, seconded by Council Member Strawbridge, Council approved the General Plan Annual Progress Report to the State of California, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Schwartzman, Campbell, Hughes  
Noes: (None)

## **B. TOURISM MARKETING VIDEO SHOOT**

Mario Giuliani, Economic Development Manager, reviewed the staff report.

Mayor Patterson asked that Staff address the walkability and bikability of Benicia in the future.

### Public Comment:

None

## **C. REQUEST BY MAYOR PATTERSON TO SUBMIT A LETTER OF SUPPORT TO THE FEDERAL OFFICE OF MANAGEMENT AND BUDGET REGARDING THE IMPLEMENTATION OF THE LEAGUE OF CALIFORNIA CITIES' RAIL SAFETY POLICIES**

Mayor Patterson reviewed the staff report.

Council Member Campbell discussed concern regarding letters that are being sent on behalf of the Council. He would like to start putting them on the consent calendar so the citizens could be informed on what Council was doing. He discussed concern regarding sending the letter and possibly prejudicing Council's position to be unbiased regarding crude by rail project.

Heather McLaughlin stated that sending letter would not adversely prejudice Council.

Council Member Schwartzman asked the Mayor to highlight the changes in her letter vs. the League of California Cities' letter. He wondered if it had the potential to affect the EIR. Mayor Patterson confirmed it would not. Staff and Council Member Schwartzman discussed the Mayor's proposed changes. Council Member Schwartzman stated that he would rather go with the League of California Cities' letter.

Council Member Hughes stated that he was fine with the letter; however he would rather go with the proposed language from the League of California Cities for consistency.

### Public Comment:

1. Andres Soto - Mr. Soto spoke in support of Mayor Patterson's proposed language for the letter. He discussed concerns regarding the Crude by Rail project.
2. Chris Howe, Valero - Mr. Howe discussed Valero's safety record and their commitment to safe crude by rail transportation. He confirmed Valero would comply with the rules that are adopted by the Department of

Transportation.

3. Marilyn Bardet - Ms. Bardet discussed concern regarding the letter and reference to the 1232 tank cars, as they are dangerous.

Council Member Hughes made a motion to send the letter using the language that was provided to the City by the League of California Cities.

On motion of Council Member Hughes, seconded by Council Member Schwartzman, Council approved sending the letter with the language provided by the League of California Cities, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Schwartzman, Campbell, Hughes

Noes: (None)

**IX. ADJOURNMENT:**

Mayor Patterson adjourned the meeting at 10:03 p.m.

**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - APRIL 21, 2015**  
**CONSENT CALENDAR**

**DATE** : April 15, 2015

**TO** : City Manager

**FROM** : Assistant City Manager

**SUBJECT** : **APPROVE THE AGREEMENTS BETWEEN THE CITY OF BENICIA AND BENICIA PART-TIME UNIT OF THE BENICIA PUBLIC SERVICE EMPLOYEES' ASSOCIATION**

**RECOMMENDATION:**

Adopt the resolution approving November 1, 2014 – October 31, 2017 Memorandum of Understanding (MOU) for Benicia Part-Time Unit of the Benicia Public Service Employees' Association (BPSEA-PT) and authorizing the City Manager to take the necessary administrative steps to implement the provisions of the agreement.

**EXECUTIVE SUMMARY:**

The City recently concluded negotiations with BPSEA-PT. The City was notified on April 13, 2015 that the proposed agreement had been ratified by a majority of the unit's members.

**BUDGET INFORMATION:**

The estimated cost to the 2014-15 Budget is de minimis (i.e., less than \$2,000) and sufficient funds exist to cover the cost in the current budget. The estimated cost for 2015-16 is approximately \$12,500 and 2016-17 cost is estimated at \$31,250.

**STRATEGIC PLAN:**

Relevant Strategic Plan Goals and Strategies:

- Strategy Issue #3: Strengthening Economic and Fiscal Conditions
  - Strategy #4: Manage City finances prudently

**BACKGROUND:**

In 2010 and 2011, City employees took reductions in compensation, resulting in much needed savings for the City's budget. In subsequent years, due to continuing fiscal challenges, the majority of the City's bargaining units agreed to status quo one-year extensions with no salary increases.

In recognition of the City's ongoing efforts to address budget challenges and develop a Sustainable Community Services Strategy with the goal of a fiscally

resilient organization, this agreement implements the following: 1) Complies with AB1522, which is the new sick leave law for part time employees, effective July 1, 2015; 2) provides minimal increases to leave associated pay; and 3) does not include any ongoing increases to part-time employees' salary ranges until the final, third, year of the agreement, which consists of a 1% salary adjustment effective July 1, 2016 and a 1% salary adjustment on January 1, 2017.

It should be recognized that BPSEA-PT worked very cooperatively and diligently with the City to reach agreement on the proposed MOU in a timely manner. Their efforts on the proposed agreement are very much appreciated.

Attachments:

- Resolution
- Signed Tentative Agreement

**RESOLUTION NO. 15-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING THE AGREEMENT BETWEEN THE CITY OF BENICIA AND PART TIME UNIT OF BENICIA PUBLIC SERVICE EMPLOYEES' ASSOCIATION (BPSEA-PT)**

**WHEREAS**, the existing Memorandum of Understanding (MOU) between the City and Part-Time unit of Benicia Public Service Employee's Association (BPSEA-PT), which cover salaries and other conditions of employment expired on October 31, 2014; and

**WHEREAS**, the City has recently concluded negotiations with BPSEA-PT; and

**WHEREAS**, BPSEA-PT has agreed to the proposed amendments to their MOU as outlined in Exhibit A; and

**WHEREAS**, unless otherwise amended by the MOU language, as summarized in the attached tentative agreement, all terms of the existing MOU shall remain in effect from November 1, 2014 – October 31, 2017; and

**WHEREAS**, there is minimal cost to the 2014-15 budget and sufficient funds exist to cover the cost in the current budget.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby approves the amendments to the agreement between the City of Benicia and BPSEA-PT.

**BE IT FURTHER RESOLVED THAT** the City Council of the City of Benicia authorizes the City Manager to take the necessary administrative steps to implement the provisions of the agreements and actions approved by this resolution.

\* \* \* \* \*

On motion of Council Member \_\_\_\_\_, and 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 21<sup>st</sup> day of April, 2015 and adopted by the following vote.

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date

## Tentative Agreement

### Between the City of Benicia and BPSEA PT Association

Distributed at the table on March 11, 2015 in response to BPSEA Part Time Association's proposal received on February 19, 2015.

1. **Section 3: Duration of Agreement:** Agreement by the Parties on term of November 1, 2014 to October 31, 2017.
2. **Section 4: Recognition:** Parties agree that Exhibit B shall only include BPSEA classifications that are used as part time employees and excludes any part time classifications that are in other units and language in the MOU shall memorialize this. An updated Exhibit B is attached which per BPSEA's agreement to eliminate the administrative secretary, public safety dispatchers I/II, and Librarians I/II all of whom are in other units. City agrees to BPSEA request to add custodian, police aide, recreation specialist I/II and hydrant maintenance worker. City rejects the addition of economic development manager. Additionally, the City proposes to add the family resources clerk, family resource coordinator II, and recreation specialist I to Exhibit B.
3. **Section 13: Wage Adjustments:** Upon ratification by the Association and City Council approval of a successor MOU agreement that includes the changes in Section 4: Recognition as proposed by the City in paragraph 2 above, the City would confer a 1.0% salary increase on July 1, 2016 and 1% salary increase on January 1, 2017.
4. **Step Increases:** Agreement by the parties that part-time employees will be eligible to receive a salary step increases after 12 months and 250 hours worked based on satisfactory performance evaluation. However, at no time shall more than one step increase may be given a Part-Time employee in any twelve (12) month period regardless of the amount of hours worked. If performance evaluation is received late the step increase will be retroactive to the pay period that includes the date eligible for the step increase.
5. **New Sick Leave:** City will comply with California Healthy Workplaces/Healthy Families Act of 2014 which requires employers to provide paid sick leave at a rate of one hour for every 30 hours worked. City will require new employees to complete 30 shifts to begin

accruing and 90 days of employment to use sick leave. There will be no cap to the hours an employee can accumulate. There is no cash value to hours upon separation from service.

6. **Minimum Wage Increases:** City has and will continue to comply with minimum wage requirements. City will continue to raise the individual steps below the new minimum wage rate to the new increased minimum wage rate. City is not currently in a financial position to raise each step of the range that is currently above the minimum wage rate for all steps in the classification already above minimum wage.
7. **Section 16. Pay for Leave Credits:** Delete current language and replace with current practice. The new language shall be: Employees who are eligible for Pay for leave credits receive an additional .04% in hourly wages each pay period.
8. **Holiday Leave:** This section shall become inoperative on June 30, 2017 and shall not be incorporated into a successor agreement unless otherwise negotiated by the parties.
  - a. **Holiday Closure for December 2014:** Current employees in paid status in this unit who were also employed and normally scheduled to work by their departments on December 22, 23, 24, and 26 of 2014, but were off due to the City's authorized holiday closure, will receive the pay for the normally scheduled hours, the first full pay period after the Association ratification and approval of the successor MOU by the City Council.  
 Those employees currently in paid status in this unit who were also employed and actually worked on December 22, 23, 24, and 26 of 2014 will receive pay for leave credits as provided for in Section 16 of the MOU for the hours worked on these days.  
 Those employees who are no longer in paid status with the City of Benicia at the time the holiday pay is processed are not entitled to any holiday closure pay.
  - b. **Holiday Closure for December 2015 and December 2016:**  
 The City shall determine whether to institute a holiday closure in 2015 and 2016. If the City determines that there will be a closure, holiday leave days for this unit will correspond with the days of the City's designated holiday closure dates.



Exhibit B - Positions Eligible for BPSEA PT MOU  
(Updated March 2015)

HRLY ADMIN CLERK I  
HRLY ADMIN CLERK II  
HRLY ~~ADMINISTRATIVE SECRETARY~~  
HRLY ASSISTANT POOL COORDINATOR  
HRLY ASSISTANT RECREATION COORDINATOR  
HRLY CAMP DIRECTOR  
HRLY CUSTODIAN  
HRLY DEPARTMENT AIDE  
HRLY ESL COORDINATOR (GRANT FUNDED)  
HRLY FACILITY ATTENDANT II  
HRLY FAMILIES FOR LITERACY COORD (GRANT FUNDED)  
HRLY FAMILY RESOURCE CENTER CLERK (GRANT FUNDED)  
HRLY FAMILY RESOURCE COORDINATOR I (GRANT FUNDED)  
HRLY FAMILY RESOURCE COORDINATOR II (GRANT FUNDED)  
HRLY HYDRANT MAINTENANCE WORKER  
HRLY KINDERGYM INSTRUCTOR  
HRLY LAB AIDE (MINIMUM WAGE)  
HRLY LAB ASSISTANT  
HRLY LIBRARY ASSISTANT I  
HRLY LIBRARY ASSISTANT II  
HRLY LIBRARY PAGE (MINIMUM WAGE)  
HRLY LIFEGUARD (ENTRY LEVEL)  
HRLY LIFEGUARD (SENIOR)  
HRLY LIFEGUARD (WSI)  
HRLY LITERACY INSTRUCTOR (GRANT FUNDED)  
HRLY LITERACY PROGRAM DIRECTOR (GRANT FUNDED)  
HRLY OFFICE AIDE (MINIMUM WAGE)  
HRLY OFFICE ASSISTANT I  
HRLY OFFICE ASSISTANT II  
HRLY POOL COORDINATOR  
HRLY POLICE AIDE  
HRLY PUBLIC SAFETY DISPATCHER  
HRLY ~~PUBLIC SAFETY DISPATCHER (NO PERS)~~  
HRLY ~~PUBLIC SERVICES LIBRARIAN I~~  
HRLY ~~PUBLIC SERVICES LIBRARIAN II~~  
HRLY RECREATION LEADER II  
HRLY RECREATION SPECIALIST I  
HRLY RECREATION SPECIALIST II  
HRLY RECREATION SPECIALIST III  
HRLY SAFETY COORDINATOR  
HRLY SEASONAL LEAD PARK WORKER  
HRLY SEASONAL PARK WORKER  
HRLY SEASONAL SENIOR LEAD PARK WORKER  
HRLY SENIOR ADMINISTRATIVE CLERK  
HRLY SMALL GROUP INSTRUCTOR  
HRLY TEEN ADVISORY BOARD COORD (MINIMUM WAGE)  
HRLY TINY TOT INSTRUCTOR  
HRLY VOLUNTEER COORDINATOR

**AGENDA ITEM  
CITY COUNCIL MEETING DATE - APRIL 21, 2015  
CONSENT CALENDAR**

**DATE** : April 8, 2015

**TO** : City Manager

**FROM** : Public Works Director  
Associate Civil Engineer

**SUBJECT** : **BENICIA INDUSTRIAL PARK BUS HUB PROJECT - APPROVAL OF A RESOLUTION CONFIRMING PROJECT DESIGN COMPLETED AND REQUESTING \$945,000 IN GRANT FUNDING FOR CONSTRUCTION**

**RECOMMENDATION:**

Adopt a resolution confirming project compliance and adopting the updated initial project report for the Benicia Industrial Park Bus Hub Project, and authorizing the City Manager to submit an allocation request for Regional Measure 2 Funds (RM2) to the Metropolitan Transportation Commission (MTC) for construction.

**EXECUTIVE SUMMARY:**

There is \$1.25 million in RM2 funding that has been earmarked for a Bus Hub park and ride facility at the intersection of Park Road and Industrial Way in the Benicia Industrial Park. The Bus Hub would serve the industrial park's work force and commuters traveling to and from Contra Costa and BART. The project would incorporate traffic circulation improvements requested during the initial public outreach process and attract future grant funding to the industrial park. As a condition to receiving \$945,000 for the construction phase of the project, MTC is requiring the City adopt a resolution confirming compliance with the RM2 grant requirements.

**BUDGET INFORMATION:**

The proposed budget for the \$1.25 million RM2 grant and \$860,000 Regional Traffic Impact Fee (RTIF) funded project is outlined below:

**Grant Budget**

Proposed Budget

Environmental & Preliminary Engineering .....	\$135,000
Final Design .....	\$175,000
Property Acquisition.....	\$600,000
Construction .....	<u>\$1,200,000</u>

Total Available RM2 and RTIF Grant Funding..... **\$2,110,000**

**GENERAL PLAN:**

Relevant General Plan Goals and Policies include:

- Overarching Goal of the General Plan: Sustainability
- Goal 2.17: Provide an efficient, reliable, and convenient transit system
- Goal 2.20: Provide a balanced street system to serve automobiles, pedestrians, bicycles, and transit
- Goal 2.28: Improve and maintain public facilities and services

**STRATEGIC PLAN:**

Relevant Strategic Plan Issue and Strategies include:

- Strategic Issue #2: Protecting and Enhancing the Environment
  - Strategy #4: Protect air quality/Pursue multiple mass transit opportunities
- Strategic Issue #3: Strengthening Economic and Fiscal Conditions
  - Strategy #2: Strengthen Benicia Industrial Park competitiveness
- Strategic Issue #4: Preserving and Enhancing Infrastructure
  - Strategy #1: Provide safe, functional, and complete streets
  - Strategy #2: Increase use of mass transit/Design and construct the Downtown Intermodal Facilities Project

**ENVIRONMENTAL REVIEW:**

In accordance with the California Environmental Quality Act (CEQA), an Initial Study was conducted to determine whether the proposed Bus Hub Project could have a significant adverse effect on the environment. On the basis of that study, a Mitigated Negative Declaration was prepared. The Initial Study/Mitigated Negative Declaration (IS/MND) was noticed and circulated for a 20-day public comment from October 16 – November 4, 2013. The IS/MND was adopted by the City Council on December 3, 2013. Subsequently, it was determined that the IS/MND was improperly noticed and it needed to be re-noticed and recirculated for public review. Staff took the opportunity to revise the document to provide additional detail about the proposed solar panels. On December 20, 2013, a revised IS/MND was recirculated for a 20-day public review period ending on January 9, 2014.

On January 21, 2014, City Council adopted Resolution No. 14-08 approving the revised Mitigated Negative Declaration.

**BACKGROUND:**

The existing bus stops on Park Road just south and west of Industrial Way did not have parking or other transit-related amenities. This project purchased the adjacent 1.0-acre gravel lot at the southwest corner of the intersection and will construct a paved parking lot with 46 stalls, bus pullouts, shelters, landscaping, and lighting. The project will include a vendor area, electric charging stations, and restrooms. A plan of the project is attached.

The existing stop is served by Fairfield-Suisun Transit (FAST) Route 40, which travels down the I-680 corridor into Contra Costa and BART. The new Bus Hub could transport the industrial park work force from locations within the county and commuters into Contra Costa County and BART.

The \$1.25 million in RM2 funding has been earmarked by MTC for the Bus Hub and the Solano Transportation Authority obtained additional grant funding to complete the project. MTC had already allocated a total of \$305,000 for environmental/preliminary design and final design. The \$945,000 allocation request is the remaining of the RM2 Fund that will be for the construction phase. To obtain the RM2 funding for construction, the City Council must adopt an updated Initial Project Report, which is attached.

The Benicia Industrial Park has been designated an employment Priority Development Area (PDA) under MTC's new One Bay Area Grant Program (OBAG). The intent of this program is to invest in PDA's that are served by alternative modes of transportation in order to reduce greenhouse gas emissions and the need for costly freeway expansion projects. Constructing the Bus Hub Project will strategically position the industrial park to compete for transportation-related grants in the future.

City staff met and solicited feedback from the Business Retention/Attraction Committee, the Benicia Industrial Park Association, and the Economic Development Board. Some concerns were expressed about the effect the additional automobiles could have on truck traffic. The benefit of having enhanced transit service for the industrial park work force was also mentioned. Staff indicated the project could be designed to mitigate traffic impacts and explained that under the new One Bay Area Grant scenario the Bus Hub Project is needed for the industrial park to successfully compete for transportation-related grants in the future.

As part of the project, the City acquired the 1.0-acre gravel lot at the southwest corner of the intersection of Park Road and Industrial Way. Mark Thomas and

Company has completed the design of the project. The project should be constructed in the summer of 2015.

Attachments:

- Proposed Resolution
- Initial Project Report
- Project Site Plan

**RESOLUTION NO. 15-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING PROJECT COMPLIANCE AS THE REGIONAL MEASURE 2 (RM2) IMPLEMENTING AGENCY AND REQUESTING THE METROPOLITAN TRANSPORTATION COMMISSION ALLOCATE \$945,000 IN RM2 FUNDING FOR THE CONSTRUCTION PHASE OF THE BENICIA INDUSTRIAL PARK BUS HUB PROJECT**

**WHEREAS**, SB 916 (Chapter 715, Statutes 2004), commonly referred as Regional Measure 2, identified projects eligible to receive funding under the Regional Traffic Relief Plan; and

**WHEREAS**, the Metropolitan Transportation Commission (MTC) is responsible for funding projects eligible for Regional Measure 2 funds, pursuant to Streets and Highways Code Section 30914(c) and (d); and

**WHEREAS**, MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for Regional Measure 2 funding; and

**WHEREAS**, allocations to MTC must be submitted consistent with procedures and conditions as outlined in Regional Measure 2 Policy and Procedures; and

**WHEREAS**, the City of Benicia is an eligible sponsor of transportation project(s) in Regional Measure 2, Regional Traffic Relief Plan funds; and

**WHEREAS**, the Benicia Industrial Park Bus Hub Project is eligible for consideration in the Regional Traffic Relief Plan of Regional Measure 2, as identified in California Streets and Highways Code Section 30914(c) or (d); and

**WHEREAS**, the Regional Measure 2 allocation request, attached hereto in the Initial Project Report and incorporated herein as though set forth at length, lists the project, purpose, schedule, budget, expenditure and cash flow plan for which the City of Benicia is requesting that MTC allocate Regional Measure 2 funds; and

**WHEREAS**, that the City of Benicia, and its agents shall comply with the provisions of the Metropolitan Transportation Commission's Regional Measure 2 Policy Guidance (MTC Resolution No. 3636); and

**WHEREAS**, that the City of Benicia certifies that the project is consistent with the Regional Transportation Plan (RTP); and

**WHEREAS**, that the Regional Measure 2 phase or segment is fully funded, and results in an operable and useable segment; and

**WHEREAS**, that the City of Benicia approves the updated Initial Project Report, attached to this resolution; and

**WHEREAS**, that the City of Benicia approves the cash flow plan, attached to this resolution; and

**WHEREAS**, that the City of Benicia has reviewed the project needs and has adequate staffing resources to deliver and complete the project within the schedule set forth in the updated Initial Project Report (IPR), attached to this resolution; and

**WHEREAS**, that the City of Benicia is an eligible sponsor of projects in the Regional Measure 2 Regional Traffic Relief Plan, Capital Program, in accordance with California Streets and Highways Code 30914(c); and

**WHEREAS**, that the City of Benicia is authorized to submit an application for Regional Measure 2 funds for the Benicia Industrial Park Transit Hub Project in accordance with California Streets and Highways Code 30914(c); and

**WHEREAS**, that the City of Benicia certifies that the projects and purposes for which RM2 funds are being requested is in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), and with the State Environmental Impact Report Guidelines (14 California Code of Regulations Section 15000 et seq.) and if relevant the National Environmental Policy Act (NEPA), 42 USC Section 4-1 et. seq. and the applicable regulations thereunder; and

**WHEREAS**, that there is no legal impediment to the City of Benicia making allocation requests for Regional Measure 2 funds; and

**WHEREAS**, that there is no pending or threatened litigation which might in any way adversely affect the proposed project, or the ability of the City of Benicia to deliver such project; and

**WHEREAS**, that the City of Benicia agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution 3866; and

**WHEREAS**, that the City of Benicia indemnifies and holds harmless MTC, its Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of the City of Benicia, its officers, employees or agents, or subcontractors or any of them in connection with its performance of services under this allocation of RM2 funds. In addition to any other remedy authorized by law, so much of the funding due under this allocation of RM2 funds as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages; and

**WHEREAS**, that the City of Benicia shall, if any revenues or profits from any non-governmental use of property (or project) that those revenues or profits shall be used exclusively for the public transportation services for which the project was initially approved, either for capital improvements or maintenance and operational costs, otherwise the Metropolitan Transportation Commission is entitled to a proportionate share equal to MTC's percentage participation in the projects(s); and

**WHEREAS**, that assets purchased with RM2 funds including facilities and equipment shall be used for the public transportation uses intended, and should said facilities and equipment cease to be operated or maintained for their intended public transportation purposes for its useful life, that the Metropolitan Transportation Commission (MTC) shall be entitled to a present day value refund or credit (at MTC's option) based on MTC's share of the Fair Market Value of the said facilities and equipment at the time the public transportation uses ceased, which shall be paid back to MTC in the same proportion that Regional Measure 2 funds were originally used; and

**WHEREAS**, that the City of Benicia shall post on both ends of the construction site(s) at least two signs visible to the public stating that the Project is funded with Regional Measure 2 Toll Revenues; and

**NOW, THEREFORE, BE IT RESOLVED THAT**, the City of Benicia authorizes City Manager or his/her designee to execute and submit an allocation request for the construction phase with MTC for Regional Measure 2 funds in the amount of **\$945,000** for the project, purposes and amounts included in the project application attached to this resolution; and

**BE IT FURTHER RESOLVED THAT**, that the City Manager or his/her designee is hereby delegated the authority to make non-substantive changes or minor amendments to the IPR as he/she deems appropriate; and

**BE IT FURTHER RESOLVED THAT**, a copy of this resolution shall be transmitted to MTC in conjunction with the filing of the City of Benicia application referenced herein.

\*\*\*\*\*

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 21<sup>st</sup> day of April, 2015 and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date

# Regional Measure 2 Initial Project Report (IPR)

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**Project Title:**

**RM2 Project No.**

**Allocation History:**

	<b>MTC Approval Date</b>	<b>Amount</b>	<b>Phase</b>
<b>#1: 14388908</b>	<b>7/24/13</b>	<b>\$135,000</b>	<b>ENV/PE</b>
<b>#2: 14388913</b>	<b>11/20/203</b>	<b>\$170,000</b>	<b>FINAL DESIGN</b>
<b>#3</b>	<b>N/A</b>	<b>\$945,000</b>	<b>CONSTRUCTION</b>

**Total: \$ 1,250,000**

**Current Allocation Request:**

<b>IPR Date</b>	<b>Amount Being Requested</b>	<b>Phase Requested</b>
<b>April 21, 2015</b>	<b>\$945,000</b>	<b>CONSTRUCTION</b>

**I. OVERALL PROJECT INFORMATION**

**A. Project Sponsor / Co-sponsor(s) / Implementing Agency**

City of Benicia is the project sponsor and implementing agency.

**B. Project Purpose**

## **Regional Measure 2 – INITIAL PROJECT REPORT**

This project will construct a Bus Hub Project at an existing bus stop in the Benicia Industrial Park serviced by Fairfield Suisun Transit (FAST) Route 40. SolTrans, the joint Benicia-Vallejo transit provider, has also expressed interest in servicing this stop in the future. The bus hub will provide parking facilities, kiss & ride, shuttle drop off/pick-up, and other amenities for traffic on the I-680 corridor and from the north side of Benicia to use bus transit across the Benicia-Martinez Bridge into Contra Costa County and BART.

### **C. Project Description (please provide details)**

**Project Graphics to be sent electronically with This Application**

The project acquired one acre, undeveloped parcel to construct a bus transit hub including a paved parking lot with 46 stalls, kiss & ride and shuttle drop off/pick up, bus pullouts, shelters, landscaping, and lighting. The project may include vendor area, and electric charging stations.

### **D. Impediments to Project Completion**

There are no known impediments at this time.

### **E. Operability**

It is estimated the facility will cost approximately \$6,000/yr to operate and will be funded by a combination of State Transit Assistance Funds distributed to the county, private/public partnerships, and City funds.

## **II. PROJECT PHASE DESCRIPTION and STATUS**

### **F. Environmental –**

Does NEPA Apply:  Yes  No

The Mitigated Negative Declaration was adopted at our January 21, 2104 Council Meeting.

### **G. Design –**

On August 22, 2014, the City executed a contract with Mark Thomas Company for design services for the Benicia Industrial Park Bus Hub Project. The 95% design has been completed (attached). This \$945,000 RM2 allocation request is for the for the construction phase of the project.

### **H. Right-of-Way Activities / Acquisition –**

The Solano Transportation Authority led this phase of the project and has acquired the 1.0 acre parcel for the City. Escrow closed on November 14, 2014.

### **I. Construction / Vehicle Acquisition –**

The project will be publicly bid. No vehicle acquisition is associated with the project.

## **III. PROJECT BUDGET**

### **J. Project Budget (Escalated to year of expenditure)**

**Regional Measure 2 – INITIAL PROJECT REPORT**

<b>Phase</b>	<b>Total Amount - Escalated - (Thousands)</b>
Environmental Studies & Preliminary Eng (ENV / PE / PA&ED)	\$135,000
Design - Plans, Specifications and Estimates (PS&E)	\$170,000
Right-of-Way Activities /Acquisition (R/W)	\$600,000
Construction / Rolling Stock Acquisition (CON)	\$1,205,000
<b>Total Project Budget (in thousands)</b>	<b>\$2,110,000</b>

**K. Project Budget (De-escalated to current year)**

<b>Phase</b>	<b>Total Amount - De-escalated - (Thousands)</b>
Environmental Studies & Preliminary Eng (ENV / PE / PA&ED)	\$135,000
Design - Plans, Specifications and Estimates (PS&E)	\$170,000
Right-of-Way Activities /Acquisition (R/W)	\$600,000
Construction / Rolling Stock Acquisition (CON)	\$1,205,000
<b>Total Project Budget (in thousands)</b>	<b>\$2,110,000</b>

**L. Project Budget – Deliverable Segment (Escalated to year of expenditure)**

<b>Phase</b>	<b>Total Amount - Escalated - (Thousands)</b>
Environmental Studies & Preliminary Eng (ENV / PE / PA&ED)	
Design - Plans, Specifications and Estimates (PS&E)	\$170,000
Right-of-Way Activities /Acquisition (R/W)	\$500,000
Construction / Rolling Stock Acquisition (CON)	
<b>Total Project Budget (in thousands)</b>	<b>\$670,000</b>

**M. Project Budget – Deliverable Segment(De-escalated to current year)**

<b>Phase</b>	<b>Total Amount - De-escalated - (Thousands)</b>
Environmental Studies & Preliminary Eng (ENV / PE / PA&ED)	
Design - Plans, Specifications and Estimates (PS&E)	\$170,000
Right-of-Way Activities /Acquisition (R/W)	\$500,000
Construction / Rolling Stock Acquisition (CON)	
<b>Total Project Budget (in thousands)</b>	<b>\$670,000</b>

**IV. OVERALL PROJECT SCHEDULE**

<b>Phase-Milestone</b>	<b>Planned (Update as needed)</b>	
	<b>Start Date</b>	<b>Completion Date</b>

**Regional Measure 2 – INITIAL PROJECT REPORT**

Environmental Document		01/21/2014
Environmental Studies, Preliminary Eng. (ENV / PE / PA&ED)	8/1/2013	12/3/2013
Final Design - Plans, Specs. & Estimates (PS&E)	12/3/2013	04/10/2015
Right-of-Way Activities /Acquisition (R/W)	12/3/2013	11/14/2014
Construction (Begin – Open for Use) / Acquisition / Operating Service (CON)	07/1/2015	12/1/2015

**V. ALLOCATION REQUEST INFORMATION**

**N. Detailed Description of Allocation Request**

Describe the scope of the allocation request. Provide background and other details as necessary.

**This allocation request is for Construction. The Mitigated Negative Declaration was adopted by City Council on January 21, 2015. The Solano Transportation Authority acquired the 1.0 acre lot for the City in late 2014.**

Amount being requested (in escalated dollars)	\$945,000
Project Phase being requested	Construction
Are there other fund sources involved in this phase?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Date of anticipated Implementing Agency Board approval the RM2 IPR Resolution for the allocation being requested	April 21, 2015
Month/year being requested for MTC Commission approval of allocation	May 2015

**O. Status of Previous Allocations (if any)**

The \$135,000 allocated for ENV/PE is being fully expended by Mark Thomas & Company, the City’s consultant, to complete this phase of work.

**P. Work plan in Alternate Format Enclosed**

TASK NO	Description	Deliverables	Completion Date
1	Complete Environmental	CEQA Document	01/21/2014
2	Complete Right of Way	Acquire 1 Acre Parcel	11/14/2014
3	Complete Design	PS&E	4/10/2015
4	Complete Construction	Bus Hub Project	12/1/2015

## Regional Measure 2 – INITIAL PROJECT REPORT

### **Q. Impediments to Allocation Implementation**

No impediments are known at this time.

### **VI. RM-2 FUNDING INFORMATION**

#### **R. RM-2 Funding Expenditures for funds being allocated**

**The companion Microsoft Excel Project Funding Spreadsheet to this IPR is included**

#### **S. Next Anticipated RM2 Allocation Request.**

May 2015

### **VII. GOVERNING BOARD ACTION**

**Check the box that applies:**

**Governing Board Resolution attached**

**Governing Board Resolution to be provided on or before:  
April 21, 2015**

### **VIII. CONTACT / PREPARATION INFORMATION**

#### **Contact for Applicant's Agency**

Name: Graham Wadsworth  
Phone: (707) 746-4227  
Title: Director of Public Works  
E-mail: gwadsworth@ci.benicia.ca.us  
Address: 250 East L Street, Benicia, CA 94510

#### **Information on Person Preparing IPR**

Name: Nouae Vue  
Phone: (707) 746-4228  
Title: Associate Civil Engineer  
E-mail: nvue@ci.benicia.ca.us  
Address: 250 East L Street, Benicia, CA 94510

#### **Applicant Agency's Accounting Contact**

Name: Abby Urrutia  
Phone: (707) 746-4225  
Title: Assistant Finance Director  
E-mail: aurrutia@ci.benicia.ca.us  
Address: 250 East L Street, Benicia, CA 94510

Revised IPR 120905.doc





**RM-2 Initial Project Report**

**EXPENDITURES TO-DATE BY PHASE AND FUND SOURCES**

Phase	Fund Source	Date of Last Expenditure	Amount Expended to date (Thousands)	Available Balance Remaining (Thousands)
ENV / PA&ED	RM2	3/11/2014	98.5	135
ROW	RTIF	11/14/2014	86.7	80
PS&E	RM2	3/23/2015	98.5	170
CON / Operating	RTIF		0	260
CON / Operating	RM2		0	945
Total to date (in thousands)			197	1,590

Comments:

As required by RM-2 Legislation, provide funds expended to date for the total project. Provide both expenditure by Fund Source and Expenditure by Phase, with the date of the last expenditure, and any available balance remaining to be expended.

Project ID: 17.4  
 Date: 4/7/2015



## Regional Measure 2 Program Estimated Budget Plan

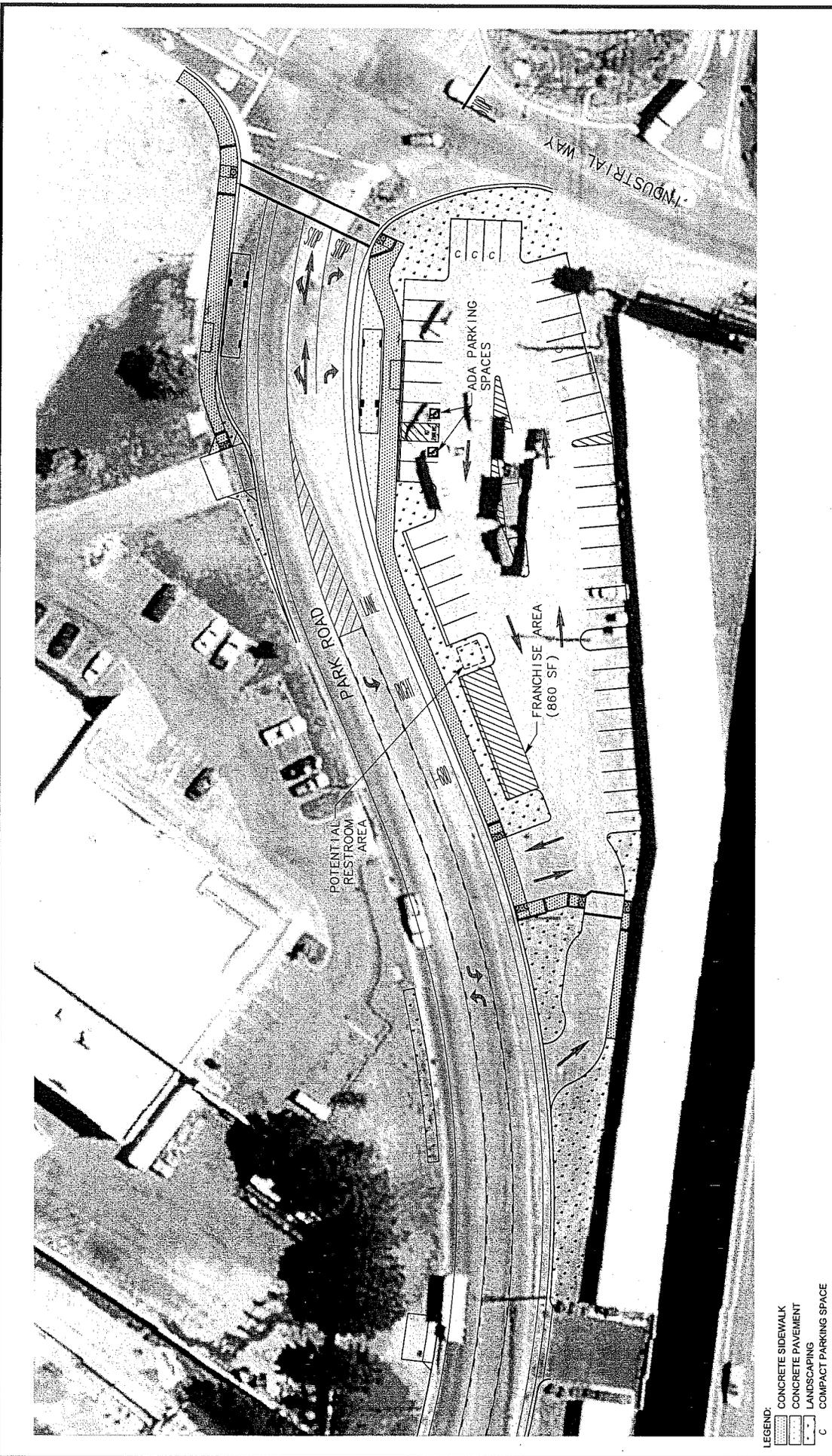
Please complete this form based the proposed allocation for your project. The scope should be consistent with the funding you are requesting the MTC allocate. Projects with complementary fund sources, should list the estimated cost of the entire work scope. Note that this information may not only represent the RM2 funding. A separate EBP needs to be completed for each allocation request or each phase of such request.

TITLE OF PROJECT  Benicia Industrial Park Bus Hub Project	RM2 Legislation ID (and project subelements if any)  <span style="float: right;">17.4</span>
NAME AND ADDRESS OF IMPLEMENTING AGENCY   	

DETAIL DESCRIPTION	ESTIMATED HOURS	RATE/HOUR	TOTAL ESTIMATED COST (Dollars)
<b>1. DIRECT LABOR of Implementing Agency (Specify by name &amp; job function)</b>			
			0
			0
			0
			0
			0
<b>TOTAL DIRECT LABOR</b>			<b>0</b>
<b>2. OVERHEAD &amp; DIRECT BENEFITS (Specify)</b>			
	RATE	X BASE	
Overhead		0	
Direct Benefit		0	
<b>TOTAL OVERHEAD &amp; DIRECT BENEFIT</b>			<b>0</b>
<b>3. DIRECT CAPITAL COSTS (include enigneer's estimate on construction, right-of-way, or vehicle acquisition)</b>			
	Unit (if applicable)	Cost per Unit (\$)	
<b>TOTAL DIRECT CAPITAL COSTS</b>			<b>0</b>
<b>4. CONSULTANTS (Identify purpose and or consultant)</b>			
ENV/PE	1125	120	135,000
PS&E	1458	120	170,000
<b>TOTAL CONSULTANTS</b>			<b>305,000</b>
<b>5. OTHER DIRECT COSTS (Specify - explain costs, if any)</b>			
<b>TOTAL OTHER DIRECT COSTS</b>			
<b>6. TOTAL ESTIMATED COST</b>			<b>305,000</b>

Comments:

Date: 4/7/2015



**MARK THOMAS & COMPANY, INC.**  
 Planning, Engineering, Surveying and Planning Services  
 1000 UNIVERSITY AVENUE, SUITE 100  
 BENICIA, CALIFORNIA 94920  
 TEL: (925) 236-0000 FAX: (925) 236-0001

**PROJECT SITE EXHIBIT**  
**BENICIA INDUSTRIAL BUS HUB PROJECT**  
 CITY OF BENICIA

LEGEND:  
 CONCRETE SIDEWALK  
 CONCRETE PAVEMENT  
 LANDSCAPING  
 C COMPACT PARKING SPACE

SCALE: 1" = 40'  
 DATE: MARCH 2015  
 FILE: CC-13116-025



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - APRIL 21, 2015**  
**CONSENT CALENDAR**

**DATE** : April 15, 2015

**TO** : City Manager

**FROM** : Assistant City Manager

**SUBJECT** : **APPROVE THE AMENDMENT TO THE CONTRACT SERVICES AGREEMENT BETWEEN THE CITY OF BENICIA AND MANAGEMENT PARTNERS**

**RECOMMENDATION:**

Adopt the resolution approving the amendment to the agreement with Management Partners for management consulting services for the Community Development Department.

**EXECUTIVE SUMMARY:**

Staff is proposing to amend the contract with Management Partners for management consulting services for the Community Development Department.

**BUDGET INFORMATION:**

The proposed amendment to this contract is for an additional \$5,000 to allow for continued consulting services to assist with various projects in the Community Development Department during the next several months. The cost of this contract will be funded from department savings in salary and benefits.

It should be noted that the City has a separate contract with Management Partners for assistance with the Sustainable Community Services Strategy (SCSS) with a separate scope of work and is unrelated to this contract.

**STRATEGIC PLAN:**

Relevant Strategic Plan Goals and Strategies:  
Strategic Issue 3: Strengthening Economic and Fiscal Conditions

**BACKGROUND:**

The City is contracting with Management Partners for interim management consulting services for the Community Development Department on various project to assist with the transition of management of the department to the recently hired director, Christina Ratcliffe. This action will extend the term of the contract through June 30, 2015, and increase the not-to-exceed compensation amount by \$5,000.

Attachments:

- Proposed Resolution
- Proposed Amendment to Agreement

**RESOLUTION NO. 15-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING THE CONTRACT WITH MANAGEMENT PARTNERS FOR MANAGEMENT CONSULTING SERVICES FOR THE COMMUNITY DEVELOPMENT DEPARTMENT**

**WHEREAS**, the City is currently contracting with Management Partners for interim management assistance in the Community Development Department; and

**WHEREAS**, the City desires to amend the agreement due to the need for management consulting services on various projects; and

**WHEREAS**, it is anticipated that assistance will be required through June 2015.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia approves the amendment to the contract of an additional \$5,000, for a total contract amount of \$108,000 for 2014-15, and authorizes the City Manager to sign the contract on behalf of the City, subject to approval by the City Attorney.

**BE IT FURTHER RESOLVED THAT** sufficient funds to cover this service contract, including budget transfers from vacant positions, exist in Accounts Nos. 010-4105-8100 (50%), and 010-4205-8100 (50%).

\*\*\*\*\*

On motion of \_\_\_\_\_, and 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 21<sup>st</sup> day of April, 2015, and adopted by the following vote.

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date



## AMENDMENT TO AGREEMENT

This Amendment of the Agreement, entered into this \_\_\_\_ day of April, 2015 by and between the City of Benicia, a municipal corporation (hereinafter "CITY") and Management Partners, a Ohio Corporation with its primary office located at 1730 Madison road, Cincinnati, OH 45206 (hereinafter "CONSULTANT").

:

### RECITALS

A. On July 30, 2014 an agreement was entered into by and between CITY and CONSULTANT ("Agreement").

B. CITY and CONSULTANT desire to modify the Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, it is mutually agreed by and between and undersigned parties as follows:

1. Paragraphs 1, 2 and 9 of the Agreement are modified to read as follows:

CONSULTANT shall provide management consulting services as assigned by the City Manager. CONSULTANT shall assist the City by executing the attached scope of services in a satisfactory and proper manner, in accordance with direction provided by the City Manager, or his designee. See Management Partners proposal dated March 31, 2015, which is attached as Exhibit A, for scope of services.

CITY agrees to pay CONSULTANT as full compensation for all services and duties performed, except as otherwise provided herein, as described in the modified proposal. The total compensation to be paid under this Agreement shall not exceed \$108,000.

The term of this Agreement shall be through June 30, 2015, or upon reaching the "not-to-exceed" compensation amount, whichever occurs first. This Agreement may be terminated by giving written notice to the other party of that party's intention to so terminate. This Agreement shall be terminated two (2) days from and after the date of delivery or mailing of the notice, unless the notice specifies otherwise.

2. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed on the day and year first above written.

CONSULTANT  
Gerald E. Newfarmer  
President & CEO

CITY OF BENICIA  
Brad Kilger, City Manager

By \_\_\_\_\_  
Dated:

By \_\_\_\_\_  
Dated:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

# Management Partners



March 31, 2015

Mr. Brad Kilger  
City Manager  
City of Benicia  
250 East L Street  
Benicia, CA 94510

Dear Mr. Kilger:

Thank you for the opportunity to submit a proposal to provide management consulting services to the City of Benicia. We understand that the City has a number of projects within the Community Development Department in need of expert assistance. Management Partners has the expertise and skills necessary to provide this assistance and we would be pleased to do so.

## **About Management Partners**

Management Partners was founded in 1994 with a specific mission to help local government leaders improve their service to the public. We are a national consulting firm with offices in San Jose and Costa Mesa, California and in Cincinnati, Ohio. We have a well-established track record of helping public sector organizations throughout the United States, including all of the services provided by cities, counties, towns and special districts at the local level.

During our 20 years of service, we have earned a national reputation by delivering quality, actionable work products to our clients. We bring extensive experience to this project, along with first-hand knowledge of local government operations. We are distinguished by the fact that each team we assign is led and staffed by associates who have actual experience in direct public service and experience working together as a team. The work we do is not an academic exercise; it is grounded in the real world of customer service and accomplishment in the public sector. As a result, we have a bias for producing value-added work for each client that will be actionable, and will be implemented.

The firm is staffed with about 80 professionals who are experienced public service managers as well as qualified management consultants. This group includes generalists as well as subject-matter experts. Our consultants have years of experience working in all aspects of local government management and have built a track record of extraordinary quality service for our clients.

The firm has extensive experience helping improve both the efficiency and effectiveness of local government services. We have completed organizational staffing and improvement projects in virtually every type of local government service, including reviews of entire governments as well as selected studies of individual departments and functional activities.

Management Partners' services include everything required to support a local government leader, elected or appointed. Our full range of services includes the following:

- § Organizational Analysis and Performance Audits – Also called efficiency studies and organizational reviews, identifies improvements to an operation's efficiency and effectiveness.
- § Performance Management – Encompasses a wide range of management tools that can be and often are developed independently of one another, including: performance management and measurement, process management, performance budgeting, employee performance evaluation and strategic and process benchmarking.
- § Process Improvement – Examines the processes by which customers are served, an important technique for developing a program for operations improvement, including process mapping.
- § Strategic and Business Planning – Can be an important tool for focusing the efforts of an organization and fostering communication between leaders, staff and important stakeholder groups.
- § Financial Planning, Budgeting and Analysis – Assists clients in analyzing their finances and planning for the effective and efficient use of taxpayer or customer dollars.
- § Organizational Development and Training – Helps clients develop organizational capacity, a key to developing high performance organizations. Services include executive coaching, customer service training, employee and customer surveys and conflict management workshops.
- § Sharing and Consolidation of Services – Offers a more efficient way to provide services, particularly on a regional basis. Options range from the complete integration of previously separate jurisdictions to sharing or consolidating the management of individually delivered services and operations.
- § Executive Recruitment – Identifies top candidates for chief executive officer positions and department director level jobs in local governments.

We offer a balance of perspectives with a practitioner's bias and a proven track record of successful consulting engagements. This experience gives us a sensitivity that produces positive outcomes. Each of our projects is individually tailored to the unique needs of the client. We have a deep understanding of the service environment of local government and we are proud to say that as a result of our quality work, many of our clients ask us to complete subsequent assignments.



## Understanding of the Engagement

The City has need for assistance from Management Partners for the following scope of work. These projects are to be completed in June 2015.

1. Provide recommendations for modifications to the City's Zoning Ordinance related to property owner/tenant notice; assist in preparing a report to the Planning Commission.
2. Review and provide comments on a draft report on the permit status of Pine Lake.
3. Prepare a draft request for proposals for building services.
4. Review and provide recommendations for draft implementation strategies for the adaptation study.
5. Provide recommendations pertaining to the Marin Clean Energy opt-out notification.
6. Review and provide recommendations on a request for proposals pertaining to wind turbine.
7. Provide expert advice regarding planning fees
8. Prepare a draft of a flood plain ordinance.
9. Prepare draft fundraising guidelines for the Community Sustainability Commission.
10. Prepare a draft report regarding Community Development Block Grant Funding:
11. Prepare revisions to the City's photo-voltaic review process.

We understand that some of these projects will require presentation by our consultant(s) to City Council, commissions and/or community meetings.

## Consultants

Management Partners has a well-qualified team to complete this scope of work. We will assign Dan Marks as the lead consultant on this engagement. Other Management Partners consultants are available as needed, including economic and community development experts, financial experts, and management analysts. The following table lists several of our consultants available for this engagement. Brief qualifications are provided for Dan Marks, Jay Trevino and Liane Schuller.

Consultant	Title	Expertise
Dan Marks	Special Advisor	Community and economic development, planning
Jay Trevino	Special Advisor	Community and economic development, planning
Liane Schuller	Special Advisor	Planning and zoning
Andrew Belknap	Regional Vice President	Community and economic development, public works, finance, fee analysis, executive management
Heain Lee	Management Analyst	Analytical projects

Our consultants will work at the direction of Management Partners. We will provide all insurance, training and administrative support (including company equipment) as necessary during the assignment. Our commitment is to provide high quality project assistance to the City of Beverly Hills.

**Dan Marks, AICP, Special Advisor**

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Dan Marks has more than 23 years experience as a local government planner, including 14 years as a community development director and planning director. His areas of expertise include management and budgeting, permitting procedures, community engagement and facilitation, zoning, historic preservation, policy development, sustainable development practices and the California Environmental Quality Act. In addition to his public sector experience, Dan has also worked as a planning consultant and for non-profit organizations in various capacities. He brings a deep understanding of the complexities of the development review and approval process, the policy and political context for decision-making, and years of experience successfully managing departments through the ups and downs of the development cycle and fiscal constraints.

**Jay Trevino, AICP, Special Advisor**

---

Jay Trevino, Special Advisor, has extensive public sector experience in land use planning and regulation, urban design, transit oriented development, environmental analysis, redevelopment, community outreach, strategic management, organizational development and team building. During his 31 years in local government, Jay served in a variety of planning positions in four cities, the most recent of which was executive director of the Planning and Building Agency of the City of Santa Ana. He had direct responsibility for the leadership and administration of the 108-member agency which included advance, current, and environmental planning; plan check; permit issuance; new construction inspection; and code enforcement. He was previously planning manager for the City of Santa Monica.

**Liane Schuller, Special Advisor**

---

Liane Schuller, Special Advisor, joined Management Partners after spending over 29 years in local government public service in the cities of Newport Beach, Santa Ana, and Laguna Beach. Liane has expertise in the area of community development with multi-faceted experience in planning, building and code enforcement. She is a skilled facilitator of team building, community outreach and conflict resolution. Liane most recently served as the Zoning Administrator in the City of Laguna Beach where she managed the processing of local development applications. These included managing coastal and cultural resources, growing and retaining local businesses, protecting views, and historic preservation and neighborhood gentrification. During her tenure in Laguna Beach Liane was recognized for her efforts to improve the design review process. Based on her work, the City Council adopted measures to bolster staff support, to streamline decision-making and improve predictability, thereby lessening the contentiousness associated with the entitlement process.



**Fee Proposal**

Management Partners will provide these consulting services on an hourly basis. We are anticipating approximately 40 hours to complete the projects identified above. During this engagement, the actual consultant hours will be reimbursed by the City, plus travel expenses. We will charge \$125 per hour for Dan Mark’s consulting assistance. This is a discounted rate in recognition of the anticipated duration of this project. Other Management Partners consultants who provide assistance will be billed at their regular hourly rates ranging from \$75 to \$250, depending on the individual assigned to the project.

We appreciate the opportunity to be of assistance to the City of Benicia. Please feel free to contact either Jan Perkins (949-202-8870) or me if you have any questions about this proposal.

Sincerely,



Gerald E. Newfarmer  
President and CEO

Accepted for City of Benicia by:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - APRIL 21, 2015**  
**CONSENT CALENDAR**

**DATE** : April 15, 2015

**TO** : City Manager

**FROM** : Economic Development Manager

**SUBJECT** : **APPROVAL OF AMENDED PROVISIONS OF LEASE AGREEMENT WITH CARTER RANKIN OF CARTER'S BIZ CAFÉ FOR THE COMMANDING OFFICER'S QUARTERS, 1 COMMANDANT'S LANE**

**RECOMMENDATION:**

Approve the proposed amended provisions to the lease agreement for the Commanding Officer's Quarters (COQ), which was originally approved by the City Council on October 21, 2014.

**EXECUTIVE SUMMARY:**

On October 21, 2014 the City Council approved a lease agreement with Carter Rankin of Cater's Biz Café to utilize the COQ as a co-working venue. The intent was to execute the lease agreement on November 1, 2015; however, due to scheduling and financing delays of investors the execution of the lease has been postponed to April 22, 2015. As such, a few provisions have been modified to reflect this new timeframe. The proposed changes only alter the date, not the amount in which the security deposit and monthly rent become due.

**STRATEGIC PLAN:**

Relevant Strategic Plan Goals:

Strategic Issue No. 5: Maintain and Enhance a High Quality of Life:

- Strategy No. 4: Preserve City-owned Historic Structures

**BUDGET INFORMATION:**

Approval of the proposed changes do not alter the value of the lease agreement. The lease agreement would generate, for the first sixty-six (66) months, a total of \$191,724.

**BACKGROUND:**

As noted above, it had been the intent of both parties to execute the lease agreement in November 2014, but due to delays in finalizing the business plan and investment group it has been necessary to postpone the lease execution date to April 22, 2015. As such, a few date provisions have been modified.

The most significant change is a reduction of time for which the tenant would enjoy free rent to prepare the facility for occupancy. Originally the tenant had six months to perform that work rent free. The modified agreement provides a ten-week grace period beginning April 22<sup>nd</sup> to June 30<sup>th</sup>. Beginning on July 1<sup>st</sup> the tenant will be required to pay monthly rent as shown below:

**Revised Monthly Rent Provision:**

April 22, 2015 through June 30, 2015:	Free
July 1, 2015 through June 30, 2016:	\$500.00 / month
July 1, 2016 through June 30, 2017:	\$3,500.00 / month
July 1, 2017 through June 30, 2018:	\$5,900.00 / month
July 1, 2018 through June 30, 2019:	\$6,077.00 / month
July 1, 2019 through June 30, 2020:	\$6,266.00 / month

Under the original agreement the paid rent schedule would have begun on May 1<sup>st</sup>, it has now been moved to begin on July 1<sup>st</sup>.

The only other modification to the agreement approved last October is the payment of the security deposit. Due to the accelerated preparation phase, and for cash-flow purposes, Carter Rankin has requested the \$15,000 security deposit be paid in two payments. The first payment would be in the amount of \$5,000 and upon City receipt of that first payment, Carter Rankin would be granted entry. The second payment of \$10,000 would be paid on July 1<sup>st</sup>. The original agreement specified a one-time payment of \$15,000 prior to entry.

Staff is comfortable with the above stated modifications to the agreement and recommends approval.

Attachments:

- Proposed Resolution
- Proposed Modified Lease Agreement

**RESOLUTION NO. 15-**

**RESOLUTION APPROVING THE LEASE AGREEMENT WITH CARTER RANKIN OF CARTER'S BIZ CAFÉ COMMANDING OFFICER'S QUARTERS AT 1 COMMANDANT'S LANE AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE LEASE**

**WHEREAS**, the reconstruction and rehabilitation of the Historic Commanding Officer's Quarters building, occurring in 2008 and 2009 preserved a valuable historic community asset in the City of Benicia; and

**WHEREAS**, the City of Benicia applied for and received grants and allocated general funds to undertake the renovation to the of the Commanding Officer's Quarters; and

**WHEREAS**, the grant funds received from the California Office of Historic Preservation and the California Cultural and Historical Endowment, totaling \$900,000, \$400,000 and \$500,000 respectfully required that the public have access to the premises; and

**WHEREAS**, on May 5, 2009 the City Council adopted a reuse plan for the Commanding Officer's Quarters developed by Carey & Co., Inc., and Strategic Economics; and

**WHEREAS**, the lease agreement with Carter Rankin of Carter's Biz Café to utilize the Commanding Officer's Quarters as a co-working venue is consistent with the adopted reuse study and meets the requirements of the State grants; and

**WHEREAS**, the term of this agreement is for a period of sixty-two (62) months and nine (9) days with a one five-year option; and

**WHEREAS**, it is anticipated the City will receive \$191,724 in lease revenue during the first term of the agreement; and

**WHEREAS**, a portion of the rental income will be deposited in special account for the maintenance and improvement of the Commanding Officer's Quarters; and

**WHEREAS**, the lease document as drafted was negotiated on good faith by both parties, is consistent with standard city provisions, and has been accepted by Carter Rankin.

**NOW, THEREFORE, BE IT FURTHER RESOLVED THAT** the City Council of the City of Benicia hereby approves the attached lease agreement for the Commanding Officer's Quarters at 1 Commandant's Lane and authorizes the City Manager to execute the agreement.

\* \* \* \* \*

On motion of Council Member \_\_\_\_\_, and 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 21<sup>st</sup> day of April, 2015, and adopted by the following vote.

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date

**LEASE AGREEMENT**

**COMMANDING OFFICER'S QUARTERS**

**BY AND BETWEEN**

**CITY OF BENICIA  
A CALIFORNIA MUNICIPAL CORPORATION ("LANDLORD")**

**AND**

**CARTER RANKIN OF  
CARTER'S BIZ CAFÉ ("TENANT")**

**DATED: APRIL 22, 2015**

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## **EXHIBITS**

- Exhibit A-1    Legal Description of Property
- Exhibit A-2    Depiction of the Premises
- Exhibit B      Rules and Regulations
- Exhibit C      Reuse Study

**COMMANDING OFFICER'S QUARTERS LEASE AGREEMENT**

**BASIC LEASE INFORMATION**

1. **Landlord:** City of Benicia, a California Municipal Corporation  
250 East L Street  
Benicia, CA 94510  
Attn: Office of the Director, Parks & Community Services Dept.  
Telephone: 707.746.4289  
Facsimile: 707.747.8118
  
2. **Tenant:** Carter's Business Café  
Attn: Carter Rankin  
Address: 2827 Monument Blvd # 18  
Concord 94520  
  
Telephone: 415.756.5737  
E-Mail: carterrankin3@gmail.com
  
3. **Effective Date:** April 22, 2015
  
4. **Premises:** The Premises contain approximately 8,883 square feet ("**Premises**"). The Premises are located at 1 Commandant's Lane, Benicia, CA 94510
  
5. **Permitted Uses:** Co-working Venue; also See limitations per Reuse Study (Exhibit C)
  
6. **Initial Term:** Initial Term of five (5) years, commencing as of that date set forth in Lease Section 2, below ("**Commencement Date**").
  
7. **Demo and Construction Phase:**

April 22, 2015 through June 30, 2015

Tenant is not obligated to pay any rent, but must place and pay ALL Utilities in their name.

8. **Base Rent:**  
**Five Hundred Dollars and 00/100** per month (\$500.00 / month)  
July 1, 2015 through June 30, 2016  
**Three Thousand Five Hundred Dollars and 00/100** per month (\$3,500.00 / month)  
July 1, 2016 through June 30, 2017  
**Five Thousand Nine Hundred Dollars and 00/100** per month (\$5,900.00 / month)  
July 1, 2017 through June 30, 2018

**Six Thousand Seventy Seven Dollars and 00/100** per month (\$6,077.00 / month)

July 1, 2018 through June 30, 2019

**Six Thousand Two Hundred Sixty Dollars and 00/100** per month (\$6,266.00 / month)

July 1, 2019 through June 30, 2020

9. Other Rent: Tenant shall pay Landlord annually **3% on Gross Sales over \$766,400.00 per year**. With a Cap of \$30,000 annually. Gross sales to consist only of Food & Beverage, Merchandise, Membership, Room & Equipment rental that pertains to and physically takes place inside the Commanding Officers Quarters
10. Security Deposit: **Fifteen Thousand Dollars and 00/100** (\$15,000.00) due in two payments of Five Thousand dollars (\$5,000) and Ten Thousand dollars (\$10,000). Upon City receipt of the first payment of Five Thousand Dollars (\$5,000) tenant may gain entry.
11. Option Period: The term of this lease may be extended for (1) period of five (5) years provided (i) Tenant gives notice of its election to renew and extend the lease term; and (ii) Tenant is not currently nor has ever been in default. Option shall (1) be a personal right in favor of Tenant; (2) be non-assignable; and (3) terminate upon assignment of the Lease or sublease of the premises. If Option Period is exercised, a market survey shall be conducted to establish a new monthly rent rate. Under no circumstance may the rent rate be adjusted below \$6,266/month. Once the new rate has been established, each year thereafter there shall be an annual rent increase of 3%.

The Basic Lease Information set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Lease. In the event of any conflict between the Basic Lease Information and terms of the Lease, the terms of the Lease shall control.

LANDLORD'S INITIALS \_\_\_\_\_

TENANT'S INITIALS \_\_\_\_\_

## COMMANDING OFFICER'S QUARTERS LEASE AGREEMENT

This Lease Agreement ("**Lease**") is made and entered into as of the effective date specified in Section 3 of the Basic Lease Information, above ("**Effective Date**"), by and between the City of Benicia, a municipal corporation of the State of California ("**Landlord**"), and the tenant identified in Section 2 of the Basic Lease Information ("**Tenant**").

### 1. PREMISES.

1.1. Premises. Landlord is the owner of the land parcel(s) on which the Premises and the Building are located ("**Property**"). A legal description of the Property is attached hereto and incorporated by reference as Exhibit A-1. Landlord hereby leases to Tenant, and Tenant leases from Landlord, the Premises together with Tenant Improvements (defined below), if any. A drawing depicting the general location and layout of the demised Premises is attached hereto and incorporated by reference as Exhibit A-2. Tenant is familiar with the existing condition of the Premises, and Building, acknowledges that Landlord has made no representations or warranties in that regard, and hereby accepts them in their "AS IS" condition as of the Effective Date. Landlord to include descriptive language from Parks Superintendent highlight current state of the property and "AS IS" condition.

1.2. Landlord's Reserved Rights. Landlord and Tenant agree that 24 Hours Notice (oral or written) shall be sufficient and reasonable notice to Tenant to enter the property (except that advance notice shall not be required in case of an emergency) for the following purposes (i) to inspect the condition of the Premises; (ii) to ascertain the performance by Tenant of the terms and conditions hereof; (iii) to respond to an emergency at the Premises; (iv) to maintain, inspect, and repair the Premises to the extent required or permitted under this Lease; (v) to post notices of non-responsibility for alterations, additions, or repairs undertaken by Tenant; (vi) to show the Premises to prospective tenants or purchasers or persons acting on their behalf; (vii) to post a leasing sign, after 90 day notice of lease expiration or Tenant default that ends in termination in or about the Premises; (viii) to host with Tenant four (4) Open House events at the Commanding Officer's Quarters to occur on a quarterly basis that provides free access of the premises or part thereof to the public; and (ix) to perform any other right or duty of Landlord under this Lease. Landlord may exercise this right of entry without any abatement of Rent to Tenant for any loss of occupancy or quiet enjoyment of the Premises.

### 2. TERM.

2.1. Term. The "**Initial Term**" of this Lease shall be as set forth in Section 6 of the Basic Lease Information and shall commence as of the Commencement Date (defined below). The Initial Term together with the Extension Term(s), if any, are collectively referred to herein as the "**Term.**" If the Commencement Date occurs other than on the first day of a month, the Term shall begin on such day, but shall include such partial month as well as the number of months accounted for in Section 6 of the Basic Lease Information.

2.2. Commencement Date. The "**Commencement Date**" shall be that date on which Tenant has obtained all required certificates of occupancy (which may be temporary certificates) for the Premises.

### 3. RENT; SECURITY DEPOSIT

Base Rent, Rent. All Rent under this Lease shall commence as of the Commencement Date. Rent shall be paid as set forth in this Section 3. Tenant shall pay to Landlord, at Landlord's address for payment of Rent designated in Section 1 of the Basic Lease Information, or at such other address as Landlord may from time to time designate in writing to Tenant for the payment of Rent, the Base Rent designated in Section 7 of the Basic Lease Information, without notice, demand, offset or deduction, in advance, on the first day of each month of the Term. Upon execution of this Lease, Tenant shall pay to Landlord the first month's Base Rent. The term "**Rent**" means the Base Rent, and all Additional Rent payable as provided in Section 3.2. If Rent is due for a period of less than a full month, it shall be prorated for such partial month on the basis of a thirty (30) day month.

If Landlord allows Tenant to have early possession (prior to the **Commencement Date**) and elects not to charge the tenant **Rent** for those days, Tenant is still obligated to comply with all other terms of this contract.

3.1.1 Application of Payments. All payments received by Landlord from Tenant shall be applied to the oldest obligation owed by Tenant to Landlord. No designation by Tenant, either in a separate writing, on a check or money order, or otherwise shall modify this clause or have any force or effect.

3.1.2 Late Charge and Interest. The late payment of any Rent will cause Landlord to incur additional costs, including administration and collection costs and processing and accounting expenses ("**Delinquency Costs**"). If Landlord has not received any installment of Rent within ten (10) days after such amount is due, Tenant shall pay a late charge of ten percent (10%) of the delinquent amount immediately. The ten percent (10%) late charge represents a reasonable estimate of the Delinquency Costs incurred by Landlord. In addition, all such delinquent amounts shall bear interest from the date such amount was due until paid in full at a rate per annum ("**Applicable Interest Rate**") equal to the lesser of (a) the maximum interest rate permitted by Law or (b) five percent (5%) above the rate publicly announced by Bank of America, N.A. (or if Bank of America, N.A. ceases to exist, the largest bank then headquartered in the State of California) ("**Bank**") as its "**Reference Rate.**" If the use of the announced Reference Rate is discontinued by the Bank, then the term Reference Rate shall mean the announced rate charged by the Bank which is, from time to time, substituted for the Reference Rate. Landlord and Tenant recognize that the damage which Landlord shall suffer as a result of Tenant's failure to pay such amounts is difficult to ascertain and said late charge and interest are the best estimate of the damage which Landlord shall suffer in the event of late payment. Landlord's acceptance of late Rent, partial Rent and late charges does not equate with a waiver of Tenant's default with respect to the overdue amount, or prevent Landlord from exercising any rights and remedies available under this Lease and/or by operation of Law.

3.2. Additional Rent. Tenant's obligation to pay Rent under this Lease survives the Term to the extent such obligation has not been fulfilled during the Term. In addition, Landlord reserves the right to charge Tenant and Tenant shall pay for any Utilities as described in Section 4 not directly paid by Tenant to the utility company.

3.3. Security Deposit. The cash sum specified under Section 8 of the Basic Lease Information shall be deposited with Landlord in two payments of Five Thousand Dollars (\$5,000) on April 22, 2015 and Ten Thousand Dollars (\$10,000) on July 1, 2015 ("**Security Deposit**"). Landlord shall hold the Security Deposit as security for the performance of Tenant's obligations under this Lease. Tenant is not entitled to any interest on the Security Deposit and Landlord shall not be liable therefore. If Tenant defaults on any provision of this Lease, Landlord may, at its election and without prejudice to any remedy it has under this Lease or by operation of Law, apply all or part of the Security Deposit to: (i) Rent or other sum in default; (ii) any amount that Landlord may spend or become obligated to spend in exercising Landlord's rights under this Lease; (iii) unamortized costs of improvements paid for by Landlord, if any; (iv) unamortized costs of brokerage commissions; or (v) any expense, loss or damage that Landlord may suffer because of Tenant's default. Tenant shall not use any portion of the Security Deposit in lieu of "**Last Month's Rent**" upon vacating the property. Tenant waives the provisions of California Civil Code section 1950.7, and all Laws in force or that become in force after the date of execution of this Lease, that provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of Rent, to repair damage caused by Tenant, or to clean the Premises. Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other foreseeable or unforeseeable loss or damage caused by the act or omission of Tenant, or of Tenant's officers, agents, employees, independent contractors, invitees, customers, licensees, assignees or subtenants (individually and collectively, "**Tenant's Parties**").

3.3.1 Restoration of Security Deposit; Return of Security Deposit. If Landlord applies any portion of the Security Deposit during the Term, Tenant shall, within ten (10) days after demand by Landlord, deposit with Landlord an amount sufficient to restore the Security Deposit to its original amount. If Tenant performs every provision of this Lease to be performed by Tenant, the unused portion of the Security Deposit, if any, shall be returned to Tenant or the last assignee of Tenant's interest under this Lease within thirty (30) days following the expiration or termination of the Term.

3.3.2 Transfer of Security Deposit; Assignment or Encumbrance of Security Deposit. If Landlord disposes of its interest in the Premises, Landlord may deliver the remaining Security Deposit to Landlord's successor in interest in the Premises and thereupon be relieved of further responsibility with respect to the Security Deposit. Tenant may not assign or encumber the Security Deposit without the prior written consent of Landlord. Any attempt to do so shall be void and shall not be binding on Landlord.

3.4. Improvement Financing. The provisions of this Lease and the Work Letter related to Improvement Financing and the Rent Offset are personal to Tenant and shall not be included in any assignment or sublet of this Lease.

3.4.1 Loan Documents. In the event that Tenant desires to obtain financing for the cost of the Improvement Work ("**Improvement Financing**"), Tenant shall advise Landlord of the loan terms and proposed lender, and provide Landlord with copies of all applicable documentation and agreements, including the proposed promissory note, loan agreement, and any security instruments (collectively, "**Loan Documents**"). The Improvement Financing shall be obtained from, and all Loan Documents shall be with, a reputable third-party

institutional lender upon commercially reasonable terms. In no event shall Landlord's fee interest in the Building or Premises be or become subordinate to the Improvement Financing or any other financing or security instruments. Improvement Financing shall in no event be more than the amount of the Final Cost Proposal, and shall only be used for purposes of covering the reasonable hard costs incurred by Tenant and payable to third parties in connection with the actual costs of the Improvement Work (excluding costs associated with trade fixtures) as capped by the amount set forth in the Final Cost Proposal ("**Improvement Costs**"). If, at any time, the Improvement Financing is used for purposes other than covering the Improvement Costs, the Rent Offset shall expire and be of no further force or effect, and Tenant shall, within thirty (30) days of Landlord's request therefore, repay to Landlord any portion of the Rent Offset that Landlord, in its reasonable discretion, determines was used for purposes other than covering the Improvement Costs.

3.4.2 Audit Rights. Landlord shall have the right, upon seven (7) day prior written notice to Tenant, and during normal business hours, to inspect and examine Tenant's Documentation (defined below) related to the Improvement Work, the Improvement Costs, the Improvement Financing, and the Loan Documents, for all purposes including confirmation that the Improvement Financing is being used only to cover Improvement Costs. If Landlord, in its reasonable discretion, determines that such Documentation was materially incomplete, false, or misleading, Landlord may elect to declare a default under the Lease, and Tenant shall pay all costs associated with such audit. "**Documentation**" means, collectively, promissory notes, loan agreements, deeds of trust and other security instruments, truth-in-lending disclosure statements, change orders, requests for clarifications, contracts with contractors, subcontractors and suppliers, inspector notes, testing, correspondence, submittals, samples, shop drawings, materials lists, invoices, receipts, reimbursable expenses, vouchers, purchase orders, books of account, records, financial information notes, daily logs, detailed list of daily labor, equipment used and related costs including rental costs, time cards and payrolls, and any and all other data or financial information directly or indirectly related to the Improvement Work and/or the Improvement Financing.

### 3.5. Tenant Financial Data.

3.5.1 Annual Data. Tenant shall provide Landlord, within ten (10) days after Tenant's receipt of Landlord's written request therefore, from time to time, Tenant's current annual balance sheet and financial statement, in a form reasonably acceptable to Landlord, certified by Tenant to be true and correct.

3.5.2 Books and Records. For a period of seven years following the close of each calendar year, Tenant shall keep at the Premises or at any other location in the County in which the Premises are located, full and accurate books of account and records relative to transactions from the Premises in accordance with generally accepted accounting principles consistently applied.

3.5.3 Audits. Landlord, at any time within seven (7) years after receipt of any statement and upon no less than fifteen (15) days prior written notice to Tenant, may cause an audit to be made of Tenant's records and books. Tenant shall make available for the audit at the Premises all of these books and records. Tenant further authorizes Landlord, or Landlord's

Designated Agent, to obtain a copy of the Tenant's Credit Report periodically during tenancy in connection with approval, modification or enforcement of this agreement.

#### **4. UTILITIES.**

4.1. Tenant Utility and Service Costs. Tenant, at Tenant's sole cost and expense, shall be responsible and directly contract and pay for any and all utilities, except for security and fire alarm services, and services required or desired by Tenant in connection with its use or occupancy of the Premises, including: (i) heat and air conditioning, if any; (ii) water; (iii) electricity; (iv) telecommunications; (v) trash and recycling pick-up; (vi) gas; and (vii) any other materials, services, or utilities (individually and collectively, "**Services**").

4.2. Conservation and Use Policies. Tenant, at its expense, shall comply with federal, state, or local governmental controls, rules, regulations, or restrictions on the use or consumption of energy or other utilities during the Term. Tenant is required to maintain trash and recycling services to Premises as a condition of this Lease.

4.3. Furnished Services. Landlord shall have no obligation to provide any Services to the Premises. Landlord will maintain surrounding parking lot and all tree maintenance. Notwithstanding the foregoing, if Landlord, in Landlord's sole discretion, elects to provide Services, Tenant shall pay to Landlord upon demand (after 15 day notice and detailed description of services furnished) the cost of any and all Services furnished to Tenant; the cost of installing, maintaining and repairing equipment and/or facilities for the delivery of such Services, if any; and any cost incurred by Landlord in keeping account of or determining such Services in accordance with rates established by Landlord, and Landlord may discontinue such Services upon thirty (30) days prior written notice to Tenant. If any Services are provided, Landlord, at its election, may cause an electrical or water meter (including, without limitation, any additional wiring, conduit or panel required therefore) to be installed ( ) to measure use of Services consumed by Tenant.

4.4. Exculpation of Liability. Landlord is not obligated to furnish any security patrol or special public safety patrols or any other Services to Tenant, and shall not be liable for any loss or damage suffered by Tenant or others, by reason of Landlord's failure to furnish or election to discontinue providing any security patrol or any of the Services. Landlord makes no representation with respect to the presence, adequacy or fitness of the heating, air conditioning or ventilation equipment on or about the Premises to maintain temperatures which may be required for, or because of, any equipment of Tenant. The exculpation of liability under this Section 4.4 shall not apply to the extent claims are caused by Landlord's sole or active negligence or willful misconduct.

#### **5. TAXES.**

5.1. Taxes. As used in this Lease "**Taxes**" means Property Taxes, Possessory Interest Taxes and Personal Taxes. Tenant's obligations for Taxes for the last full or partial year of the Term and for any prior unpaid Taxes shall survive the expiration or earlier termination of this Lease.

5.2. Property Taxes. Although no Property Taxes are currently assessed, in the event they are assessed, whether due to a change in ownership or otherwise, Tenant shall pay such Property Taxes pursuant to Section 5.5. "**Property Taxes**" means and includes all of the following: all real property taxes, public infrastructure improvement assessments or any other assessments, levies, fees, exactions or charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen (including fees "in lieu" of any such tax or assessment) which are assessed, levied, charged, conferred or imposed by any public authority upon the Property) or its operations, together with all taxes, assessments or other fees imposed by any public authority upon or measured by any Rent or other charges payable hereunder, including any gross receipts tax or excise tax levied by any governmental authority with respect to receipt of rental income, or upon, with respect to or by reason of the development, possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof, together with any tax imposed in substitution, partially or totally, of any tax previously included within the aforesaid definition or any additional tax the nature of which was previously included within the aforesaid definition. Nothing contained in this Lease shall require Tenant to pay any franchise, corporate, estate or inheritance tax of Landlord, or any income, profits or revenue tax or charge upon the net income of Landlord. Landlord shall deliver to Tenant copies of the assessment and tax bill from the applicable taxing authority.

5.3. Possessory Interest Taxes. This Lease creates a possessory property interest in Tenant. Tenant's property interest may be subject to property taxation, and Tenant or the party in whom the possessory interest is vested shall be responsible for payment of any and all property taxes levied on the interest (collectively, "**Possessory Interest Taxes**").

5.4. Personal Taxes. Tenant shall pay directly to the taxing authority all taxes and assessments levied upon the trade fixtures, alterations, additions, improvements, partitions, cabling, wiring, furniture, equipment, inventories and other personal property located and/or installed on the Premises by or on behalf of Tenant (individually and collectively "**Tenant's Property**") and any Tenant Improvements (collectively, "**Personal Taxes**").

5.5. Payment of Taxes. Tenant shall pay all Taxes prior to delinquency. To the extent any such taxes are not separately assessed or billed to Tenant by the taxing authority, Landlord shall deliver to Tenant copies of the assessment and tax bill. Tenant shall pay such amount directly to the taxing authority no later than ten (10) business days prior to the date on which such Taxes are due. Should Tenant fail to pay its Taxes, Landlord may elect to do so on Tenant's behalf within five (5) days of Landlord's demand therefore. Tenant shall reimburse Landlord for such Taxes and any penalties and fines, together with interest at the Applicable Interest Rate, from the date Landlord tendered payment.

## 6. INSURANCE.

6.1. Landlord. Landlord may elect to self-insure, jointly-insure, or maintain insurance or an insurance equivalent (including, but not limited to, that offered to a municipality through and by a joint powers authority, a self insurance pool of liability coverage authorized pursuant to California Government Code Section 6500, or similar collective) insuring the Premises (excluding Tenant's Property and any Tenant Improvements) on an occurrence basis against fire and extended coverage (including, if Landlord elects, "all risk" coverage, earthquake/volcanic

action, flood and/or surface water insurance) similar in type and coverage limits to that carried by Landlord on its other properties. At Landlord's option, such insurance or insurance equivalent may be carried under any blanket or umbrella policies or other insurance or insurance equivalent which Landlord has in force for other buildings or projects. Landlord may also carry such other insurance as Landlord may deem prudent or advisable, in such amounts and on such terms as Landlord shall determine. All such insurance or insurance equivalent maintained by Landlord pursuant to this Section 6.1 is referred to herein as "**Landlord's Insurance.**" Landlord's Insurance shall not, under any circumstances, include Tenant's Property, any Tenant Improvements, or other items required to be covered by Tenant's Insurance.

6.2. Tenant. Tenant shall, at Tenant's expense, obtain and keep in force at all times during the Term the following "**Tenant's Insurance,**" and shall be liable for all premiums, deductibles, and self-insured amounts, if any, in connection therewith. Tenant's Insurance shall not have a deductible amount exceeding Five Thousand Dollars (\$5,000).

6.2.1 Commercial General Liability Insurance. A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate, providing coverage for, among other things, blanket contractual liability (including Tenant's indemnification obligations under this Lease), premises liability, products and completed operations liability, owner's protective coverage, broad form property damage, and bodily injury (including wrongful death). If necessary, Tenant shall provide for restoration of the aggregate limit.

6.2.2 Automobile Liability Insurance. Comprehensive automobile liability insurance having a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence and insuring Tenant against liability for claims arising out of the ownership, maintenance, or use of any owned, hired, or non-owned automobiles.

6.2.3 Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance, if required by Law, which complies with all applicable state statutes and regulatory requirements, and employer's liability insurance coverage in statutory amounts.

6.2.4 Property Insurance. "All risk" property insurance including fire and extended coverage, sprinkler leakage, vandalism and malicious mischief coverage, covering damage to or loss of any portion of Tenant's Property or any Tenant Improvements (together with, if the property of Tenant's invitees is to be kept in the Premises, warehouse's legal liability or bailee customers insurance property belonging to invitees and located in or about the Premises), in an amount not less than the full replacement cost thereof. In the event that there shall be a dispute as to the amount which comprises full replacement cost, the decision of Landlord or the mortgagees of Landlord shall be presumptive.

6.2.5 Other Insurance. Any other form or forms of insurance as Landlord or the mortgagees of Landlord may reasonably require from time to time, in form, amounts and for insurance risks against which a prudent tenant would protect itself, but only to the extent such risks and amounts are available in the insurance market at commercially reasonable costs.

6.3. General.

6.3.1 Insurance Companies. Tenant's Insurance shall be written by companies licensed to do business in California and having a "General Policyholders Rating" of at least A-VII (or such higher rating as may be required by a lender having a lien on the Premises) as set forth in the most current issue of "Best's Insurance Guide."

6.3.2 Certificates of Insurance. Tenant shall deliver to Landlord certificates of insurance for Tenant's Insurance, in the form of the ACORD standard certificate of insurance, prior to the Commencement Date. Tenant shall, at least thirty (30) days prior to expiration of the policy, furnish Landlord with certificates of renewal or "binders" thereof. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after thirty (30) days' prior written notice to the parties named as additional insured as required in this Lease. If Tenant fails to maintain any insurance required in this Lease, Tenant shall be liable for all losses and costs resulting from said failure.

6.3.3 Additional Insured. Landlord and any property management company of Landlord for the Premises shall be named as additional insured on the commercial general liability policy required by Section 6.2.1. An additional insured endorsement naming such parties as additional insured(s) shall be attached to the certificate of insurance.

6.3.4 Primary Coverage. Tenant's Insurance shall be primary, without right of contribution from any Landlord's Insurance.

6.3.5 Umbrella/Excess Insurance. Any umbrella liability policy or excess liability policy shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. The limits of Tenant's Insurance shall not limit Tenant's liability under this Lease.

6.3.6 Waiver of Subrogation. Tenant waives any right to recover against Landlord for claims for damages to Tenant's Property or any Tenant Improvements to the extent covered (or required by this Lease to be covered) by Tenant's Insurance. Except in the case of Landlord's or Landlord's parties; i.e. contractors, employees, staff, officials negligence and/or willful misconduct. This provision is intended to waive fully, and for the benefit of Landlord, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The coverage obtained by Tenant pursuant to this Lease shall include a waiver of subrogation endorsement attached to the certificate of insurance.

6.3.7 Notification of Incidents. Tenant shall notify Landlord within twenty-four (24) hours after the occurrence of any accident or incident on or about the Property or any portion thereof which could give rise to a claim against Landlord, Landlord's Insurance, Tenant, or Tenant's Insurance, except that Tenant shall not be obligated to give Landlord notice of any accident or incident which could give rise to a claim under Tenant's workers' compensation insurance. Tenant's notice shall be accompanied by a copy of any report(s) relating to the accident or incident.

6.3.8 Compliance With Insurance Requirements. Tenant shall not do anything in the Premises, or bring or keep anything therein, or subject the Property or any

portion thereof to any use which would damage the same or increase the risk of loss or fire, or violate Landlord's Insurance, or Tenant's Insurance, or which shall conflict with the regulations of the fire department or any Laws or with any insurance policy on the Premises or any part thereof, or with any rules or regulation established by any administrative body or official having jurisdiction. Tenant shall promptly comply with the reasonable requirements of any board of fire insurance underwriters or other similar body now or hereafter constituted.

## **7. INDEMNITY; LIABILITY EXEMPTION.**

7.1. Indemnity. Except to the extent claims are caused by Landlord's sole or active negligence or willful misconduct, Tenant shall indemnify, protect, defend, and hold harmless Landlord and its elected officials, officers, employees, volunteers, lenders, agents, representatives, contractors and each of their successors and assigns from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the Term as a result (directly or indirectly) of or in connection with (i) any default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease; (ii) Tenant's or Tenant's Parties use of the Premises, the conduct of Tenant's business or any activity, work or thing done, permitted or suffered by Tenant or Tenant's Parties in or about the Premises or the Property; or (iii) any act, error or omission of Tenant or Tenant's Parties in or about the Property or any portion thereof (collectively, the "**Indemnification**"). Tenant shall provide such Indemnification by and through counsel reasonably acceptable to Landlord. The obligations of Tenant under this Section 7.1 shall survive the expiration or other termination of this Lease with respect to any claims or liability arising prior to such expiration or other termination.

7.2. Exemption of Landlord from Liability. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property including, but not limited to, Tenant's Property and any Tenant Improvements, and injury to or death of persons in, upon or about the Premises or the Property arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except to the extent such claims are caused by Landlord's sole or active negligence or willful misconduct. Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income there from or for damage to the property of Tenant, or injury to or death of Tenant, Tenant's Parties or any other person in or about the Premises or the Property, whether such damage or injury is caused by fire, steam, electricity, gas, water or rain, or from the breakage, leakage or other defects of sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising within or about the Premises or the Property or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant, except damage or injury caused solely by Landlord's sole or active negligence or willful misconduct. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant or occupant, if any, of the Premises or the Property or Landlord's failure to enforce the terms of any agreements with parties other than Tenant.

## **8. REPAIRS AND MAINTENANCE.**

8.1. Landlord's Obligations. The Premises are being leased to Tenant in their current, existing, "AS-IS" condition. It is specifically understood and agreed that Landlord has no obligation and has made no promises to alter, remodel, improve, decorate or paint the Premises, construct or install any Tenant Improvements, or otherwise alter or improve the Premises, Property, or any portion thereof; provided that Landlord shall repair and maintain the Building's roof and roof membrane, structural elements, foundation, parking lot, common areas (including restrooms and landscaping), Elevator and Shaft and Building HVAC systems (if any), at Landlord's sole cost and expense. Tenant is familiar with the existing condition of the Property and Premises, including any Tenant Improvements, and acknowledges that Landlord has made no representation or warranty regarding the condition thereof. If Landlord in its sole discretion elects to undertake repairs and maintenance of the Premises, excluding those repairs and maintenance for which the Landlord may otherwise be responsible for under the terms of this lease, the Property, or any portion thereof, then Tenant shall pay as Additional Rent, Landlord's reasonable determination of Tenant's share thereof based on Landlord's actual costs paid or incurred in connection therewith.

8.1.1 Tenant's Waiver. Notwithstanding anything in this Lease to the contrary, whether stated or implied in this Lease, Tenant waives and releases its rights, including its right to make repairs at Landlord's expense, under California Civil Code sections 1932(1), 1941, and 1942 or any similar Laws.

8.2. Tenant's Obligations. Tenant, at its expense, shall maintain the Premises in good order, condition and repair, including all non-structural components thereof, interior floor surfaces and floor coverings, interior walls and wall coverings, paintings, glass, doors, Tenant Improvements, Signs, and such plumbing, HVAC and electrical systems in the Premises, regardless of when or by whom installed, together with any items required for compliance with applicable Laws. In the event Tenant fails, in the reasonable judgment of Landlord, to so maintain the Premises in good order, condition and repair, Landlord shall in its sole discretion, upon five (5) days' written notice to Tenant, have the right but not the obligation to perform such maintenance, repairs or refurbishing at Tenant's expense, provided Tenant fails to do so within such five (5) day period. If Landlord elects to undertake any such repairs or maintenance as provided above, then Tenant shall pay, as Additional Rent, Landlord's actual costs paid or incurred in connection therewith.

## 9. ALTERATIONS.

### 9.1. Trade Fixtures; Alterations; Improvement Work.

9.1.1 Conditions. Subject to the conditions and requirements of this Section 9, Tenant may install necessary trade fixtures, equipment and furniture in the Premises, provided that such items are installed and are removable without structural or material damage to the Premises or any Tenant Improvements. For purposes of this Lease, "**trade fixtures**" means specialty fixtures or equipment used in Tenant's trade or business as identified by Tenant and agreed to by Landlord in writing. Tenant shall not construct, or allow to be constructed, any alterations, physical additions, or improvements in, about, or to the Premises without the prior written consent of Landlord, and Landlord's review and approval of architectural plans and specifications, which consent and approval may be granted or denied in Landlord's sole discretion. If Landlord approves proposed alterations, additions or improvements, Landlord's consent may be conditioned upon Tenant's establishing compliance with Laws and with Landlord's reasonable requirements regarding selection of contractors and construction of improvements and alterations. Should Tenant make any alterations, additions, improvements without the prior written consent of Landlord, Landlord may, at any time during the Term of this Lease, require Tenant to remove any or all of the same and restore the Premises to their prior condition, at Tenant's sole cost and expense.

9.2. Satellites and Antennae. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant agree that it shall be reasonable for Landlord to withhold its consent to installation in or about the Premises or any portion thereof of equipment comprising or relating to relays, monopoles, satellite dishes, antennae, wireless telecommunications devices, transmitters, roof mounts, two-way radios, or similar apparatus (collectively, "**Transmission Devices**").

9.3. Standard of Work. All work to be performed by or on behalf of Tenant shall be performed diligently and in a first-class, workmanlike manner, and in compliance with all applicable Laws and all insurance carrier requirements. Landlord shall have the right, but not the obligation, to periodically inspect such work and may require changes in the method or quality thereof. In no event shall such work materially obstruct access to the Property or any portion thereof.

9.4. Financial Credit for Improvements. Landlord and Tenant shall confer upon improvements proposed by Tenant. Any improvements proposed by tenant must be approved by the Landlord in advance of any work being done. Landlord may apply, at its sole discretion, financial credit to Tenant in an amount **up to** the value of the improvements made to the premises. Landlord will only consider those improvements that would remain on the premises after the termination of this agreement. Any financial credit granted by Landlord shall be prorated monthly, in the form of rent credit, over the initial term of this agreement.

9.5. Damage; Removal. Tenant shall repair all damage to the Premises, Property and any portions thereof caused by the installation or removal of Tenant's trade fixtures or other work performed by or on behalf of Tenant. Upon the expiration or other termination of this Lease, Tenant shall remove Tenant's trade fixtures and other improvements, alterations and additions

and restore the Premises to their condition existing prior to the construction or installation of any such items and perform any closure work, investigation and environmental remedial work required by the presence or suspected presence of any Hazardous Substances under Hazardous Substances Laws (as hereinafter defined) or by any other applicable Laws; provided, however, Landlord may require, upon written notice to Tenant no less than fifteen (15) days before the expiration or other termination of the Term, any such items (including trade fixtures) designated by Landlord to remain on the Premises, in which event they shall be and become the property of Landlord upon the expiration or other termination of this Lease. All such removals and restoration shall be accomplished in a good and workmanlike manner so as not to cause any damage to the Premises or the Property whatsoever and in strict accordance with all applicable Laws. Landlord agrees to remove shed, located in back yard of building within 120 days of commencement date.

9.6. Liens. Tenant shall promptly pay and discharge all claims for labor performed, supplies furnished and services rendered at the request of Tenant and shall keep the Premises and Property and all portions thereof free of all mechanics' and material men's' liens in connection therewith. Tenant shall provide at least ten (10) business days' prior written notice to Landlord before any labor is performed, supplies furnished or services rendered on or at the Premises and Landlord shall have the right to post on the Premises notices of non-responsibility. If any lien is filed, Tenant shall cause such lien to be released and removed within ten (10) days after the date of filing, and if Tenant fails to do so, Landlord may take such action as may be necessary to remove such lien, without the duty to investigate the validity of it, and Tenant shall pay Landlord such amounts expended by Landlord together with interest thereon, at the Applicable Interest Rate, from the date of expenditure.

9.7. Bonds. Landlord may require Tenant to provide Landlord, at Tenant's sole cost and expense, lien, performance, and payment completion bonds in an amount equal to one and one-half times the estimated cost of any alterations, additions, or improvements to insure Landlord, the Premises and the Property against any liability for mechanic's and material men's liens, and to ensure completion of the work and payment of any contractors or subcontractors.

## **10. USE.**

10.1. Usage. The Premises shall be used only for the permitted uses set forth in Section 5 of the Basic Lease Information and for no other purpose without the prior written consent of Landlord. Tenant acknowledges that neither Landlord nor any of Landlord's agents has made any representation or warranty with regard to the Premises, any Tenant Improvements, or the Property with respect to their suitability for the conduct of Tenant's business. Tenant's execution of this Lease and entry of the Premises hereunder shall conclusively establish that the foregoing were at such time in satisfactory condition. Tenant, at Tenant's expense, shall comply with all applicable statutes, laws, codes, rules, orders, zoning, ordinances, directions, regulations, regulations, permits, or other requirements of federal, state, county, municipal, or other governmental authorities having jurisdiction, now in force or which may hereafter be in force (individually "**Law**" and collectively "**Laws**"), which shall impose any duty upon Landlord or Tenant with respect to the use, occupancy, or alteration of the Premises. Tenant shall be responsible for obtaining a Benicia Business License and any other permit or business license required by any governmental agency permitting Tenant's use of the Premises. Landlord makes

no representation concerning the availability of any permits or approvals required or permitted under this Lease. Tenant shall comply with the rules and regulations, including observance of prohibited uses ("**Rules**"), attached hereto as **Exhibit B** and incorporated by reference, together with such reasonable additional rules and regulations, with 30 day notice to Tenant, as Landlord may from time to time prescribe. Tenant shall not commit waste; overload the floors or structure of the Premises; permit any unreasonable odors, smoke, dust, gas, substances, noise, or vibrations to emanate from the Premises that are offensive or objectionable to Landlord or other tenants or occupants of the Property; take any action which would constitute a nuisance or would disturb, obstruct, or endanger Landlord or other tenants or occupants of the Property; take any action which would abrogate any warranties; or use or allow the Premises to be used for any unlawful purpose; and shall cooperate with Landlord and Landlord's agents to prevent those actions. Landlord shall not be responsible for non-compliance by any other tenant or occupant with, or Landlord's failure to enforce, any of the Rules or any other terms or provisions of such tenant's or occupant's lease.

10.2. Continuous Operating Covenant. Tenant acknowledges that the rent structure contained in this Lease is intended to bolster Tenant's ability to operate its business in the Premises and to fulfill its obligations under this Lease. Tenant shall continuously conduct its business in the Premises during Business Hours, and remain open for business, except due to Force Majeure.

10.2.1 Before Improvement Work Constructed. Prior to and during construction of the Improvement Work, Tenant will use its best efforts to operate its business and provide related service within the Premises during the Business Hours as set forth below, and in a manner approved by Landlord, all governing agencies, and in accordance with applicable Laws. Tenant shall keep the Premises adequately staffed and, if appropriate, shall maintain adequate merchandise consistent with the permitted uses. Tenant acknowledges that continuous operation is necessary for the development of business, image and traffic and that Tenant's failure to open or remain open will be detrimental to both the image and the economics of the Building, the Premises, and this Lease. Landlord shall have and may exercise remedies as provided in this Lease, at law or in equity; if Tenant breaches this operating covenant.

10.2.2 Business Hours. Tenant's normal business hours ("**Business Hours**") shall be from 6:30 a.m. to 10 p.m., Monday to Saturday and 8 a.m. to 6 p.m. Sundays.

10.3. Materiality. The terms and conditions of Basic Lease Information Section 5 and this Section 10 (including all subsections hereof) are material consideration for Landlord's lease of the Premises to Tenant on the terms set forth herein and, but for the terms and conditions contained therein, Landlord would not have leased the Premises to Tenant.

## 11. ENVIRONMENTAL MATTERS.

11.1. Environmental Compliance. Tenant shall, at its sole cost and expense, comply with all laws, codes, rules, orders, ordinances, directives, regulations, permits, or other requirements of federal, state, county, municipal or governmental authorities having jurisdiction, now in force or which may hereafter be in force (collectively, "**Hazardous Substances Laws**") concerning the management, use, generation, storage, transportation, presence, discharge or

disposal of any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous or toxic materials, hazardous or toxic wastes, hazardous or toxic substances, carcinogenic materials or contaminants and all other materials governed, monitored, or regulated by any federal, state or local law or regulation, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Substances Account Act, and/or the Resources Conservation and Recovery Act. "**Hazardous Substances**" include asbestos, asbestos-containing materials, hydrocarbons, polychlorinated biphenyl ("**PCB**") or PCB-containing materials, petroleum, gasoline, petroleum products, crude oil or any fraction, product or byproduct thereof (collectively, "**Hazardous Substances**"). Neither Tenant nor Tenant's Parties shall use, handle, store, transport, treat, generate, release or dispose of any Hazardous Substances anywhere in, on, under or about the Premises or the Property. Tenant shall cause any and all Hazardous Substances brought onto, used, generated, handled, treated, stored, released or discharged on or under the Premises or the Property to be removed from the Premises and Property and transported for disposal in accordance with applicable Hazardous Substances Laws. Landlord shall have the right to enter the Premises from time to time to conduct tests, inspections and surveys concerning Hazardous Substances and to monitor Tenant's compliance with its obligations concerning Hazardous Substances and Hazard Materials Laws. Tenant shall immediately notify Landlord in writing of: (i) any release or discharge of any Hazardous Material; (ii) any voluntary clean-up or removal action instituted or proposed by Tenant, (iii) any enforcement, clean-up, removal or other governmental or regulatory action instituted or threatened, or (iv) any claim made or threatened by any person against Landlord, Tenant, the Premises, or the Property or any portion thereof relating to Hazardous Substances or Hazardous Substances Laws. Tenant shall also supply to Landlord as promptly as possible, and in any event within five (5) business days after Tenant receives or sends same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Tenant's use thereof and concerning Hazardous Substances or Hazardous Substances Laws. In the event Tenant institutes a cleanup or removal action, Tenant shall provide copies of all work-plans and subsequent reports submitted to the governmental agency with jurisdiction to Landlord in a timely manner.

11.2. Tenant's Indemnification. Except to the extent caused by Landlord's sole or active negligence or willful misconduct, Tenant shall indemnify, defend and hold Landlord harmless from any claims, causes of action, liabilities, losses, damages, injunctions, suits, fines, penalties, costs or expenses (including attorneys' fees and expenses and consultant fees and expenses) caused or alleged to have been caused by the presence of Hazardous Substances in, on, under, about, or emanating from the Premises or the Property, including, without limitation, any bodily injury, death, property damage, natural resource damage, decrease in value of the Premises or the Property, caused or alleged to have been caused by Tenant or Tenant's Parties' use, storage, handling, treatment, generation, presence, discharge or release of Hazardous Substances in violation of Tenant's obligations under this Lease, whether such claims, causes of action or liabilities are first asserted during the Term or thereafter, and including without limitation, claims made against Landlord with respect to bodily injury, death or property damage sustained by third parties caused or alleged to have been caused by Tenant or Tenant's Parties' use, storage, handling, treatment, generation, presence, discharge or release of Hazardous Substances.

## **12. DAMAGE AND DESTRUCTION.**

12.1. Casualty. If, during the Term, the Premises are totally or partially destroyed from any cause rendering the Premises totally or partially inaccessible or unusable (the "**Casualty**"), then Landlord shall have the right at Landlord's option to give written notice to Tenant within ninety (90) days after the date of the occurrence of such damage of Landlord's intention to either (i) repair such damage as soon as reasonably possible at Landlord's expense, or (ii) terminate this Lease as of the date of the occurrence of such damage. If Landlord elects to repair the damage, and if the cost of such repairs does not exceed the amount of insurance proceeds received by Landlord from Landlord's Insurance pursuant to Section 6 above, on account of such damage, and if the restoration can be made under the existing Laws and can be completed within one hundred eighty (180) days after obtaining all necessary permits therefore, then Landlord shall restore the Premises (excluding Tenant's Property and any Tenant Improvements) to substantially the same condition as they were in immediately before destruction. If the restoration cannot be so made, then within fifteen (15) days after Landlord determines that the restoration cannot be made as stated in this Section 12.1, Tenant may terminate this Lease immediately by giving written notice to Landlord. If the existing Laws do not permit the restoration, either party may terminate this Lease by giving ninety (90) days prior written notice to the other party. In case of destruction, there shall be an abatement or reduction of Rent, between the date of destruction and the date of completion of restoration if restoration takes place, or the date of termination if the Lease is terminated, based on the extent to which the destruction actually interferes with Tenant's use of the Premises.

12.2. Tenant's Fault. If the Premises, the Property, or any portion thereof, are damaged resulting from the negligence or breach of this Lease by Tenant or any of Tenant's Parties, Rent shall not be reduced during the repair of such damage, Tenant shall have no right to terminate this Lease as provided in Section 12.1, and Tenant shall be liable to Landlord for the cost of the repair caused thereby to the extent such cost is not covered by insurance proceeds.

12.3. Repair Limitation. Notwithstanding anything in this Lease to the contrary, Landlord shall not be required to repair any injury or damage, by fire or other cause, to Tenant's Property or any Tenant Improvements, if any, or to rebuild, repair or replace any decorations, alterations, partitions, fixtures, trade fixtures, additions or other improvements installed on the Premises by or for Tenant, unless and to the extent Landlord has received insurance proceeds from Tenant's property insurance as provided in Section 6.2.4 above, and neither Tenant or Landlord has opted to terminate this Lease as provided in Section 12.1.

12.4. Waiver. The provisions of this Lease contain an express agreement between Landlord and Tenant that applies in the event of any Casualty. Tenant fully waives the provisions of any statute or regulation, including California Civil Code sections 1932(2) and 1933(4) (as amended from time to time, and successor statutes thereto) for any rights or obligations concerning a Casualty.

## **13. EMINENT DOMAIN.**

13.1. Effect on Rights and Obligations. If any portion of the Premises is permanently taken by condemnation, this Lease shall remain in effect, except that Tenant may elect to

terminate this Lease if twenty-five percent (25%) or more of the total number of square feet in the Premises is taken and if the remaining portion of the Premises is rendered unsuitable for Tenant's continued use of the Premises. If Tenant elects to terminate this Lease, Tenant must exercise its right to terminate by giving written notice to Landlord within thirty 60 days after the nature and the extent of the taking have been finally determined, as of the date of termination, which date shall not be earlier than thirty (30) days nor later than ninety (90) days after Tenant has notified Landlord of its election to terminate; except that this Lease shall terminate on the date of taking if the date of taking falls on a date before the date of termination as designated by Tenant. If Tenant does not terminate this Lease within the thirty 60 day period, this Lease shall continue in full force and effect, except that the Base Rent thereafter to be paid shall be reduced on a pro-rata basis. Tenant shall notify Landlord in writing of any condemnation or threatened condemnation within ten (10) days after Tenant receives notice of said action or threatened action. No condemnation of any kind shall be construed to constitute an actual or constructive eviction of Tenant or a breach of any express or implied covenant of quiet enjoyment.

13.2. Award. In connection with any condemnation, Landlord shall be entitled to receive all compensation and anything of value awarded, paid, or received in settlement or otherwise ("**Award**") and Tenant hereby irrevocably assigns and transfers to Landlord all rights to and interests in the Award and fully waives, releases, and relinquishes any claim to, right to make a claim on, or interest in the Award, including any amount attributable to any excess of the market value of the Premises for the remainder of the Term over the present value as of the termination date of the Rent payable for the remainder of the Term (commonly referred to as the "**bonus value**" of the Lease).

#### 14. DEFAULT.

14.1. Events of Default. Where "**default**" is used in this Lease with reference to Tenant, default refers to any breach of Tenant's obligations under this Lease, however brief. Where Tenant's default continues for the period specified below, it shall, at Landlord's option, constitute an Event of Default giving rise to the remedies set forth in Sections 14.2 and 14.3 of this Lease. The occurrence of any of the following events shall, at Landlord's option, constitute an "**Event of Default**:"

- (i) Abandonment of or vacating the Premises for a period of thirty (30) consecutive days; except due to casualty or force majeure
- (ii) Failure to pay Rent, Security Deposit or other sums on the date when due and the failure continuing for a period of ten (10) days after such payment is due;
- (iii) Failure to perform Tenant's covenants and obligations hereunder (except default in the payment of Rent) where such failure continues for a period of thirty (30) days;
- (iv) The making of a general assignment by Tenant for the benefit of creditors; the filing of a voluntary petition by Tenant or the filing of an involuntary petition by any of Tenant's creditors seeking the rehabilitation, liquidation or reorganization of Tenant under any Laws relating to bankruptcy, insolvency or other relief of

debtors and, in the case of an involuntary action, the failure to remove or discharge the same within sixty (60) days of such filing; the appointment of a receiver or other custodian to take possession of substantially all of Tenant's assets or this leasehold; Tenant's insolvency or inability to pay Tenant's debts or failure generally to pay Tenant's debts when due; any court entering a decree or order directing the winding up or liquidation of Tenant or of substantially all of Tenant's assets; Tenant taking any action toward the dissolution or winding up of Tenant's affairs; the cessation or suspension of Tenant's use of the Premises; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets or this leasehold; or

- (v) The making of any material misrepresentation or omission by Tenant or any successor in interest of Tenant in any materials delivered by or on behalf of Tenant to Landlord or Landlord's lender pursuant to this Lease.

#### 14.2. Remedies.

14.2.1 Termination. In the event of the occurrence of any Event of Default, Landlord shall have the right to give a written termination notice to Tenant and, on the date specified in such notice (which date shall be at least three (3) business days following the date of delivery of such notice), this Lease shall terminate unless on or before such date all arrears of Rent and all other sums payable by Tenant under this Lease and all costs and expenses incurred by or on behalf of Landlord hereunder shall have been paid by Tenant and all other Events of Default at the time existing shall have been fully remedied to the satisfaction of Landlord. If default for performance, other than payment of rent, date of termination to be 30 days (or more) if Tenant commences in good faith to cure default, but cure cannot reasonably be completed within the period specified for termination.

- (i) Repossession. Following termination, without prejudice to other remedies Landlord may have, Landlord may (i) peaceably re-enter the Premises upon voluntary surrender by Tenant, or remove Tenant, and any other persons occupying the Premises, there from using such legal proceedings as may be available; (ii) repossess the Premises or re-lease the Premises or any part thereof for such term (which may be for a term extending beyond the Term), at such rental and upon such other terms and conditions as Landlord in Landlord's sole discretion shall determine, with the right to make reasonable alterations and repairs to the Premises; and (iii) remove all personal property there from.
- (ii) Unpaid Rent. Landlord shall have all the rights and remedies of a landlord provided by applicable Laws, including the right to recover from Tenant: (a) the worth, at the time of award, of the unpaid Rent that had been earned at the time of termination, (b) the worth, at the time of award, of the amount by which the unpaid Rent that would have been earned after the date of termination until the time of award exceeds the amount of loss of rent that Tenant proves could have been reasonably avoided, (c) the worth, at the time of award, of the amount

by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided, and (d) any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default. The phrase "**worth, at the time of award**," as used in (a) and (b) above, shall be computed at the Applicable Interest Rate, and as used in (c) above, shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

14.2.2 Continuation. Landlord shall have the remedy described in California Civil Code section 1951.4 (as amended from time to time, and successor statutes thereto) and Landlord may continue the Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due. In the event and for so long as Landlord elects this remedy, Tenant shall have the right to sublet its Premises, assign its interest in the Lease, or both, subject to Landlord's prior written consent, which shall not be unreasonably withheld. In addition, even though an Event of Default may have occurred, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession, and Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover Rent as it becomes due. Landlord, without terminating this Lease, may, during the period Tenant is in default, enter the Premises and re-let the same, or any portion thereof, to third parties for Tenant's account and Tenant shall be liable to Landlord for all costs Landlord incurs in re-letting the Premises, including, without limitation, brokers' commissions, and expenses of remodeling the Premises and like costs. Re-letting may be for a period shorter or longer than the remaining Term. Tenant shall continue to pay the Rent on the date the same is due. No act by Landlord hereunder, including acts of maintenance, preservation or efforts to lease the Premises or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease, shall terminate this Lease unless Landlord notifies Tenant that Landlord elects to terminate this Lease. In the event that Landlord elects to re-let the Premises, the rent that Landlord receives from re-letting shall be applied to the payment of, first, any indebtedness from Tenant to Landlord other than Base Rent and Additional Rent; second, all costs, including commissions, incurred by Landlord in re-letting; and, third, Base Rent and Additional Rent. After deducting the payments referred to above, any sum remaining from the rental Landlord receives from re-letting shall be held by Landlord and applied in payment of future Rent as Rent becomes due under this Lease. In no event, and notwithstanding anything in Section 15 to the contrary, shall Tenant be entitled to any excess rent received by Landlord. If, on the date Rent is due under this Lease, the rent received from the re-letting is less than the Rent due on that date, Tenant shall pay to Landlord, in addition to the remaining Rent due, all costs, including commissions, which Landlord incurred in re-letting the Premises that remain after applying the rent received from re-letting as provided hereinabove. So long as this Lease is not terminated, Landlord shall have the right to remedy any default of Tenant, to maintain or improve the Premises, to cause a receiver to be appointed to administer the Premises and new or existing subleases and to add to the Rent payable hereunder all of Landlord's reasonable costs in so doing, with interest at the Applicable Interest Rate from the date of such expenditure.

14.3. Cumulative. Each right and remedy of Landlord provided for herein or now or hereafter existing at Law or in equity, by statute or otherwise shall be cumulative and shall not

preclude Landlord from exercising any other rights or remedies provided for in this Lease or now or hereafter existing at Law or in equity, by statute or otherwise. No payment by Tenant of a lesser amount than the Rent nor any endorsement on any check or letter accompanying any check or payment of Rent shall be deemed an accord and satisfaction of full payment of Rent; and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue other remedies.

## **15. ASSIGNMENT AND SUBLETTING.**

15.1. Sublet for Public Use: Landlord's Consent. Tenant may request Landlord consent to sublease a portion of the Premises ("Subject Space") to one or more non-profit organizations who will use it for a public benefit such as displays, exhibits, or events to which the public is invited without restriction (although admission may be charged). Tenant may not receive rental payment from the non-profit organization(s) although may recoup costs for utilities, security, etc. Tenant may request consent from Landlord by submitting a written request no less than one month in advance describing the non-profit(s), the event or exhibit, the Subject Space, and the schedule. Landlord permission shall not be unreasonably withheld. Grounds for rejection include nature of the event or exhibit, schedule conflicts, or a non-profit with a delinquency on file with the City. Tenant must allow public access to building per this Section at least twice annually.

15.2. Sublet for Private Use and Assignment: Landlord's Consent. Other than as described in Section 15.1, Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of law, this Lease, the Premises, or any part thereof, without Landlord's prior written approval, which shall not be unreasonably withheld. Tenant's attempted assignment/subletting without first obtaining Landlord's written consent shall be void at Landlord's election. Landlord's consent to one assignment or subletting shall not be deemed consent to subsequent assignments and/or sub-lettings. The merger of Tenant with any other entity or the transfer of any controlling or managing ownership or beneficial interest in Tenant, or the assignment of a substantial portion of the assets of Tenant, whether or not located at the Premises ("**Change of Control**"), shall constitute an assignment hereunder. Landlord and Tenant agree that it is reasonable for Landlord to reasonably consider any one or all of the following factors in determining whether to give consent under this section:

- (i) Financial responsibility of proposed assignee or sub-lessee;
- (ii) Expertise of assignee or sub-lessee in proposed business;
- (iii) Need for alteration of Building;
- (iv) Legality of proposed use;
- (v) Difference between proposed use and the Use permitted under this Lease;
- (vi) Need for good tenant mix within the Building;
- (vii) Nature of proposed occupancy of assignee or sub-lessee;

- (viii) Landlord's assessment that proposed business may not be successful;
- (ix) Any legally enforceable restrictions contained in this Lease; and
- (x) Any legally enforceable restrictions contained in other leases between Landlord and its tenants regarding identity of tenants in the Building.

The above list is nonexclusive and Landlord may impose any reasonable condition upon Tenant and its proposed assignee or sub-lessee prior to Landlord giving consent under this Section 15. In addition, the parties agree that it shall be reasonable for Landlord to withhold its consent to a proposed assignment or subletting if the proposed assignee or sub-lessee or the nature of its business would require Landlord to incur additional expense in construction work or other work to the Premises that would not otherwise be required if Tenant remained, for example, if the proposed assignee or sub-lessee is subject to compliance with additional requirements of the Americans with Disabilities Act (42 U.S.C. section 12101 et seq.) (including related regulations) beyond those requirements which are applicable to the tenant desiring to assign or sublease, if the proposed assignee's or subtenant's activities in, on or about the Premises or the Property involve the use, analysis, handling, storage, transport, discharge, release, generation or disposal of any Hazardous Substances, or if the proposed assignment or subletting would violate any provision of this Lease.

15.2.1 Notice; Costs and Fees. If Tenant desires to assign this Lease (including by a Change of Control) or sublet any or all of the Premises, Tenant shall give Landlord written notice thereof ("**Tenant's Transfer Request**") with copies of all related documents and agreements associated with the assignment or sublease, including without limitation, a description of the space Tenant proposes to assign or sublet (the "**Subject Space**"), the anticipated effective date of the assignment or sublease ("**Transfer Date**"), and the financial statements of any proposed assignee or subtenant, at least forty-five (45) days prior to the anticipated effective date of the assignment or sublease. Landlord shall have a period of thirty (30) days following receipt of Tenant's Transfer Request and all related documents and agreements to notify Tenant in writing of Landlord's election of one of the following options:

- (i) to offer to recapture the Subject Space on the Transfer Date, in which event Tenant shall respond to Landlord in writing within ten (10) days of the date of Landlord's offer to recapture, either accepting or declining such recapture offer. In the event that Tenant declines such recapture offer, Landlord shall be deemed to have disapproved the assignment or subletting. In the event Tenant accepts such recapture offer, Tenant will be relieved of further obligations under this Lease with regard to the Subject Space only, as of the Transfer Date;
- (ii) to permit Tenant to assign or sublease the Subject Space on the terms stated in Tenant's Transfer Request, subject, however, to prior written approval of the proposed assignee or subtenant by Landlord; or
- (iii) to disapprove Tenant's Transfer Request.

In any event, if Landlord fails to notify Tenant in writing of Landlord's election, Landlord shall be deemed to have disapproved Tenant's Transfer Request, and Landlord's failure to so notify

Tenant shall not be deemed to constitute a termination of this Lease. This Lease may not be assigned by operation of law. Any purported assignment or subletting contrary to the provisions hereof shall be void at Landlord's election and shall constitute an Event of Default hereunder.

15.2.2 Tenant's Consideration; Liability. If Tenant (or any successor tenant) receives rent or other consideration for any such transfer in excess of the Rent, or in case of the sublease of a portion of the Premises, in excess of such Rent that is fairly allocable to such portion, after appropriate adjustments to assure that all other payments required hereunder are appropriately taken into account. Tenant (and successor tenants) shall continue to be liable as a principal and not as a guarantor or surety to the same extent as though no assignment or subletting had been made. In addition, Tenant shall make all legally required disclosures to the proposed assignee or subtenant. Landlord's consent shall not be construed as relieving Tenant or any successor tenant of any liability or obligation under the Lease. No permitted transfer shall be effective until there has been delivered to Landlord a counterpart of the transfer instrument in which the transferee agrees to be and remain jointly and severally liable with Tenant (and if applicable, successor tenants) for the payment of Rent pertaining to the Premises and for the performance of all the terms and provisions of this Lease relating thereto arising on or after the date of the transfer.

## **16. ESTOPPEL, ATTORNMENT AND SUBORDINATION.**

16.1. Estoppel. Within ten (10) days after request by Landlord, Tenant shall deliver an Estoppel Certificate duly executed and acknowledged to any proposed mortgagee, beneficiary, purchaser, or Landlord, in a commercially reasonable form substantially similar to that requested and a statement certifying, without limitation: (i) the date of commencement of this Lease; (ii) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications); (iii) the date to which the rental and other sums payable under this Lease have been paid; (iv) the fact that there are no current defaults under this Lease by either Landlord or Tenant except as specified in Tenant's statement; (v) no deposit of any nature has been made in connection with the Lease (other than deposits the nature and amount of which are expressly described in the Lease), and (vi) such other matters requested by Landlord. Landlord and Tenant intend that any statement delivered pursuant to this Section 16 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the Premises, the Property or any interest therein. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant that (i) this Lease is in full force and effect, without modification except as may be represented by Landlord; (ii) there are no uncured defaults in Landlord's performance, (iii) not more than one (1) month's rental has been paid in advance; and (iv) no deposit of any nature has been made in connection with the Lease except as represented by Landlord. Except to the extent caused by Landlord's sole or active negligence or willful misconduct, Tenant shall indemnify and hold Landlord harmless from and against any and all damages, penalties, fines, taxes, costs, liabilities, losses and expenses (including, without limitation, reasonable attorneys' fees and court costs) which Landlord may sustain or incur as a result of or in connection with Tenant's failure or delay in delivering such Estoppel Certificate. If any financier should require that this Lease be amended (other than in the description of the Premises, the Term, the permitted uses, the Rent or as will substantially, materially and adversely affect the rights of Tenant), Landlord shall give written notice thereof to Tenant, which notice

shall be accompanied by a Lease supplement embodying such amendments. Tenant shall, within ten (10) days after the receipt of Landlord's notice, execute and deliver to Landlord the tendered Lease supplement. Tenant will also prepare and deliver to Landlord any financial statements reasonably requested by a prospective lender, beneficiary or purchaser.

16.2. Subordination. This Lease shall be subject and subordinate to all ground leases, CC&Rs, and the lien of all mortgages and deeds of trust which now or hereafter affect the Premises or the Property or Landlord's interest therein, and all amendments thereto, all without the necessity of Tenant's executing further instruments to effect such subordination; provided, however, that Tenant's rights hereunder shall not be disturbed, except in accordance with the terms and provisions of this Lease. If requested, Tenant shall execute and deliver to Landlord within ten (10) days after Landlord's request, whatever documentation that may reasonably be required to further effect the provisions of this Section 16.2.

16.3. Attornment. In the event of a foreclosure proceeding, the exercise of the power of sale under any mortgage or deed of trust or the termination of a ground lease, Tenant shall, if requested, attorn to the purchaser thereupon and recognize such purchaser as Landlord under this Lease. The transferee shall not be liable for any acts, omissions or defaults of Landlord that occurred before the sale or conveyance, or the return of any security deposit except for deposits actually paid to transferee, and except as reduced as expressly provided for in Section 3.3 of this Lease or by operation of Law.

17. **RELOCATION WAIVER**. Tenant fully releases and discharges Landlord (in its capacity as Landlord and otherwise as a municipal corporation) from all and any manner of rights, demands, liabilities, obligations, claims, or cause of actions, in law or equity, of any kind or nature, known or unknown, now existing or hereinafter arising, which arise from or relate in any manner to the relocation of Tenant's business operations, or the relocation of any person(s), business(es), or other occupant(s) located on within, on, or about, the Premises following the full or partial termination or expiration of Tenant's leasehold interest in the Premises (collectively, "**Relocation Claims**"), including waiver and release of any relocation rights under Government Code sections 7260 et seq. or any federal laws ("**Relocation Assistance Law**"). Tenant acknowledges and agrees that the release and waiver set forth in this Section 17 is material consideration for Landlord's agreement to this Lease, and that, but for this release and waiver, Landlord would not have entered into this Lease. By releasing and forever discharging the Relocation Claims, Tenant expressly waives any rights under California Civil Code section 1542, which provides:

"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."

18. **MISCELLANEOUS**.

18.1. General.

18.1.1 Entire Agreement. This Lease sets forth all the agreements between Landlord and Tenant concerning the Property and the Premises, and there are no agreements either oral or written other than as set forth herein.

18.1.2 Time of Essence. Time is of the essence of this Lease.

18.1.3 Attorneys' Fees. If any action is commenced which arises out of or related to this Lease, the prevailing party shall be entitled to recover from the other party such sums as the court may adjudge to be reasonable attorneys' fees, expert fees, and expenses in the action, in addition to costs and expenses otherwise allowed by Law. In all other situations, including any matter arising out of or relating to any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships, Tenant agrees to pay all of Landlord's costs and expenses, including attorneys' fees and expert fees, which may be incurred in enforcing or protecting Landlord's rights or interests.

18.1.4 Severability. If any provision of this Lease or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Lease and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

18.1.5 Law. This Lease shall be construed and enforced in accordance with the Laws of the State of California, without reference to its choice of law provisions.

18.1.6 Interpretation. The titles to the sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease. As used in this Lease, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "**including**" shall be construed as if followed by the words "**without limitation.**" This Lease shall be interpreted as though prepared jointly by both parties.

18.1.7 No Option. Submission of this Lease to Tenant for examination or negotiation does not constitute an option to lease, offer to lease or a reservation of, or option for, the Premises; and this Lease shall become effective and binding only upon the execution and delivery hereof by Landlord and Tenant.

18.1.8 Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord and, subject to compliance with the terms of Section 15, Tenant.

18.1.9 Third Party Beneficiaries. Nothing herein is intended to create any third party benefit.

18.1.10 Memorandum of Lease; Title. Landlord may elect to have either this Lease or a short form memorandum hereof recorded pursuant to the requirements of California Government Code section 37393. Tenant shall cooperate with Landlord in executing and acknowledging any such memorandum of lease. Upon the expiration or other termination of this Lease, Tenant shall immediately execute and deliver to Landlord a quitclaim deed to the Premises the Deck Areas, and the Property, as required, in recordable form, designating

Landlord as transferee or grantee. Tenant shall not do any act which shall in any way encumber the title of Landlord in and to the Property or any portion thereof.

18.1.11 No Agency, Partnership or Joint Venture. Nothing contained herein nor any acts of the parties hereto shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture by the parties hereto or any relationship other than the relationship of landlord and tenant.

18.1.12 Merger. The voluntary or other surrender of this Lease by Tenant or a mutual cancellation thereof or a termination by Landlord shall not work a merger and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.

18.2. Signs. Landlord shall use reasonable efforts to accommodate appropriate signage necessary to identify Tenant's business at the Building. All signs and graphics of every kind visible in or from public view or corridors, or the exterior of the Premises, installed or caused to be installed by, for the benefit of, or at the request of Tenant ("**Signs**") shall be, at Tenant's sole cost and expense, and subject to Landlord's prior written approval and shall be subject to all applicable Laws, including City permitting regulations. Tenant shall remove all Signs prior to the termination of this Lease. Sign installations and removals shall be made in such manner as to avoid injury or defacement of the Premises; and Tenant shall repair any injury or defacement, including discoloration caused by such installation or removal. Tenant shall be responsible for all fees, costs and expenses associated with installation and removal of Signs. In the event any such fees, costs or expenses are incurred by Landlord (whether directly or indirectly), Landlord shall deliver to Tenant an invoice, with reasonable supporting documentation, and Tenant shall reimburse Landlord for those amounts within fifteen (15) days after receipt of such invoice.

18.3. Waiver. No waiver of any default or breach hereunder shall be implied from any omission to take action on account thereof, notwithstanding any custom and practice or course of dealing. No waiver by either party of any provision under this Lease shall be effective unless in writing and signed by such party. No waiver shall affect any default other than the default specified in the waiver and then such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant shall not be construed as a waiver of any subsequent breach of the same.

18.4. Limitation of Liability. The obligations of Landlord under this Lease are not personal obligations of Landlord; and Tenant shall look solely to the rents, issues, profits and other income generated by the Premises for satisfaction of any liability of Landlord and shall not look to other assets of Landlord nor seek recourse against the other assets of Landlord. Whenever Landlord transfers its interest, Landlord shall be automatically released from further performance under this Lease and from all further liabilities and expenses hereunder and the transferee of Landlord's interest shall assume all liabilities and obligations of Landlord hereunder from the date of such transfer.

18.5. Notices. All notices to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or delivered by personal or courier delivery, or sent by facsimile (immediately followed by one of the preceding methods),

to Landlord's address and Tenant's address set forth in Sections 1 and 2 of the Basic Lease Information, or to such other place as Landlord or Tenant may designate in a written notice given to the other party. Notices shall be deemed served upon the earlier of receipt or three (3) days after the date of mailing.

18.6. Brokerage Commission. Landlord and Tenant each represents that they have not been represented by any broker in connection with this Lease, and that no real estate broker's commission, finder's fee or other compensation (individually and collectively, "**Commission**") is due or payable. Tenant agrees to indemnify and hold harmless Landlord from any claims or liability, including reasonable attorneys' fees, in connection with a claim by any person for a Commission based upon any statement, representation or agreement of Tenant.

18.7. Authorization. Each individual or entity executing this Lease on behalf of Tenant represents and warrants that he or she or it is duly authorized to execute and deliver this Lease on behalf of Tenant and that such execution is binding upon Tenant.

18.8. Holding Over. If, with Landlord's express written consent, Tenant holds over the Premises or any part thereof after expiration or earlier termination of the Term, such holding over shall constitute a month-to-month tenancy on all the other terms and conditions of this Lease, except that Base Rent shall be equal to the Rent payable under this Lease for the last full month before the date of expiration or termination. This section shall not be construed as Landlord's permission for Tenant to hold over. Acceptance of Rent by Landlord following expiration or termination shall not constitute a renewal of this Lease or extension of the Initial Term or any Renewal Term, as the case may be, except as specifically set forth above. If Tenant remains in possession of the Premises after expiration or other termination of this Lease without Landlord's express written consent, Tenant's continued possession shall be on the basis of a tenancy at sufferance and Tenant shall pay as Base Rent during the holdover period an amount equal to Fair Market Rent. "**Fair Market Rent**" means the price that a ready and willing tenant would pay, as of the commencement of holdover period, as monthly rent to a ready and willing landlord of property comparable to and within close proximity of the Premises if such property were offered for lease on the open market for a reasonable period of time and taking into account all of the purposes for which the Premises may be used, and shall be determined by Landlord in Landlord's sole discretion. If Tenant fails to surrender the Premises upon expiration or other termination of this Lease, Tenant shall indemnify and hold Landlord harmless from and against all loss or liability resulting from or arising out of Tenant's failure to surrender the Premises, including, but not limited to, any amounts required to be paid to any tenant or prospective tenant who was to have occupied the Premises after the expiration or other termination of this Lease and any related attorneys' fees and brokerage commissions.

18.9. Surrender. Upon the expiration or other termination of this Lease or Tenant's right to possession of the Premises, Tenant will surrender the Premises, together with all keys, clean and in good condition and repair, reasonable wear and tear excepted. Conditions existing because of Tenant's failure to perform regular cleaning, maintenance, repairs or replacements shall not be deemed "**reasonable wear and tear.**"

18.10. Joint and Several. If Tenant consists of more than one person, the obligation of all such persons shall be joint and several.

18.11. Covenants and Conditions. Each provision to be performed by Tenant hereunder shall be deemed to be both a covenant and a condition. This Lease shall be construed as though the covenants between Landlord and Tenant are independent and not dependent. Tenant expressly waives the benefit of any statute to the contrary, and agrees that even if Landlord fails to perform its obligations under this Lease, Tenant shall not be entitled to make repairs or perform any acts at Landlord's expense, or to any setoff against Rent or other amounts owing under this Lease against Landlord.

18.12. Force Majeure. For purposes of this Lease, the term "**Force Majeure**" shall mean and include the following: any delay caused by any action, inaction, order, ruling, moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over any portion of the Property, over any construction anticipated to occur thereon or over any uses thereof, or by fire, flood, inclement weather, energy shortage, strikes, lockouts or other labor or industrial disturbance, civil disturbance, order of any government, court or regulatory body claiming jurisdiction or otherwise, governmental preemption or curtailment in connection with a national emergency or in connection with any rule, order, guideline or regulation of any department or governmental agency, or by reason of the conditions of supply and demand which have been or are affected by a war or other emergency, acts of terrorism, act of public enemy, war, riot, sabotage, blockade, embargo, failure or inability to secure an adequate supply of water, electricity, fuel, materials, supplies or labor through ordinary sources by reason of shortages or priority, discovery of Hazardous Substances (as defined in paragraph 11.1), earthquake, or other natural disaster, or any cause whatsoever beyond the reasonable control (excluding financial inability) of the party whose performance is required, or any of its contractors or other representatives.

18.13. Financial Statements. Upon ten (10) days' prior written request from Landlord (which Landlord may make at any time during the Term but no more often than once in any calendar year, unless Tenant is in default), Tenant shall deliver to Landlord a current financial statement of Tenant and any guarantor of this Lease. Such statements shall be prepared in accordance with generally acceptable accounting principles and certified as true in all material respects by Tenant (if Tenant is an individual) or by an authorized officer or general partner of Tenant (if Tenant is a corporation or partnership, respectively).

**19. ADDENDA**. Attached hereto are addenda containing Sections that constitute a part of this Lease.

\*\*\*\*\*

*[Signatures follow on next page]*

IN WITNESS WHEREOF, the parties have executed this Lease as of the Effective Date.

**LANDLORD:**

CITY OF BENICIA, a California municipal corporation

\_\_\_\_\_  
City Manager  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

**--AND--**

**TENANT:**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A-1**

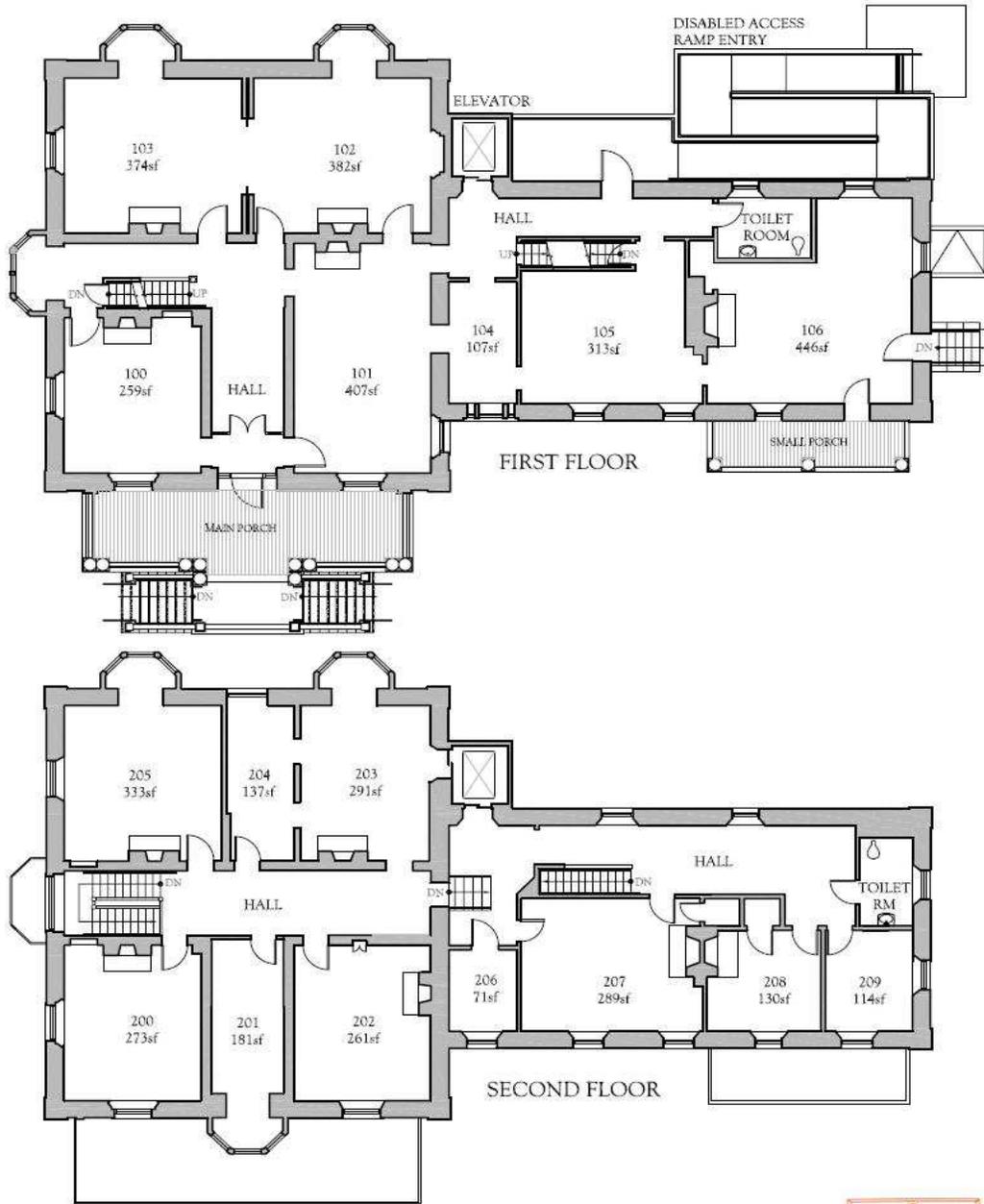
**Legal Description of Property**

Commanding Officer's Quarters, formally known as Commandant's Residence, located at 1  
Commandant's Lane, Benicia, California 94510.

(see Exhibit A-2 for physical depiction of premises)

# EXHIBIT A-2

## Depiction of Premises



COMMANDING OFFICER'S QUARTERS, BENICIA ARSENAL



CAREY & CO. INC.  
ARCHITECTURE

## EXHIBIT B

### Rules and Regulations

Tenant shall comply with the following Rules and Regulations (individually and collectively, "**Rules**"). Landlord shall not be responsible to Tenant for the nonperformance of any of these Rules.

1. Locks; Keys. Tenant shall not alter any lock or install any new or additional locks or bolts on any doors or windows of the Premises without obtaining Landlord's prior written consent. Tenant shall bear the cost of any lock changes or repairs required by Tenant. Three (3) keys shall be furnished by Landlord for the Premises, and any additional keys required by Tenant must be obtained from Landlord at a reasonable cost to be established by Landlord.
2. Doors Opening to Public Corridors; Protection of Premises. All doors opening to public corridors, if any, must be kept closed at all times except for normal ingress to and egress from the Premises. Tenant shall assume all responsibility, including keeping doors locked and other means of entry to the Premises closed, for protecting the Premises from theft, robbery, and pilferage.
3. Floor Loads. Landlord may prescribe the weight, size, and position of all safes, machinery, equipment, fixtures or other heavy property ("**Heavy Property**") brought into the Premises and the times and manner of moving those items within and out of the Premises. Tenant shall not overload any floor in the Premises or use or operate any machinery, equipment, or other device, even though its installation may have been permitted, that in Landlord's opinion is harmful to the Premises. If Tenant shall require Heavy Property, Tenant shall notify Landlord of such fact. If considered necessary by Landlord, Heavy Property must stand on supports that are adequate to distribute the weight properly and Tenant shall pay the cost of any necessary supports or structural bracing. Any damage to any property (whether or not belonging to Tenant), the Premises, the Property or any portion thereof, or its or their respective contents, or any harm to Tenant, its employees, agents, or any occupants or visitors caused by moving or maintaining any Heavy Property shall be the sole responsibility and expense of Tenant.
4. Requirements of Tenant. Any special requirements of Tenant not set forth as an obligation of Landlord under the Lease will be considered only upon written application to Landlord at Landlord's address set forth in the Lease. Landlord's employees shall not perform any work or do anything outside their regular duties unless under special instructions from Landlord.
5. Use of Plumbing Facilities; Responsibility for Damage. The plumbing facilities (including but not limited to restrooms, toilets, wash bowls, drains, and other apparatus) shall be used for no purpose other than that for which they were constructed, and no foreign substance of any kind shall be thrown into them. The expense of any breakage, stoppage, or damage resulting from violation of this rule shall be borne by Tenant.
6. Restrictions on Defacement; Maintenance of Premises. Tenant shall not mark, drive nails or screws into, or drill into the partitions, woodwork, or plaster, or in any way deface the

Premises, the Property or any portion thereof, without Landlord's prior written consent. Tenant shall maintain the Premises and all portions thereof in a safe, neat and clean condition.

7. Parking. All parking spaces are shared with the adjacent Clock Tower Property. Twenty (20) Reserved Parking spaces nearest the premises are guaranteed for the Tenant under the provisions of this lease agreement. Tenant is allowed reasonable use of the parking area. Tenant further agrees and understands that large events are regularly held at the Clock Tower and the entire parking lot area may be utilized during these events. If Tenant wishes to have a schedule of these event dates it is the sole responsibility of the Tenant to contact the City of Benicia to obtain this information.

8. Permitted Machines. No machines or equipment that consumes the equivalent of more than one horsepower (i.e. 740 watts) of energy (e.g. electricity, gas, etc.) shall be installed, maintained, or operated on the Premises without Landlord's prior written consent.

9. Additional Storage. Tenant shall only store property that Tenant owns or leases for the business named in this agreement. Tenant shall not store property that is owned or leased by another party, or in which another party has any claim or right, or title, or interest in. Tenant shall not store any improperly packaged food or perishable goods, flammable materials, explosives, or any other dangerous or hazardous materials that are not specifically needed for the reasonable operation and specifically needed for the specific purpose of the named business in this agreement. Tenant to maintain and produce on demand all Material Safety Data Sheets (MSDS) for any hazardous product used in the day to day operations on the premises. Tenant is responsible for all costs of any clean up, damage or contamination caused by anything stored on site. No additional structures, moveable or permanent, may be erected on the property without prior landlord approval, in writing.

10. Flammable or Combustible Fluids or Materials; Foul or Noxious Gases or Substances; Nontoxic Materials. Tenant shall not use or keep, or allow to be used or kept, in or on the Premises, the Property or any portion thereof, any kerosene, gasoline, or other flammable or combustible fluid, material, or any foul or noxious gas or substance. For purposes of this Lease, reasonable smells associated with coffee roasting shall be permitted. All materials, fabrics, and products used in Tenant's furnishings, wall and floor coverings, and ceiling installations shall be nontoxic and subject to the prior approval of Landlord's architect or engineer. Nothing contained here is intended or shall be construed to alter or diminish any obligations of Tenant under any portion(s) of its Lease addressing environmental matters and compliance, Hazardous Substances Laws, Hazardous Substances, or similar matters, or compliance with Laws.

11. Cooking; No Use of Premises for Improper Purposes. No cooking shall be done or permitted without Landlord's prior written consent on the Premises, except that Underwriters' Laboratory (UL)-approved equipment and microwave ovens may be used in the Premises for heating food and brewing coffee, tea, hot chocolate, and similar beverages for employees and visitors. This use must be in accordance with all Laws. The Premises shall not be used for lodging, or for any improper, objectionable, or immoral purposes.

12. Exclusion or Expulsion. Landlord reserves the right to exclude or expel from the Property or any portion thereof any person who, in Landlord's judgment, is under the influence of alcohol or drugs or commits any act in violation of any of these Rules.
13. Loitering Prohibited. Tenant and Tenant's Parties shall not loiter in or about the Property for the purpose of smoking tobacco products or for any other purpose unrelated to Tenant's use of the Premises.
14. Smoking; Illegal Substances. Smoking of tobacco products and use of illegal substances is strictly prohibited in or about the Property or any portion thereof.
15. Extermination. Tenant agrees not to permit the extermination of vermin to be performed in, on or about the Property or any portion thereof except at times and by a person or company reasonably designated by Landlord.
16. Obstructions. Tenant and Tenant's Parties shall not in any way obstruct the sidewalks, entry passages, pedestrian passageways, driveways, entrances and exits to the Property, and they shall use the same only as passageways to and from the Premises. At no time shall Tenant or Tenant's Parties be permitted to conduct work activity (except for normal loading and unloading of vehicles) nor store wooden pallets, boxes, goods or other materials outside the confines of Tenant's Premises.
17. Disposal of Trash and Garbage. Tenant shall store all trash, recycling, garbage and refuse ("**Trash**") within the confines of the Premises. Tenant shall not place or have placed in Trash boxes or receptacles any material that may not or cannot be disposed of in the ordinary and customary manner of removing and disposing of Trash in the vicinity of the Premises. Tenant shall comply fully with all applicable Laws when disposing of Trash.
18. Provision of Information to Tenant's Employees. Tenant shall comply with requests via written document by Landlord that Tenant inform Tenant's employees and agents of items of importance to Landlord.
19. Prohibited Uses and Activities.
  - 19.1 Any use, operation or activity which causes or produces the attraction of flies, insects, rodents or other animals, or the creation or emission of dust or dirt, without proper mitigating measures in place;
  - 19.2 Any use, operation or activity which causes or produces any emission into the air of any (a) noxious, toxic, hazardous or corrosive fumes or gases; (b) excessive smoke, dirt or dust; or (c) pollutants in violation of any local, state or federal standards;
  - 19.3 Any use, operation or activity which causes or produces any discharge of Hazardous Substances (as defined in paragraph 11.1) into any sewer system or storm drain serving the Property in a manner that will result in any leaching into the soil, or release into the atmosphere or groundwater;

19.4. Hazardous or unsafe uses by reasons of danger of fire or explosion, or uses that will increase the fire hazard rating on the Property or other properties, or uses objectionable or offensive to adjoining properties;

19.5. Uses in violation of any applicable Laws;

19.6. Any construction, erection, or placement of ornamentation or other objects or equipment, permanently or temporarily, on the outside portions of the Property, whether such portion is improved or unimproved, except as specifically permitted by Landlord; and

19.7 Any activity which occurs in the basement other than storage; and

19.8 Additional prohibited uses as determined by Landlord from time to time.

20. Conflict. In the event of any conflict between these Rules or any further or modified Rules from time to time issued by Landlord and the Lease provisions, the Lease shall govern and control.

21. Rule Changes; Waivers. Landlord reserves the right at any time to change or rescind any one or more of these Rules, with 30 day notice, or to make such other and further reasonable Rules as, in Landlord's judgment, may from time to time be necessary for the operation, management, safety, care and cleanliness of the Property or any portion thereof, for the preservation of good order therein, or for the convenience of other occupants and tenants of the Property, if any. Landlord may waive any one or more of these Rules for the benefit of any particular tenant(s) in writing, with no adverse effect on Tenants use of the premises or its occupancy. Landlord further reserve(s) all the rights reserved to it or them by the provisions of the Lessor by operation of Law. No waiver by Landlord shall be construed as a waiver of those Rules in favor of any other tenant or occupant of the Premises or Property, and no waiver shall prevent Landlord from enforcing those Rules against any other tenant or occupant of the Property. Landlord shall not be responsible to Tenant or to any other person for the non-observance or violation of the Rules by any other tenant, occupant, or other persons. Tenant shall abide by any additional rules or regulations which are ordered or requested by any governmental or military authority. Tenant shall be deemed to have read these rules and to have agreed to abide by them as a condition of Tenant's use and occupancy of the Premises.

**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - APRIL 21, 2015**  
**BUSINESS ITEMS**

**DATE** : April 7, 2015

**TO** : City Manager

**FROM** : Public Works Director  
Associate Civil Engineer

**SUBJECT** : **INTRODUCTION AND FIRST READING OF STORM WATER  
ORDINANCE TEXT AMENDMENT TO INCORPORATE  
REGULATIONS PERTAINING TO URBAN STORM WATER  
MANAGEMENT AND DISCHARGE CONTROL**

**RECOMMENDATION:**

Conduct a public hearing and introduce an ordinance updating and amending Benicia Municipal Code Chapter 15.64 (Storm Water Management and Discharge Control) to incorporate amendments adopted by the State Water Resources Control Board pertaining to urban storm water management and discharge controls.

**EXECUTIVE SUMMARY:**

The Federal Clean Water Act and the California State Porter-Cologne Water Quality Control Act have requirements to protect and enhance water quality in watercourses. The City is a Small MS4 permittee under the State's Phase II Stormwater Permit. This requires the City to enact appropriate regulations to control pollutant discharges. To do this, the City must amend Benicia Municipal Code Chapter 15.64.

**ENVIRONMENTAL REVIEW:**

The proposed ordinance amendment is exempt from the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines, Section 15307 (Class 7). This exemption consists of actions taken by regulatory agencies as authorized by state law or local ordinance to ensure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment.

The stormwater ordinance is a local implementation of the National Pollutant Discharge Elimination System (NPDES) Phase II Stormwater Permit, which is a federal initiative to reduce the quantity of pollutants entering the waterways. Pollutants such as oil, grease, pesticides, sediment, and refuse may be removed or filtered from the water by implementation of stormwater control measures. In Benicia, stormwater runoff eventually makes its way to the Carquinez Strait, a

part of the tidal estuary of the Sacramento and San Joaquin rivers that drain into the San Francisco Bay and Pacific Ocean. The Carquinez Strait is recognized as an important migratory path for fish and fowl; therefore, protection of water quality is an important component of habitat protection for these species.

The local implementation of NPDES Phase II requirements is occurring pursuant to the efforts of the Bay Area Stormwater Management Agencies Association (BASMAA) in coordination with the San Francisco Bay Regional Water Quality Control Board (RWQCB). Implementation of the new standards, via the proposed ordinance, will bring Benicia into consistency with regional efforts toward stormwater management, which includes Best Management Practices (BMPs) and engineered systems to regulate the quality and quantity of storm water runoff for enhanced protection of natural resources.

**BUDGET INFORMATION:**

Additional staff time will be required to review documents submitted by developers, plan check, inspect, monitor and train. No additional budget changes are requested at this time but may be submitted as part of the Organizational Scan and User Fee Study.

**GENERAL PLAN:**

Relevant General Plan Goals:

- Goal 2.28: Improve and maintain public facilities and services.
- Goal 2.38: Protect water quality.

**STRATEGIC PLAN:**

Relevant Strategic Plan Issues:

- Strategic Issue 1: Protecting Community Health and Safety  
Strategy 4: Promote community preservation and prevent nuisances through increased code enforcement, environmental strategies, and community education.

**BACKGROUND:**

The Federal Clean Water Act and the California State Porter-Cologne Water Quality Control Act have requirements to protect and enhance water quality in watercourses. On February 5, 2013, the State Water Resources Control Board (SWRCB) adopted the Phase II Small Municipal Separate Stormwater Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) Permit, Water Quality Order No. 2013-0001-DWQ, General Permit No. CA S000004 (Phase II Stormwater Permit). The Phase II Stormwater Permit regulates discharges from Small MS4s and requires permittees to implement a stormwater management program. The City of Benicia is named as a Small MS4 permittee in the Phase II Stormwater Permit.

The Phase II Stormwater Permit requires each permittee to “review and revise relevant ordinances or other regulatory mechanisms, or adopt any new ordinances or other regulatory mechanisms, to obtain adequate legal authority, to the extent allowable under state law or local law, to control pollutant discharges into and from its MS4, and to meet the requirements of [the Phase II Stormwater Permit].” Section E.6.a). In order for the City of Benicia to be in compliance with the new Phase II Stormwater Permit requirements, Chapter 15.64 of the Municipal Code must be amended.

Provision E.12 requires all municipal permittees to implement these requirements by **June 30, 2015**, to the extent allowed by applicable law. This includes projects requiring discretionary approvals that have not been deemed complete for processing and discretionary permit projects without vesting tentative maps that have not requested and have not received an extension of previously granted approvals. Individual municipalities sometimes require implementation on development projects not subject to the requirements to mitigate impacts identified during California Environmental Quality Act (CEQA) review, to address impacts on local drainage systems, or to preserve and enhance local environmental quality.

With funding from the North Bay Watershed Association (NBWA) and support from the NBWA Joint Technical Committee, the Bay Area Stormwater Management Agencies Association (BASMAA), through the BASMAA Phase II Committee, created the BASMMA Post-Construction Manual to assist applicants for development approvals to prepare submittals that demonstrate their project complies with the NPDES permit requirements. A copy of the Manual can be accessed on the City of Benicia website at the following link:

[https://beniciaca.govoffice2.com/vertical/Sites/%7B3436CBED-6A58-4FEF-BFDF-5F9331215932%7D/uploads/BASMAA\\_Post-Construction\\_Manual\\_2014-07-14.pdf](https://beniciaca.govoffice2.com/vertical/Sites/%7B3436CBED-6A58-4FEF-BFDF-5F9331215932%7D/uploads/BASMAA_Post-Construction_Manual_2014-07-14.pdf)

City staff reached out to the Napa Solano Builder Exchange and Bay Area Builder Exchange via of email, phone and letter of the ordinance changes. City staff requested both builder exchanges for a date and time for the City to host a workshop, but neither of the builder exchanges responded.

A summary of updates and significant changes are listed below:

- Section 15.64.010, *Purpose*, is updated to include requirements set forth by the Phase II Storm water Permit.
- Section 15.64.020, *Definitions*, is updated to expand and modify key words and phrases contained within the ordinance.
- Section 15.64.030, *Responsibility for administration*, is updated to expand authority of the administrator to include the Phase II Storm Water Permit.
- Section 15.64.040, *Construction and application*, is updated to include the BASMAA Post Construction Manual as a guidance document for construction project compliance.
- Section 15.64.060, *Discharge of Pollutants*, is updated to identify specific discharges that shall not be considered a source of pollutants. This section also includes updates to the management of incidental irrigation runoff.
- Section 15.64.080, *Illicit discharge and illicit connections*, is updated to include requirements for the cleanup of illicit discharges and a mechanism for recovering costs associated with cleanup.
- Section 15.64.090, *Best Management Practices and Standards*, expands storm water control measures, includes significant updates to Best Management Practices (BMPs) for ground disturbing activities, and creates a new clause for Best Management Practices for new development, and redevelopment, as follows:
  - The development and implementation of Erosion and Sediment Control Plans are required for all projects requiring a grading permit.
  - New development and redevelopment projects must implement post-construction Best Management Practices to control the volume, rate, and potential pollutant load of storm water runoff.
  - New development and redevelopment projects, which create or replace 2,500 square feet of impervious area, must submit and implement a Storm water Control Plan, which is separate from an Erosion and Sediment Control Plan that identifies the post-construction BMPs planned to control the volume, rate, and potential pollutant load of storm water runoff.
- Section 15.64.120, *Authority to Inspect*, is expanded to grant the City authority to inspect premises to enforce the requirements of Chapter 15.64 of the Municipal Code.
- Section 15.64.210, *Administrative Enforcement Powers*, is expanded to grant the City authority to enforce the requirements of Chapter 15.64 of the Municipal Code, through the issuance of progressive enforcement actions.

In accordance with the Phase II Stormwater Permit Guidelines, the proposed amendments to Chapter 15.64 of the Municipal Code grant the City of Benicia with the authority to:

- Minimize discharges other than storm runoff to storm drains or watercourses and prohibit non-storm water discharges;
- Respond to the discharge of spills, prevent and control the discharge of spills to storm drains or watercourses, and prohibit dumping or disposal of materials other than storm water;
- Require the use of appropriate Best Management Practices (BMPs) to reduce pollutants in storm water discharges to the maximum extent practicable;
- Require operators of construction sites to develop erosion and sediment control plans and install, implement, and maintain appropriate BMPs; and
- Require applicants for land development and redevelopment to develop storm water control plans to reduce storm water pollutant discharges through the construction, operation and maintenance of source control measures, low impact development design, site design measures, storm water treatment measures and hydromodification management measures, and require agreements to ensure the future operation and maintenance of the practices.

ATTACHMENTS:

- Proposed Ordinance Amending Chapter 15.64 (with changes shown in redline strikeout)
- Proposed Ordinance Amending Chapter 15.64 (clean copy)



CITY OF BENICIA  
ORDINANCE NO. 15-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA UPDATING AND AMENDING CHAPTER 15.64 (STORM WATER MANAGEMENT AND DISCHARGE CONTROL) TO INCORPORATE AMENDMENTS ADOPTED BY THE STATE WATER RESOURCES CONTROL BOARD PERTAINING TO URBAN STORM WATER MANAGEMENT AND DISCHARGE CONTROLS

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN AS FOLLOWS:

**Section 1.**

Chapter 15.64 (Storm Water Management and Discharge Control) of Division IV (Storm Water) of Title 15 (Buildings and Construction) of the Benicia Municipal Code is amended by replacing it in its entirety to read as follows:

**Chapter 15.64**

**STORM WATER MANAGEMENT AND DISCHARGE CONTROL**

Sections:

- 15.64.010 Purpose.
- 15.64.020 Definitions.
- 15.64.030 Responsibility for administration.
- 15.64.040 Construction and application.
- 15.64.050 Taking.
- 15.64.060 Discharge of pollutants.
- 15.64.070 Discharge in violation of permit.
- 15.64.080 Illicit discharge and illicit connections.
- 15.64.090 Best management practices and standards.
- 15.64.100 Tourtelot cleanup project.
- 15.64.110 Watercourse protection.
- 15.64.120 Authority to inspect.
- 15.64.130 Violations constituting misdemeanors.
- 15.64.140 Penalty for violation.
- 15.64.150 Continuing violation.
- 15.64.160 Concealment.
- 15.64.170 Acts potentially resulting in violation of federal Clean Water Act and/or Porter-Cologne Act.
- 15.64.180 Violations deemed a public nuisance.
- 15.64.190 California Code of Civil Procedure Section 1094.6.
- 15.64.200 Civil actions.
- 15.64.210 Administrative enforcement powers.
- 15.64.220 Remedies not exclusive.
- 15.64.230 Coordination with hazardous materials inventory and response program.

## 15.64.010 Purpose.

The City Council finds as follows:

A. The intent of this chapter is to protect and enhance the water quality in the city of Benicia's watercourses, water bodies, and wetlands in a manner pursuant to, and consistent with, the Porter-Cologne Water Quality Control Act (Water Code Section 13000 et seq.), the federal Clean Water Act (33 U.S.C. Section 1251 *et seq.*) and any subsequent revisions and amendments thereto, and with the goals of the city of Benicia general plan including:

Goal 2.38: Protect water quality.

Goal 3.22: Preserve water bodies.

Goal 3.24: Protect watersheds.

Goal 4:12: Accommodate runoff from existing and future development.

Goal 4.14: Prevent ground and surface water contamination.

B. This chapter also carries out the conditions in the city's Phase II Small Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) permit, Water Quality Order No. 2013-0001—DWQ, General Permit No. CAS000004 (Phase II Stormwater Permit) and subsequent revisions and amendments thereto, that require, effective upon adoption of this chapter, implementation of appropriate measures to control pollutant discharges into and from the MS4 system. source control and site design measures and storm water treatment measures for projects that create or replace one acre or more of impervious surface, and that, effective January 1, 2008, reduce the threshold to projects that create or replace 10,000 square feet or more of impervious surface.

C. It is the purpose of the city council in enacting this chapter to ensure the future health, safety, and general welfare of city of Benicia residents and acting in accordance with the precepts of the general plan by:

1. Detecting and Eliminating non-storm water discharges and illegal connections to the municipal separate storm drain system.
2. Responding to and prohibiting Controlling the discharge to municipal separate storm drains from spills, dumping or disposal of materials other than storm water.
3. Reducing pollutants in storm water discharges to waters of the United States to the maximum extent practicable.
4. Complying with applicable state and federal laws.
5. Minimizing increases in nonpoint source pollution caused by storm water runoff from development that would otherwise degrade local water quality.

6. Reducing storm water runoff rates and volumes and nonpoint source pollution whenever possible, through storm water management controls and ensuring that these management controls are properly maintained and pose no threat to public safety.

(Ord. 06-14 § 1).

#### 15.64.020 Definitions.

The following words and phrases when used in this chapter shall be as defined herein. Words and phrases in this chapter and not otherwise defined shall be interpreted as defined in the regulations issued by the U.S. Environmental Protection Agency to implement the provisions of the Phase II Stormwater Permit, the federal Clean Water Act, and as defined by the State Water Resources Control Board to implement the Porter-Cologne Act:

- A. "Authorized enforcement official" or "authorized enforcement officer" is the City Engineer and those individuals designated by the City Engineer as authorized enforcement officials.
- B. "BASMAA Post Construction Manual" means the most recent version of the Bay Area Stormwater Management Agencies (BASMAA) Post Construction Manual.
- C. "Best management practices (BMPs)" are schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly the pollution of waters of to the waters of the United States city or state. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, waste disposal, or drainage from raw material storage. ~~BMPs are for construction and post-construction storm water controls..-~~
- B. "~~City storm drain system~~" includes but is not limited to those facilities within the city by which storm water may be conveyed to waters of the United States, including any roads with drainage systems, municipal streets, drainage inlets, curbs, gutters, ditches, manmade open channels or culverts and pipes, which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR Part 122.2.
- D. "Construction activity" means any activity that involves soil disturbing activities including, but not limited to, clearing, grading, paving, disturbances to ground such as stockpiling, and excavation.
- G.E. "Development runoff requirements" shall mean the provisions in the city's Storm Water Phase II Final Rule that contains performance standards to address both construction and post-construction phase impacts of new projects and redevelopment projects on storm water quality.
- D.F. E. "Discharge" or "Discharge of a Pollutant." is (a) The addition of any pollutant or combination of pollutants to waters of the United States from any point source, or (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft, which is being used as a means of transportation. The term includes additions of pollutants to waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned

~~treatment works is the release of all fluids, solids, flowing substances, liquids, or any other substance to the city's storm water system.~~

G. "Erosion and Sediment Control Plan (ESCP)" means a plan prepared to control erosion and prevent the discharge of sediment and construction materials from a construction site

~~E.H. "Illicit connection" is any device or method that conveys non-storm water to a municipal separate storm sewer (storm drain) system (MS4) or receiving water.~~

~~I. F. "Illicit discharge" is any discharge to a MS4 that is prohibited under local, state, or federal statutes, ordinances, codes, or regulations. The term illicit discharge includes all non-storm water discharges not composed entirely of storm water and discharges that are identified under the Discharge of Pollutants section of this chapter (BMC 15.64.060). is any discharge to the city storm water system that is not composed entirely of storm water except discharges exempted in BMC. The term illicit discharge does not include discharges that are regulated by an NPDES permit.~~

J. "Incidental irrigation runoff." Unintended amounts (volume) of runoff, such as unintended, minimal over-spray from sprinklers that escapes the landscaped area of intended use. Water leaving an intended use area is not considered incidental if it is part of the facility design, if it is due to excessive application, if it is due to intentional overflow or application, or if it is due to negligence.

K. "Low Impact Development (LID)." A sustainable practice that benefits water supply and contributes to water quality protection. LID uses site design and storm water management to maintain the site's pre-development runoff rates and volumes. The goal of LID is to mimic a site's predevelopment hydrology by using design techniques that infiltrate, filter, store, evaporate, and detain runoff close to the source of rainfall.

~~F.L. "NPDES permit" is a National Pollutant Discharge Elimination System (NPDES) permit issued by the United States Environmental Protection Agency, the State Water Resources Control Board, or a California Regional Water Quality Control Board pursuant to the Clean Water Act that authorizes discharges to waters of the United States. a general permit for the discharge of storm water from small agencies (WQ Order No. 2003-0005-DWQ) to provide permit coverage for smaller municipalities, including nontraditional small agencies, which are governmental facilities such as military bases, public campuses, and prison and hospital complexes.~~

G.M. "Non-storm water discharge" is any discharge to a storm sewer system that is not composed entirely of storm water. ~~except discharges resulting from fire fighting activities.~~

N. I. "Notice of intent (NOI)" Permit Registration Documents (PRDs)" is a form are the application materials required by the State Water Resources Control Board ~~which that includes consists of~~ a notice of intent to comply with the terms of the General Permit to Discharge Storm Water Associated with Construction and Ground Disturbing Activity Activities (WQ Order No. 93-082009-0009-DWQ as amended, General Permit No. CAS000002) or the General Permit to Discharge Storm Water Associated with Industrial Activities (Order No. 2014-057-DWQ, General Permit No. CAS000001)

O. "Phase II Stormwater Permit" is the NPDES general storm water permit applicable to the city of Benicia, Water Quality Order No. 2013-0001—DWQ, General Permit No. CAS000004, and any subsequent amendment, reissuance or successor to this NPDES permit.

P. "Post Construction Measure Requirements." The provisions in Section E.12 of the Phase II Stormwater Permit that contain design standards or performance criteria to

address the post-construction phase impacts of new projects and redeveloped projects on storm water quality and quantity.

~~H. "Premises" are any building, lot, parcel, real estate, or land or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.~~

~~Q. K. "Pollutant" is any material other than storm water including, but not limited to, petroleum products or by-products, solid waste, incinerator residue, sewage, sewage sludge, acidity, dredged or excavated soil, solid waste, incinerator residue, filter backwash, sewage, pet wastes, manure, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, sediment, cellar dirt, concrete, debris, dumped yard wastes, and industrial, municipal, and agricultural waste; temperature, chemical waste, biological materials, wrecked or discarded equipment, rock, sand, soil and industrial, municipal or agricultural waste discharged into the water or storm water system, that is discharged to or placed within the storm water, in such a way as to be carried away by storm water into the storm drains and watercourses of the city.~~

~~I.R. "Premises" are any building, lot, parcel, real estate, or land or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.~~

~~S. "Responsible person" shall mean the owner or occupant of any premises or who engages in any activity from which there is or may be a non-storm water discharge or any person who releases pollutants to the city's storm water system.~~

~~T. "Storm drain system" or "storm drain" includes but is not limited to those storm water drainage conveyance facilities within the city by which storm water may be conveyed to waters of the United States, including any roads with drainage systems, municipal streets, catch basins, drainage inlets, curbs, gutters, ditches, creeks, manmade open channels or culverts and pipes, which is not part of a Publicly Owned Treatment Works (POTW) as defined in the Code of Federal Regulations (at 40 C-F-R Part 122.2).~~

~~J.U. "Storm water" means storm water runoff, and surface runoff and drainage. It excludes infiltration and runoff from agricultural land.~~

~~V. N. "Storm water control plan" shall mean a plan that meets the criteria stated in the city's New and Redevelopment Project Application Guidance, contained in the most recent version of the BASMAA Post Construction Manual.~~

~~W. "Stormwater Facilities Operation and Maintenance Plan" is a plan identifying the locations and characteristics of storm water management facilities on a newly developed or redeveloped site and describing maintenance activities, schedules, and responsibilities to ensure the ongoing proper operation of those facilities.~~

~~X. "Storm water management facility" is any device designated to detain, retain, filter, or infiltrate storm water.~~

~~K.Y. "Storm water pollution prevention plan (SWPPP)" is a plan to identify sources of sediment and other pollutants that affect the quality of storm water discharges and describes and ensures the implementation of practices to reduce sediment and other pollutants in storm water discharges. A SWPPP is required for sites greater than one acre or from a site that results in a land disturbance of less than one acre, but is part of a larger common plan and is part of the State Water Resources Control Board's General Construction Activity Storm Water Permit or the federal National Pollution Discharge Elimination System (NPDES) storm water discharge regulations. The SWPPP must include BMPs which address prevention and control of erosion and sediment.~~

~~A. "Watercourse" is any channel, ditch, drainage swale, closed pipe system, whether manmade or natural, that collects and transports runoff.~~

~~A.B.~~ "Waters of the United States" are all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide as defined in 33 CFR Part 328. (Ord. 06-14 § 1).

#### **15.64.030 Responsibility for administration.**

This chapter shall be administered for the city by the City Engineer. In administering this chapter, the City Engineer has the authority to request and require the submittal of information deemed necessary to assess compliance with this chapter and the Phase II Stormwater Permit (Ord. 06-14 § 1).

#### **15.64.040 Construction and application.**

This chapter shall be construed to assure consistency with the requirements of the federal Clean Water Act and acts amendatory thereof or supplementary thereto, applicable implementing regulations. Every application for a development project, including but not limited to a rezoning, tentative map, parcel map, conditional use permit, variance, site development permit, design review, or building permit is subject to the development runoff requirements in the city's NPDES permit and shall be accompanied by a storm water control plan that meets the most recent version of the BASMAA Post Construction Manualcity's Project Application Guidance. (Ord. 06-14 § 1).

#### **15.64.050 Taking.**

The provisions of this chapter shall not operate to deprive any landowner of substantially all of the market value of his/her property or otherwise constitute an unconstitutional taking without compensation. If application of this chapter to a specific project would create a taking, then pursuant to this chapter the city council may allow additional land uses, but only to the extent necessary to avoid a taking. Such uses shall be consistent with and carry out the purposes of this chapter as stated in BMC [15.64.010](#). (Ord. 06-14 § 1).

#### **15.64.060 Discharge of pollutants.**

- A. ~~A.~~ The discharge of non-storm water discharges to the city storm water-drain system is prohibited. All discharges of material other than storm-water must be in compliance with this chapter, state and federal regulations and authorized by the City Engineer.
- B. ~~B.~~ The discharge of storm water from premises or an activity that causes or contributes to a violation of receiving water limitations in the city's NPDES permit is prohibited.
- C. ~~C.~~ Exceptions to Discharge Prohibition. The following discharges are exempt from the prohibition set forth in subsection (A) of this section:
  1. ~~The prohibition on discharges shall not apply to any d~~Discharges regulated under another National Pollutant Discharge Elimination System (NPDES) permit (other than the Phase II Stormwater Permit) issued to the discharger and administered by the state-State of California under authority of the United States Environmental Protection Agency; provided, that the discharger is in full compliance with all requirements of the permit and other applicable laws or regulations.

- 4.2. Discharges or flows from fire-fighting activities unless they are identified as significant sources of pollutants to waters of the United States.
- ~~2. The prohibition shall also not apply to flows from riparian habitats and wetlands, diverted stream flows, springs, rising groundwater and uncontaminated groundwater infiltration.~~
3. Discharges from the following activities, provided any pollutants in the discharges are identified and appropriate control measures to minimize the impacts of such discharges are developed and implemented:
- ~~3. The following discharges are exempt from the prohibitions set forth in subsection (A) of this section if the Regional Water Quality Control Board approves the exempted category under section D.2.c.6 of the city's NPDES permit:~~
- ~~i. w~~Water line flushing and other discharges from potable water sources;
  - ~~ii. , landscape irrigation and lawn watering, Incidental~~ irrigation runoff from landscaped areas provided the conditions in item (4) of this section are met;
  - ~~iii. diverted~~Diverted stream flows;
  - ~~iv. R~~Rising ground waters;
  - ~~v. l~~infiltration to separate storm drains;
  - ~~vi. u~~Uncontaminated pumped ground water, (as defined at 40 C.F.R. § 35.2005(20)) to separate storm sewers;
  - ~~vii. f~~Foundation and footing drains;
  - ~~viii. w~~Water from crawl space pumps;
  - ~~ix. A~~air conditioning condensation;
  - ~~x. N~~Natural springs;
  - ~~xi. -l~~Individual residential car washing;
  - ~~xii. f~~Flows from riparian habitats and wetlands; and
  - ~~xiii. d~~Dechlorinated swimming pool discharges. ~~and or f~~
4. Irrigation systems must be designed to conserve water and prevent water leaving the area of application. Persons responsible for controlling irrigation systems shall prevent excessive irrigation runoff by:
- i. Detecting and correcting leaks from the irrigation system within 72 hours of discovering the leak;
  - ii. Properly designing and aiming sprinkler heads to only irrigate the planned application area;
  - iii. Not irrigating during precipitation events; and
  - iv. Where recycled water is used for irrigation, designing and managing holding ponds such that no discharge occurs unless it is the result of the 25 year-24 hour storm event. Any releases from holding ponds must be reported to the Regional Water Board and the city of Benicia within 24 hours of the discharge.

(Ord. 06-14 § 1).

#### 15.64.070 Discharge in violation of permit.

Any discharge that would result in a contribution to a violation of the NPDES-Phase II Stormwater Permit, WQ Order No. 93-08-DWQ and any amendment or reissuance thereof, either separately considered or when combined with other discharge, is prohibited. Any non-storm water discharge not within the confines of this chapter and/or not approved by the City

Engineer is prohibited. Liability for any such discharge shall be the responsibility of the person(s) causing or responsible for the discharge, and such persons shall defend, indemnify and hold harmless the city in any administrative or judicial enforcement action relating to such discharge. (Ord. 06-14 § 1).

#### **15.64.080 Illicit discharge and illicit connections.**

A. It is prohibited to establish, use, maintain, or continue illicit drainage connections to the city storm water system or watercourse, and to commence or continue any illicit discharges to the city storm water system or watercourse. This prohibition is expressly retroactive and applies to connections made in the past, regardless of whether made under a permit or other authorization or whether permissible under the law or practices applicable or prevailing at the time of the connection.

B. Any person responsible for a discharge, spill, or pollutant release shall promptly cease and desist discharging, and/or cleanup and abate such a discharge as directed by the City Engineer.

C. Any person ~~Persons~~ found to be in violation of this section or found to be responsible for an illicit connection, shall shall be responsible for removing promptly remove the illicit drainage or connection in a manner acceptable to and approved by the city.

~~D~~G. No discharge shall cause the following conditions, create a nuisance or adversely affect beneficial uses of waters of the state:

1. Floating, suspended or deposited macroscopic matter or foam;
2. Bottom deposits or aquatic growth;
3. Alterations of temperature, sediment load, nutrient load, or dissolved oxygen, which cause significant adverse impacts to native aquatic biota;
4. Visible, floating, suspended or deposited oil or products of petroleum origin; or
5. Substances present in concentrations or quantities which cause deleterious effects on aquatic biota, wildlife or waterfowl, or which render any of these unfit for human consumption.

E. The city may perform clean-up and abatement work and recover its costs from the responsible person as provided in Section 15.64.200.

(Ord. 06-14 § 1).

#### **15.64.090 Best management practices and standards.**

Any person engaged in activities that will or may result in pollutants entering the city storm drainsewer -system shall undertake all practicable measures to cease such activities, and/or eliminate or reduce such pollutants. Such activities shall include, but not be limited to:

ownership and use of parking lots, gasoline stations, industrial facilities, commercial facilities, ground disturbing activities, and stores fronting city streets. The following minimal requirements shall apply:

A. Littering. Except for pollutants lawfully disposed of by way of containers or in lawfully established dumping grounds, no person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, placed, left or maintained, any refuse, rubbish, garbage, or other discarded or abandoned objects, articles, and accumulations, in or upon any street, alley, sidewalk, storm drain, inlet, drain inlet, conduit or other drainage structures, business place, or upon any public or private lot of land in the city, in any fountain, pond, lake, stream or any other body of water in a park or elsewhere within the city, so that the same might be or become a pollutant discharged to water, ~~except in containers or in lawfully established dumping grounds.~~

B. Sidewalks. The occupant or tenant, or in the absence of occupant or tenant, the owner, lessee, or proprietor of any real property in the city of Benicia in front of which there is a paved sidewalk shall maintain said sidewalk free of dirt or litter to the maximum extent practicable. Sweepings from said sidewalk shall not be swept or otherwise made or allowed to go into the gutter or roadway, but shall be disposed of in receptacles maintained on said real property as required for the disposal of garbage, trash or green waste.

C. Standard for Parking Lots and Similar Uses. Persons owning or operating private streets, a parking lot, gas station pavement or similar structure shall clean those structures as frequently and thoroughly as practicable in a manner that does not result in discharge of pollutants to the city storm water system.

D. Best Management Practices for Construction and Ground Disturbing Activities.

1. Any person performing construction activities in the city shall use the best available technology (BAT) and the best conventional technology (BCT). Any person performing construction activities shall implement appropriate BMPs consistent with the California Stormwater Quality Association BMPs or equivalent to prevent the discharge of construction wastes or contaminants from construction materials, tools, and equipment from entering the storm drain system or watercourse.

2. Construction-phase BMPs include erosion and sediment controls and pollution prevention practices.

Erosion control BMPs may include, but are not limited to:

- i. Scheduling and timing of grading activities;
- ii. Preservation of Existing Vegetation;
- iii. Timely revegetation of graded areas;
- iv. The use of hydroseed and hydraulic mulches;
- v. Soil Binders;
- vi. Earth Dike and Drainage Swales;
- vii. Velocity Dissipation Devices;
- viii. Slope Drains;
- ix. Installation of erosion control blankets;
- x. Soil Preparation-Roughening;
- xi. Wind Erosion Control.

Sediment control BMPs may include, but are not limited to:

- i. Properly sized detention basins, dams, or filters to reduce entry of suspended sediment into the storm drain system and watercourses;
- ii. Installation of construction entrances to prevent tracking of sediment onto adjacent streets;
- iii. Biofilter Bags;
- iv. Sandbag Barrier;
- v. Storm Drain Inlet Protection;
- vi. Entrance Outlet Tire Wash;
- vii. Street sweeping to remove tracked sediment.

-Pollution prevention practices may include, but are not limited to:

- i. Designated concrete washout areas or facilities;
- ii. Control of trash and recycled materials;
- iii. Tarping of materials stored on-site;
- iv. Proper location of and maintenance of temporary sanitary facilities.

The combination of BMPs used, and their execution in the field, must be customized to the site using up-to-date standards and practices.

3. Financial security may be required to ensure that temporary measures to control storm water pollution are implemented and maintained during construction and after construction for a period determined by the city. Financial security shall consist of an irrevocable letter of credit, cash deposit, or performance bond as determined by the agency.

4. When any work is being done contrary to the provisions of this article, the City Engineer may order the work stopped by notice in writing served on any persons engaged in doing or causing the work to be done. Such work shall stop until the authorized enforcement official authorizes the work to proceed. This remedy is in addition to, and does not supersede or limit, any and all other remedies, both civil and criminal provided in the city of Benicia Municipal Code.

5. The city has the authority to review designs and proposals for construction activities and new development and redevelopment sites to determine whether adequate BMPs will be installed, implemented, and maintained during construction and after final stabilization (post-construction).

6. All construction plans and applications for construction activity submitted to the city shall consider the potential for erosion and sedimentation at the construction site, and shall include appropriate erosion and sedimentation controls.

7. Erosion and Sediment Control Plan Requirements:

(a) An Erosion and Sediment Control Plan (ESCP) shall be required for:

- (1) Any project subject to a grading permit under Chapter 15.28 Grading and Erosion Control;
- (2) Any project subject to a building permit or other permit that has the potential for significant erosion and/or significant non-storm water discharges of sediment and/or construction site waste;

(3) Any other project as required by the authorized enforcement official considering factors such as whether the project involves hillside soil disturbance, rainy season construction, construction near a creek or an intermittent or ephemeral drainage way, or any other condition or construction site activity that could lead to a non-storm water discharge to a storm drain if not managed by effective implementation of an ESCP.

(b) The ESCP shall be submitted for review and approval by the authorized enforcement official. The project applicant shall follow guidance issued by the City Engineer in preparing the ESCP. At a minimum, the ESCP shall include:

(1) Description of the proposed project and soil disturbing activity;

(2) Site specific construction-phase BMPs;

(3) Rationale for selecting the BMPs, including if needed, soil loss calculations;

(4) List of applicable permits associated with the soil disturbing activity, such as: the State's Construction General Permit (CGP); Clean Water Act Section 404 Permit; Clean Water Act Section 401 Water Quality Certification; Streambed/Lake Alteration Agreement (1600 Agreements);

(5) Proof that the applicant has obtained the applicable permits associated with the soil disturbing activity that must be submitted prior to approval of the ESCP; and

(6) Project information including but not limited to:

i. Owner and contractor contact information;

ii. Site information (location, status, size of project, size of disturbed area);

iii. Name and distance to the nearest receiving water; and

iv. Planned start date and anticipated completion date.

(c) For projects subject to the State's General Construction Permit (CGP), project applicants may submit a Storm Water Pollution Prevention Plan (SWPPP) developed pursuant to the CGP in lieu of submitting an ESCP.

(d) Implementation of an approved ESCP shall be a condition of the issuance of a building permit, a grading permit, or other permit issued by the city for a project subject to this section. The ESCP shall be implemented year round and must be updated to reflect changing conditions on the project site. Any modifications to the ESCP shall be submitted to the city for review and approval.

#### E. Best Management Practices for New Development and Redevelopment.

1. Prior to and/or during construction, the authorized enforcement official may establish controls on the volume and rate of storm water runoff from new developments and redevelopment as may be appropriate to minimize peak flows or total runoff volume, and to mimic the pre-development site hydrology. These controls may include limits on impervious area or provisions for detention and retention of runoff on-site.

2. The authorized enforcement official may require, as a condition of project approval, permanent structural controls designed for the removal of sediment and other pollutants, and for control on the volume and rate of storm water runoff from the project's added or replaced impervious surfaces. The selection and design of such controls shall be in accordance with criteria established or recommended by federal, state, and local agencies, and where required, the BASMAA Post Construction Manual. Where physical and safety conditions allow, the preferred control measure is to retain drainage ways above ground and in as natural a state as possible, or by other biological methods such as bioretention areas.

3. Stormwater Control Plan Requirements:

(a) For each new development and redevelopment project subject to post construction measure requirements, or where required by the nature and extent of a proposed project and where deemed appropriate by the city, every applicant shall submit a Stormwater Control Plan (SCP) that meets the criteria in the most recent version of the BASMAA Post Construction Manual.

(1) Applicable new development and redevelopment projects subject to post construction measures include:

- i. *Small Projects.* Projects that create or replace between 2,500 and 5,000 square feet of impervious area ~~(including single-family homes)~~, excluding *Linear Underground/Overhead Utility Projects.*
- ii. *Regulated Projects.* Projects that create or replace greater than or equal to 5,000 square feet of impervious area, excluding: detached single family residences that are not part of a common plan of development; interior remodels; routine maintenance or repair; *Linear Underground/Overhead Utility Projects unless the project has a discrete location of that has 5,000 square feet or more of newly constructed contiguous impervious area* .
- iii. *Full Hydromodification Projects.* Regulated projects that create or replace greater than or equal to one acre of impervious area, with a net increase in impervious area.

(b) Applicants shall implement the controls identified in the SCP and required by the conditions of approval that reduce storm water pollutant discharges through the construction, operation and maintenance of source control measures, low impact development design, site design measures, storm water treatment measures and hydromodification management measures. Increases in runoff shall be managed in accordance with the post construction measures requirements.

(c) The SCP is separate and distinct from the ESCP requirements described in Section 15.64.090 (D).

(d) Where projects are required to have a SCP, project applicants shall follow the appropriate SCP template, based on the project type, in the BASMAA Post Construction Manual.

(e) Implementation of an approved SCP and submittal of an approved Stormwater Facilities Operation and Maintenance Plan by the applicant shall be a condition precedent to the issuance of a building permit or another city-issued permit for a project subject to this section.

(f) Financial security may be required to ensure that storm water management facilities operate and are maintained following construction for a period which may be determined by the city. Financial security shall consist of an irrevocable letter of credit, cash deposit, or performance bond as determined by the city.

(g) When any work is being done contrary to the provisions of this article, the authorized enforcement official may order the work stopped by notice in writing served on any persons engaged in doing or causing the work to be done. Such work shall stop until the City Engineer authorizes the work to proceed. This remedy is in addition to and do not supersede or limit any and all other remedies, both civil and criminal provided in the BMC.

(h) All storm water management facilities shall be designed in a manner to minimize the need for maintenance and reduce the chances of failure. Design guidelines are outlined in the *BASMAA Post Construction Manual*.

(i) All storm water management facilities shall be maintained according to the approved Stormwater Facilities Operation and Maintenance Plan. The person(s) or organization(s) responsible for maintenance shall be designated in the plan. Unless a different time period is provided for in the plan, those responsible for maintenance shall inspect the storm water management facilities at least annually and submit a written report of the inspection to the City Engineer. The Stormwater Facilities Operation and Maintenance Plan shall describe how the maintenance costs will be funded. If the responsible person fails to maintain the storm water management facilities in accordance with this chapter or the plan, the city may perform the maintenance and recover its costs from the responsible person as provided in Section 15.64.200.

(j) For each new development and redevelopment project subject to the post construction measures requirements, or where deemed appropriate by the city, access by the city to storm water management facilities for inspections, as provided in Section 15.64.200, and through such means as may be appropriate, including, but not limited to, legal agreements, recorded covenants or easements, shall be provided by the property owner.

(k) All project proponents and their successors, or successors in fee title, in control of a new development and redevelopment project subject to the post-construction measures requirements, shall submit one of the following as a condition prior to final inspection and approval of building permit closure:

(1) The project proponent's signed statement accepting responsibility for the operations and maintenance of storm water management facilities until such responsibility is legally transferred to another entity;

(2) Written conditions in the sales or lease agreements or deed for the project that requires the buyer or lessee to assume responsibility for the operations and maintenance of the storm water management facilities until such responsibility is legally transferred to another entity;

(3) Written text in project deeds, or conditions, covenants and restrictions for multi-unit residential projects that require the homeowners association or, if there is no association, each individual owner, to assume responsibility for the operation and maintenance of the storm water management facilities until such responsibility is legally transferred to another entity; or

(4) Any other legally enforceable agreement or mechanism, such as recordation in the property deed, that assigns the operation and maintenance of the storm water management facilities to the project owner(s).

~~All construction contractors performing work shall use the best available technology (BAT) and best conventional technology (BCT). Construction contractors shall implement appropriate best management practices such as the Caltrans Construction Site Best Management Practices, current revision, the Association of Bay Area Governments (ABAG) Manual of Erosion and Sediment Control Measures, California Storm Water Quality Association Best Management Practices, the city's grading and erosion control ordinance and other generally accepted engineering practices for control of potential pollutants, construction site waste and erosion as required by the city engineer when undertaking grading activities. The city engineer may establish controls on the rate of storm water runoff from new developments and redevelopment as may be appropriate to minimize the discharge and transport of pollutants.~~

~~All construction contractors and developers shall also comply with the provisions of Chapter 15.28 BMC, including the preparation of a storm water pollution prevention plan.~~

~~Design measures shall be used that minimize surface runoff from the post construction site and which eliminate direct connections from impervious surfaces to the city watercourses.~~

~~All developers shall comply with the city of Benicia engineering design standards in site design, source control and treatment control BMPs. In the design of drainage facilities, it is the intent of this chapter that there shall be no net increase in peak flow rates in the post construction condition. The city engineer may grant an exception to this requirement providing that new downstream conveyance installations and/or improvements, and treatment facilities remove pollutants to the maximum extent practicable. Developers shall provide appropriate measures described in the plan and acceptable to the city to ensure long term operation and maintenance of structural BMPs before a certificate of occupancy is issued. Where appropriate and necessary, developers shall provide access rights to vector control agencies.~~

FF. Notification of Intent and Compliance with General Permits. Each industrial discharger, discharger associated with construction activity, or other discharger, described in any general storm water permit addressing such discharges, as may be adopted by the United States Environmental Protection Agency, the State Water Resources Control Board, or the California Regional Water Quality Control Board, San Francisco Bay Region, shall provide notice of intent, comply with, and undertake all other activities required by any general storm water permit applicable to such discharges.

Each discharger identified in an individual NPDES permit relating to storm water discharges shall comply with and undertake all activities required by such permit.

~~F. Development Runoff Requirements. For each new development and redevelopment project subject to the development runoff requirements, every applicant will submit a storm water control plan and implement conditions of approval that reduce storm water pollutant discharges through the construction, operation and maintenance of treatment measures and other appropriate source control and site design measures. Similarly, increases in runoff volume and flows shall be managed in accordance with the development runoff requirements.~~

~~EGG. Compliance with Best Management Practices. Where Best Management Practices, guidelines or requirements have been adopted by any federal, state of California, and/or regional agency, and/or by the city agency, for any activity, operation, or facility which that may cause or contribute to storm-water pollution or contamination, illicit discharges, and/or discharge of non-storm-water to the storm water-drain system, every person undertaking such activity or operation, or owning or operating such facility, shall comply with such guidelines or requirements as may be identified by the City Engineer.~~

H. Storm Water Pollution Prevention Plan. The City Engineer may require any business or utility in the city that is engaged in activities which may result in any discharges, lawful or otherwise, to develop and implement a storm water pollution prevention plan (SWPPP), which must include maintenance, storage, manufacturing, assembly, equipment storage, vehicle loading, fueling, vehicle maintenance, food handling or processing or cleanup procedure that is carried out partially or wholly out of doors.

~~A SWPPP is required from all construction contractors for sites that have a land disturbance of one acre or more, or that is less than one acre but is part of a larger common plan and is part of the state Water Resources Control Board's General Construction Activity Storm Water Permit or the federal National Pollution Discharge Elimination System (NPDES) storm water discharge regulations. Such SWPPP must include BMPs which address prevention and control of erosion and sediment.~~

~~All other projects must prepare erosion and sedimentation control plans as required specified in this section, and by Chapter 15.28 BMC.~~

I. Coordination with Hazardous Materials Release Response and Inventory Plans. Any business subject to Hazardous Material Release Response and Inventory Plan, Division 20, Chapter 6.95 of the California Health and Safety Code (commencing with Section [25500](#)), shall include, in that plan, provision for compliance with this chapter, including the prohibition of non-storm-water discharges and the requirement to reduce release of pollutants to the maximum extent practicable. (Ord. 06-14 § 1).

#### **15.64.100 Tourtelot cleanup project.**

The Tourtelot cleanup project area consists of approximately 220 acres of the former Benicia Arsenal, north of Rose Drive and west of East 2nd Street. The site was used from 1944 to 1960 as part of the Benicia Arsenal. The site was known to contain ordnance and explosives and has been subject to a cleanup project. Because of various methods of detection and cleanup used on the site, areas of the site are subject to specific controls. Some areas are under the restriction of filing a plan for any work below grade. Other areas of the site also require the submittal of approved procedures prepared by a licensed engineer and observed

by representatives of the State of California Division of Toxic Substances Control. No new discharges of any type or alteration of any existing discharge are allowed into the Tourtelot site without compliance with restrictions contained in the Tourtelot site contingency action plans and the operation and maintenance plan which are further cited in Chapter [15.28](#) BMC, Grading and Erosion Control. (Ord. 06-14 § 1).

#### **15.64.110 Watercourse protection.**

A. Every person owning property through which a watercourse passes, or such person's lessee or tenant, shall keep and maintain that part of the watercourse within the property reasonably free of trash, debris, excessive vegetation, and other obstacles which would pollute, contaminate, or significantly retard the flow of water through the watercourse; shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse; and shall not remove healthy bank vegetation beyond that actually necessary for maintenance, and not remove vegetation in such a manner as to increase the vulnerability of the watercourse to erosion.

B. No person shall commit or cause to be committed any of the following acts, unless a written permit has first been obtained from the City Engineer:

1. Discharge into or connect any pipe or channel to a watercourse;
2. Modify the natural flow of water in a watercourse;
3. Carry out development within the greater of 30 feet of the center line of any creek or 25 feet of the top of a bank wherein the "top of bank" is defined as the flatter of the actual top of bank or a projected top of bank from the toe of slope at 2 horizontal to 1 vertical bank slope;
4. Deposit in, plant in, or remove any material from a watercourse including its banks, except as required for necessary maintenance;
5. Construct, alter, enlarge, connect to, change, or remove any structure in a watercourse; or
6. Place any loose or unconsolidated material along the side of or within a watercourse or so close to the side as to cause a diversion of the flow, or to cause a probability of such material being carried away by storm-waters passing through such watercourse. (Ord. 06-14 § 1).

#### **15.64.120 Authority to inspect.**

A. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever an authorized enforcement official has reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a violation of the provisions of this chapter, the enforcement official has the duty and the responsibility to inspect any and all locations for any violation of the provisions of this chapter. The authorized enforcement official may, within the limitations of applicable state and federal laws, enter any may enter such building or any premises (including, but not limited to, facilities, equipment, practices, or operations) at all reasonable times to inspect the same for any or all of the following situations, as determined by the authorized enforcement official:

1. Routine inspections to ensure implementation of BMPs and other requirements of this chapter;
2. Active or potential storm water discharges;
3. Whenever there is reasonable cause to believe that there exists any condition which constitutes a violation of the provisions of this chapter or the Phase II Stormwater Permit;
4. Actual violations of this chapter or the Phase II Stormwater Permit;
5. Whenever necessary to enforce any of the provisions of this chapter or the Phase II Stormwater Permit; or
6. To perform any duty imposed upon the official by this chapter.

A.B. Prior to entry for inspections, the authorized enforcement official shall comply with the following; or perform any duty imposed upon the enforcement official by this chapter; provided, that (i) if the such building or premises is be occupied, the enforcement official shall first present proper credentials and request entry; and (ii) if the such building or premises is be unoccupied, the enforcement official shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. Any such request for entry shall state that the property owner or occupant has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant by a duly authorized magistrate. In the event the owner and/or occupant refuses entry after such request has been made, the official is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

B.C. The authorized enforcement official has the right to, and shall conduct routine sampling and monitoring on, or adjacent to, the premises under review. Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this chapter, including but not limited to random sampling and/or sampling in areas with evidence of storm water contamination, illicit discharges, discharge of non-storm water to the storm sewer system, or similar factors. The cost of such routine sampling and/or monitoring activities, including test reports and results, shall be borne by the city. The authorized enforcement official may, within the limitations of law, enter such premises at reasonable times to conduct sampling and monitoring operations, provided that the official presents proper credentials to, and obtains consent from the owner or occupant to enter. In the event the owner and/or occupant refuses entry, the official shall request assistance of the city attorney to obtain an administrative warrant to enter the premises, pursuant to the provisions of state law.

C.D. A. Authority to Sample and Establish Sampling Devices. The city shall have the right to establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the official may take any samples deemed necessary to aid in the pursuit of the inquiry or in the recordation of the activities on site.

D.E. B. Notification of Spills. All persons in charge of a facility or responsible for emergency response for a facility have a responsibility to train facility personnel and maintain notification procedures to ensure that immediate notification is provided to the city of any suspected, confirmed or unconfirmed release of material, pollutants or waste creating a risk of discharge into the city storm water system.

E.F. As soon as any person in charge of a facility or responsible for emergency response for a facility has knowledge of any confirmed or unconfirmed release of materials, pollutants or waste that may result in pollutants or non-storm water discharges entering the city storm water system, such person shall take all necessary steps to ensure the discovery and

containment and cleanup of such release and shall notify the city of the occurrence by telephoning the City Engineer during normal business hours and confirming the notification by correspondence. Outside of normal business hours telephone notice shall be made to the Benicia fire department.

~~F.G.~~ The city will identify, document and respond to pretreatment violations in accordance with its enforcement response plan.

~~H. G.~~ Requirement to Test or Monitor. Any authorized enforcement official may request that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to storm water pollution or contamination, illicit discharges, and/or discharge of non-storm water to the storm water system, undertake such monitoring activities and/or analyses and furnish such reports as the official may specify. The burden and cost of undertaking such sampling and monitoring activities, including test results and reports, shall be borne by the owner of the premises under review. The type and method of sampling and monitoring shall bear a reasonable relationship to the need for testing and monitoring and to the benefits to be obtained, as determined by the enforcement official.

I. Exigent circumstances. Whenever a condition is found to exist in violation of this chapter that presents an immediate and present danger to the public health, safety and welfare requiring immediate remedial action to prevent injury to persons or property, the authorized enforcement official shall take whatever reasonable and appropriate action is necessary to neutralize the danger, including but not limited to, entry upon private premises for inspection, sampling and monitoring, and abatement.

~~The recipient of such a request shall undertake and bear the cost of providing the monitoring, analysis and/or reports requested.~~ (Ord. 06-14 § 1).

#### **15.64.130 Violations constituting misdemeanors.**

~~Unless otherwise specified by ordinance, T~~the violation of any provision of this chapter, or failure to comply with any of the mandatory requirements of this chapter, shall constitute a misdemeanor. ~~However, except that, notwithstanding any other provisions of this chapter,~~ any such violation constituting a misdemeanor under this chapter may, in the discretion of the city attorney enforcing authority, be charged and prosecuted as an infraction.

~~(~~Ord. 06-14 § 1).

#### **15.64.140 Penalty for violation.**

Upon conviction of a misdemeanor, a person shall be subject to payment of a fine, or imprisonment, or both, not to exceed the limits set forth in California Government Code Section 36901.

Upon conviction of an infraction, a person shall be subject to payment of a fine, not to exceed the limits set forth in California Government Code Section 36900. After a third conviction for a violation of the same provision subsequent violations within a 12-month period may be charged as a misdemeanor. (Ord. 06-14 § 1).

#### **15.64.150 Continuing violation.**

Unless otherwise provided, a person, firm, corporation or organization shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued or permitted by the person, firm, corporation or organization and shall be punishable accordingly as herein provided. (Ord. 06-14 § 1).

**15.64.160 Concealment.**

Causing, permitting, aiding, abetting or concealing a violation of any provision of this chapter shall constitute a violation of such provision. (Ord. 06-14 § 1).

**15.64.170 Acts potentially resulting in violation of federal Clean Water Act and/or Porter-Cologne Act.**

Any person who violates any provision of this chapter, any provision of any permit issued pursuant to this chapter, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, may also be in violation of the federal Clean Water Act, ~~the -and/or-Porter-Cologne Act, and/or the Phase II Stormwater Permit,~~ and may be subject to the sanctions of those Acts including civil and criminal penalty. Any enforcement action authorized under this chapter should also include notice to the violator of such potential liability. (Ord. 06-14 § 1).

**15.64.180 Violations deemed a public nuisance.**

In addition to the penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to the public health, safety and welfare, and is hereby declared and deemed a public nuisance, and may be summarily abated and original conditions restored by any authorized enforcement official, and/or by a civil action to abate, enjoin or otherwise compel the cessation of such nuisance ~~brought may be taken by the city attorney, authorized enforcement official, or by actions taken by the City, city attorney.~~

The cost of such abatement and restoration shall be borne by the owner of the property and the cost thereof shall be a lien upon and against the property and such lien shall continue in existence until the same shall be paid. If the lien is not satisfied by the owner of the property within three months after the completion by the authorized enforcement official of the removal of the nuisance and the restoration of the property to its original condition, the property may be sold in satisfaction thereof in a like manner as other real property is sold under execution.

If any violation of this chapter constitutes a seasonal and recurrent nuisance, the city council shall so declare. Thereafter such seasonal and recurrent nuisance shall be abated every year without the necessity of any further hearing. (Ord. 06-14 § 1).

**15.64.190 California Code of Civil Procedure Section 1094.6.**

The provisions of Section 1094.6 of the California Code of Civil Procedure are applicable to judicial review of city decisions pursuant to this chapter. (Ord. 06-14 § 1).

**15.64.200 Civil actions.**

In addition to any other enforcement powers and/or remedies provided in this ~~section~~Chapter, any violation of this ~~C~~chapter may be enforced by civil action brought by the city. In any such action, the city may seek, and the court shall grant, as appropriate, any or all of the following remedies:

A. A temporary and/or permanent injunction.

B. An action for an unlawful business practice pursuant to Business and Professions Code Section 17206;

C. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection.

D. Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation.

E. Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life. Assessments under this subsection shall be paid to the city to be used exclusively for costs associated with monitoring and establishing storm water discharge pollution control systems and/or implementing or enforcing the provisions of this chapter.

F. The cost of maintenance and repair of any BMP or storm water management facility that is not maintained in accordance with the guidebook or the storm water control plan. (Ord. 06-14 § 1).

#### **15.64.210 Administrative enforcement powers.**

In addition to the other enforcement powers and remedies established by this chapter, any authorized enforcement official has the authority to utilize the following administrative remedies.

A. Cease and Desist Orders. When an authorized enforcement official finds that a discharge has taken place or is likely to take place in violation of this chapter, the official may issue an order to cease and desist such discharge, practice, or operation likely to cause such discharge and direct that those persons not complying: (1) comply with the requirement, (2) comply with a time schedule for compliance, and/or (3) take appropriate remedial or preventive action to prevent the violation from recurring. Upon the violator's failure to comply with such order, the city shall take further enforcement action as specified in this chapter, or in accordance with other appropriate provision of local, state or federal law. At the discretion of the authorized enforcement official, orders to cease and desist may take the following form:

1. Verbal Warnings, as may be issued during inspections;
2. Warning Letters and Orders to Abate Pollution;
3. Warning Letters with requirements to submit written reports; or
4. Formal violations and legal action as described in this chapter and as authorized by Chapter 17.128 of the city of Benicia Municipal Code.

B. Notice to Clean. Whenever an authorized enforcement official finds any oil, earth, dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land, or upon any parcel of land or grounds, which may result in an increase in pollutants entering the city storm water-drain system or a non-storm water discharge to the city storm drain system, the authorized enforcement official may give notice to remove such oil, earth, dirt, grass, weeds, dead trees, metal cans, rubbish, refuse, waste or other material, in any manner that the enforcement official may reasonably provide. The recipient of such notice shall undertake the activities as described in the notice. (Ord. 06-14 § 1).

#### **15.64.220 Remedies not exclusive.**

Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

A. Appeal. Any person, firm, corporation or organization required to perform monitoring, analyses, reporting and/or corrective activities by an authorized enforcement officer who is aggrieved by the decision of the authorized enforcement officer may appeal such decision to the City Engineer within 10 days following the effective date of the decision by writing the City Engineer in accordance with Chapter 1.44 BMC. Upon receipt of such request, the City Manager shall request a report and recommendation from the authorized enforcement officer and shall set the matter for hearing within 14 days. At said hearing, the City engineer-Manager may hear additional evidence, and may reject, affirm or modify the authorized enforcement officer's decision. Said decision shall be final unless appealed further in accordance with Chapter 1.44 BMC.

B. Disclaimer of Liability. The degree of protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific, engineering and other relevant technical considerations. The standards set forth herein are minimum standards and this chapter does not imply that compliance will ensure that there will be no unauthorized discharge of pollutants into the waters of the United States. This chapter shall not create liability on the part of the city, any officer or employee thereof for any damages that result from reliance on this chapter or any administrative decision lawfully made thereunder. (Ord. 07-51 § 1; Ord. 06-14 § 1).

#### **15.64.230 Coordination with hazardous materials inventory and response program.**

The first revision of the business plan for any facility subject to the city's hazardous materials inventory and response program shall include a program for compliance with this chapter, including the prohibitions on non-storm water discharges and illicit discharges, and the requirement to reduce storm water pollutants to the maximum extent practicable. (Ord. 06-14 § 1).

### **Section 2.**

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

\*\*\*\*\*

On motion of \_\_\_\_\_, seconded by \_\_\_\_\_, the foregoing ordinance was introduced at a regular meeting of the City Council on the 17<sup>th</sup> day of March, 2015, and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

**CITY OF BENICIA**

**ORDINANCE NO. 15-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA UPDATING AND AMENDING CHAPTER 15.64 (STORMWATER MANAGEMENT AND DISCHARGE CONTROL) TO INCORPORATE AMENDMENTS ADOPTED BY THE STATE WATER RESOURCES CONTROL BOARD PERTAINING TO URBAN STORMWATER MANAGEMENT AND DISCHARGE CONTROLS**

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN AS FOLLOWS:**

**Section 1.**

**Chapter 15.64 (Stormwater Management and Discharge Control) of Division IV (Stormwater) of Title 15 (Buildings and Construction) of the Benicia Municipal Code is amended by replacing it in its entirety to read as follows:**

**Chapter 15.64**

**STORMWATER MANAGEMENT AND DISCHARGE CONTROL**

Sections:

- 15.64.010 Purpose.
- 15.64.020 Definitions.
- 15.64.030 Responsibility for administration.
- 15.64.040 Construction and application.
- 15.64.050 Taking.
- 15.64.060 Discharge of pollutants.
- 15.64.070 Discharge in violation of permit.
- 15.64.080 Illicit discharge and illicit connections.
- 15.64.090 Best management practices and standards.
- 15.64.100 Tourtelot cleanup project.
- 15.64.110 Watercourse protection.
- 15.64.120 Authority to inspect.
- 15.64.130 Violations constituting misdemeanors.
- 15.64.140 Penalty for violation.
- 15.64.150 Continuing violation.
- 15.64.160 Concealment.
- 15.64.170 Acts potentially resulting in violation of federal Clean Water Act and/or Porter-Cologne Act.
- 15.64.180 Violations deemed a public nuisance.
- 15.64.190 California Code of Civil Procedure Section 1094.6.
- 15.64.200 Civil actions.
- 15.64.210 Administrative enforcement powers.
- 15.64.220 Remedies not exclusive.
- 15.64.230 Storm Coordination with hazardous materials inventory and response program.

## **15.64.010 Purpose.**

The City Council finds as follows:

A. The intent of this chapter is to protect and enhance the water quality in the city of Benicia's watercourses, water bodies, and wetlands in a manner pursuant to, and consistent with, the Porter-Cologne Water Quality Control Act (Water Code Section [13000](#) *et seq.*), the federal Clean Water Act (33 U.S.C. Section 1251 *et seq.*) and any subsequent revisions and amendments thereto, and with the goals of the city of Benicia General Plan including:

Goal 2.38: Protect water quality.

Goal 3.22: Preserve water bodies.

Goal 3.24: Protect watersheds.

Goal 4:12: Accommodate runoff from existing and future development.

Goal 4.14: Prevent ground and surface water contamination.

B. This chapter also carries out the conditions in the city's Phase II Small Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) permit, Water Quality Order No. 2013-0001-DWQ, General Permit No. CAS000004 (Phase II Stormwater Permit) and subsequent revisions and amendments thereto, that require, effective upon adoption of this chapter, implementation of appropriate measures to control pollutant discharges into and from the MS4 system.

C. It is the purpose of the city council in enacting this chapter to ensure the future health, safety, and general welfare of city of Benicia residents and acting in accordance with the precepts of the general plan by:

1. Detecting and eliminating non-stormwater discharges and illegal connections to the municipal separate storm drain system.
2. Responding to and prohibiting the discharge to municipal separate storm drains from spills, dumping or disposal of materials other than stormwater.
3. Reducing pollutants in stormwater discharges to waters of the United States to the maximum extent practicable.
4. Complying with applicable state and federal laws.
5. Minimizing increases in nonpoint source pollution caused by stormwater runoff from development that would otherwise degrade local water quality.
6. Reducing stormwater runoff rates and volumes and nonpoint source pollution whenever possible, through stormwater management controls and ensuring that these management controls are properly maintained and pose no threat to public safety.

## 15.64.020 Definitions.

The following words and phrases when used in this chapter shall be as defined herein. Words and phrases in this chapter and not otherwise defined shall be interpreted as defined in the regulations issued by the U.S. Environmental Protection Agency to implement the provisions of the Phase II Stormwater Permit, the federal Clean Water Act, and as defined by the State Water Resources Control Board to implement the Porter-Cologne Act:

“Authorized enforcement official” or “authorized enforcement officer” is the City Engineer and those individuals designated by the City Engineer as authorized enforcement officials.

“BASMAA Post Construction Manual” means the most recent version of the Bay Area Stormwater Management Agencies (BASMAA) Post Construction Manual.

“Best management practices (BMPs)” are schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to the waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, waste disposal, or drainage from raw material storage.

“City storm drain system” includes but is not limited to those facilities within the city by which storm water may be conveyed to waters of the United States, including any roads with drainage systems, municipal streets, drainage inlets, curbs, gutters, ditches, manmade open channels or culverts and pipes, which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR Part 122.2.

“Construction activity” means any activity that involves soil disturbing activities including, but not limited to, clearing, grading, paving, disturbances to ground such as stockpiling, and excavation.

“Development runoff requirements” shall mean the provisions in the city’s Stormwater Phase II Final Rule that contains performance standards to address both construction and post-construction phase impacts of new projects and redevelopment projects on stormwater quality.

“Discharge” or “Discharge of a Pollutant” is (a) the addition of any pollutant or combination of pollutants to waters of the United States from any point source, or (b) any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft, which is being used as a means of transportation. The term includes additions of pollutants to waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.

“Erosion and Sediment Control Plan (ESCP)” means a plan prepared to control erosion and prevent the discharge of sediment and construction materials from a construction site

“Illicit connection” is any device or method that conveys non-stormwater to a municipal separate storm sewer (storm drain) system (MS4) or receiving water.

“Illicit discharge” is any discharge to a MS4 that is prohibited under local, state, or federal statutes, ordinances, codes, or regulations. The term illicit discharge includes all non-stormwater discharges not composed entirely of stormwater and discharges that are identified under the Discharge of Pollutants section of this chapter (BMC 15.64.060). The term illicit discharge does not include discharges that are regulated by an NPDES permit.

“Incidental irrigation runoff” Unintended amounts (volume) of runoff, such as unintended, minimal over-spray from sprinklers that escapes the landscaped area of intended use. Water leaving an intended use area is not considered incidental if it is part of the facility design, if it is due to excessive application, if it is due to intentional overflow or application, or if it is due to negligence.

“Low Impact Development (LID)” A sustainable practice that benefits water supply and contributes to water quality protection. LID uses site design and stormwater management to maintain the site’s pre-development runoff rates and volumes. The goal of LID is to mimic a site’s predevelopment hydrology by using design techniques that infiltrate, filter, store, evaporate, and detain runoff close to the source of rainfall.

“NPDES permit” is a National Pollutant Discharge Elimination System (NPDES) permit issued by the United States Environmental Protection Agency, the State Water Resources Control Board, or a California Regional Water Quality Control Board pursuant to the Clean Water Act that authorizes discharges to waters of the United States.

“Non-stormwater discharge” is any discharge to a storm sewer system that is not composed entirely of stormwater.

“Permit Registration Documents (PRDs)” are the application materials required by the State Water Resources Control Board that includes a notice of intent to comply with the terms of the General Permit to Discharge Storm Water Associated with Construction and Ground Disturbing Activities (Order No. 2009-0009-DWQ as amended, General Permit No. CAS000002) or the General Permit to Discharge Storm Water Associated with Industrial Activities (Order No. 2014-057-DWQ, General Permit No. CAS000001)

“Phase II Stormwater Permit” is the NPDES general stormwater permit applicable to the city of Benicia, Water Quality Order No. 2013-0001—DWQ, General Permit No. CAS000004, and any subsequent amendment, reissuance or successor to this NPDES permit.

“Post Construction Measure Requirements” are the provisions in Section E.12 of the Phase II Stormwater Permit that contain design standards or performance criteria to address the post-construction phase impacts of new projects and redeveloped projects on stormwater quality and quantity.

“Pollutant” is any material other than stormwater including, but not limited to, petroleum products or by-products, acidity, dredged or excavated soil, solid waste, incinerator residue, filter backwash, sewage, pet wastes, manure, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, sediment, cellar dirt, concrete, debris, dumped yard wastes, and industrial,

municipal, and agricultural waste; temperature, wrecked or discarded equipment, rock, sand, soil and industrial, municipal or agricultural waste discharged into the water or stormwater system, that is discharged to or placed in such a way as to be carried away by stormwater into the storm drains and watercourses of the city.

“Premises” are any building, lot, parcel, real estate, or land or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

“Responsible person” shall mean the owner or occupant of any premises or who engages in any activity from which there is or may be a non-stormwater discharge or any person who releases pollutants to the city’s stormwater system.

“Storm drain system” or “storm drain” includes, but is not limited to those stormwater drainage conveyance facilities within the city by which stormwater may be conveyed to waters of the United States, including any roads with drainage systems, municipal streets, catch basins, drainage inlets, curbs, gutters, ditches, creeks, manmade open channels or culverts and pipes, which is not part of a Publicly Owned Treatment Works (POTW) as defined in the Code of Federal Regulations (at 40 CFR Part 122.2).

“Stormwater” means stormwater runoff, surface runoff and drainage. It excludes infiltration and runoff from agricultural land.

“Stormwater control plan” means a plan that meets the criteria contained in the most recent version of the *BASMAA Post Construction Manual*.

“Stormwater Facilities Operation and Maintenance Plan” is a plan identifying the locations and characteristics of stormwater management facilities on a newly developed or redeveloped site and describing maintenance activities, schedules, and responsibilities to ensure the ongoing proper operation of those facilities.

"Stormwater management facility" is any device designated to detain, retain, filter, or infiltrate stormwater.

“Stormwater pollution prevention plan (SWPPP)” is a plan to identify sources of sediment and other pollutants that affect the quality of stormwater discharges and describes and ensures the implementation of practices to reduce sediment and other pollutants in stormwater discharges.

“Watercourse” is any channel, ditch, drainage swale, closed pipe system, whether manmade or natural, that collects and transports runoff.

“Waters of the United States” are all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide as defined in 33 CFR Part 328.

#### **15.64.030 Responsibility for administration.**

This chapter shall be administered for the city by the City Engineer. In administering this chapter, the City Engineer has the authority to request and require the submittal of information

deemed necessary to assess compliance with this chapter and the Phase II Stormwater Permit.

#### **15.64.040 Construction and application.**

This chapter shall be construed to assure consistency with the requirements of the federal Clean Water Act and acts amendatory thereof or supplementary thereto, applicable implementing regulations. Every application for a development project, including but not limited to a rezoning, tentative map, parcel map, conditional use permit, variance, site development permit, design review, or building permit is subject to the development runoff requirements in the city's NPDES permit and shall be accompanied by a stormwater control plan that meets the most recent version of the *BASMAA Post Construction Manual*.

#### **15.64.050 Taking.**

The provisions of this chapter shall not operate to deprive any landowner of substantially all of the market value of his/her property or otherwise constitute an unconstitutional taking without compensation. If application of this chapter to a specific project would create a taking, then pursuant to this chapter the city council may allow additional land uses, but only to the extent necessary to avoid a taking. Such uses shall be consistent with and carry out the purposes of this chapter as stated in BMC [15.64.010](#).

#### **15.64.060 Discharge of pollutants.**

- A. The discharge of non-stormwater discharges to the city storm drain system is prohibited. All discharges of material other than stormwater must be in compliance with this chapter, state and federal regulations and authorized by the City Engineer.
- B. The discharge of stormwater from premises or an activity that causes or contributes to a violation of receiving water limitations in the city's NPDES permit is prohibited.
- C. Exceptions to Discharge Prohibition. The following discharges are exempt from the prohibition set forth in subsection (A) of this section:
  1. Discharges regulated under a National Pollutant Discharge Elimination System (NPDES) permit (other than the Phase II Stormwater Permit) issued to the discharger and administered by the State of California under authority of the United States Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit and other applicable laws or regulations.
  2. Discharges or flows from fire-fighting activities unless they are identified as significant sources of pollutants to waters of the United States.
  3. Discharges from the following activities, provided any pollutants in the discharges are identified and appropriate control measures to minimize the impacts of such discharges are developed and implemented:
    - i. Water line flushing and other discharges from potable water sources;
    - ii. Incidental irrigation runoff from landscaped areas provided the conditions in item (4) of this section are met;
    - iii. Diverted stream flows;
    - iv. Rising ground waters;

- v. Infiltration to separate storm drains;
  - vi. Uncontaminated pumped ground water (as defined at 40 CFR § 35.2005(20)) to separate storm sewers;
  - vii. Foundation and footing drains;
  - viii. Water from crawl space pumps;
  - ix. Air conditioning condensation;
  - x. Natural springs;
  - xi. Individual residential car washing;
  - xii. Flows from riparian habitats and wetlands; and
  - xiii. Dechlorinated swimming pool discharges.
4. Irrigation systems must be designed to conserve water and prevent water leaving the area of application. Persons responsible for controlling irrigation systems shall prevent excessive irrigation runoff by:
- i. Detecting and correcting leaks from the irrigation system within 72 hours of discovering the leak;
  - ii. Properly designing and aiming sprinkler heads to only irrigate the planned application area;
  - iii. Not irrigating during precipitation events; and
  - iv. Where recycled water is used for irrigation, designing and managing holding ponds such that no discharge occurs unless it is the result of the 25 year-24 hour storm event. Any releases from holding ponds must be reported to the Regional Water Board and the city of Benicia within 24 hours of the discharge.

**15.64.070 Discharge in violation of permit.**

Any discharge that would result in a contribution to a violation of the Phase II Stormwater Permit, either separately considered or when combined with other discharge, is prohibited. Any non-stormwater discharge not within the confines of this chapter and/or not approved by the City Engineer is prohibited. Liability for any such discharge shall be the responsibility of the person(s) causing or responsible for the discharge, and such persons shall defend, indemnify and hold harmless the city in any administrative or judicial enforcement action relating to such discharge.

**15.64.080 Illicit discharge and illicit connections.**

A. It is prohibited to establish, use, maintain, or continue illicit drainage connections to the city stormwater system or watercourse, and to commence or continue any illicit discharges to the city stormwater system or watercourse. This prohibition is expressly retroactive and applies to connections made in the past, regardless of whether made under a permit or other authorization or whether permissible under the law or practices applicable or prevailing at the time of the connection.

B. Any person responsible for a discharge, spill, or pollutant release shall promptly cease and desist discharging, and/or cleanup and abate such a discharge as directed by the City Engineer.

C. Any person found to be in violation of this section or found to be responsible for an illicit connection, shall promptly remove the illicit drainage or connection in a manner acceptable to and approved by the city.

D. No discharge shall cause the following conditions, create a nuisance or adversely affect beneficial uses of waters of the state:

1. Floating, suspended or deposited macroscopic matter or foam;
2. Bottom deposits or aquatic growth;
3. Alterations of temperature, sediment load, nutrient load, or dissolved oxygen, which cause significant adverse impacts to native aquatic biota;
4. Visible, floating, suspended or deposited oil or products of petroleum origin; or
5. Substances present in concentrations or quantities which cause deleterious effects on aquatic biota, wildlife or waterfowl, or which render any of these unfit for human consumption.

E. The city may perform clean-up and abatement work and recover its costs from the responsible person as provided in Section 15.64.200.

#### **15.64.090 Best management practices and standards.**

Any person engaged in activities that will or may result in pollutants entering the city storm drain system shall undertake all practicable measures to cease such activities, and/or eliminate or reduce such pollutants. Such activities shall include, but not be limited to: ownership and use of parking lots, gasoline stations, industrial facilities, commercial facilities, ground disturbing activities, and stores fronting city streets. The following minimal requirements shall apply:

A. Littering. Except for pollutants lawfully disposed of by way of containers or in lawfully established dumping grounds, no person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, placed, left or maintained, any refuse, rubbish, garbage, or other discarded or abandoned objects, articles, and accumulations, in or upon any street, alley, sidewalk, storm drain, inlet, drain inlet, conduit or other drainage structures, business place, or upon any public or private lot of land in the city, in any fountain, pond, lake, stream or any other body of water in a park or elsewhere within the city, so that the same might be or become a pollutant.

B. Sidewalks. The occupant or tenant, or in the absence of occupant or tenant, the owner, lessee, or proprietor of any real property in the city of Benicia in front of which there is a paved sidewalk shall maintain said sidewalk free of dirt or litter to the maximum extent practicable. Sweepings from said sidewalk shall not be swept or otherwise made or allowed to go into the gutter or roadway, but shall be disposed of in receptacles maintained on said real property as required for the disposal of garbage, trash or green waste.

C. Standard for Parking Lots and Similar Uses. Persons owning or operating private streets, a parking lot, gas station pavement or similar structure shall clean those structures as frequently and thoroughly as practicable in a manner that does not result in discharge of pollutants to the city stormwater system.

D. Best Management Practices for Construction and Ground Disturbing Activities.

1. Any person performing construction activities in the city shall use the best available technology (BAT) and the best conventional technology (BCT). Any person performing construction activities shall implement appropriate BMPs consistent with the California Stormwater Quality Association BMPs or equivalent to prevent the discharge of construction wastes or contaminants from construction materials, tools, and equipment from entering the storm drain system or watercourse.

2. Construction-phase BMPs include erosion and sediment controls and pollution prevention practices.

Erosion control BMPs may include, but are not limited to:

- i. Scheduling and timing of grading activities;
- ii. Preservation of Existing Vegetation;
- iii. Timely revegetation of graded areas;
- iv. The use of hydroseed and hydraulic mulches;
- v. Soil Binders;
- vi. Earth Dike and Drainage Swales;
- vii. Velocity Dissipation Devices;
- viii. Slope Drains;
- ix. Installation of erosion control blankets;
- x. Soil Preparation-Roughening;
- xi. Wind Erosion Control.

Sediment control BMPs may include, but are not limited to:

- i. Properly sized detention basins, dams, or filters to reduce entry of suspended sediment into the storm drain system and watercourses;
- ii. Installation of construction entrances to prevent tracking of sediment onto adjacent streets;
- iii. Biofilter Bags;
- iv. Sandbag Barrier;
- v. Storm Drain Inlet Protection;
- vi. Entrance Outlet Tire Wash;
- vii. Street sweeping to remove tracked sediment.

Pollution prevention practices may include, but are not limited to:

- i. Designated concrete washout areas or facilities;
- ii. Control of trash and recycled materials;
- iii. Tarping of materials stored on-site;
- iv. Proper location of and maintenance of temporary sanitary facilities.

The combination of BMPs used, and their execution in the field, must be customized to the site using up-to-date standards and practices.

3. Financial security may be required to ensure that temporary measures to control stormwater pollution are implemented and maintained during construction and after construction for a period determined by the city. Financial security shall consist of an irrevocable letter of credit, cash deposit, or performance bond as determined by the agency.

4. When any work is being done contrary to the provisions of this article, the City Engineer may order the work stopped by notice in writing served on any persons engaged in doing or causing the work to be done. Such work shall stop until the authorized enforcement official authorizes the work to proceed. This remedy is in addition to, and does not supersede or limit, any and all other remedies, both civil and criminal provided in the city of Benicia Municipal Code.

5. The city has the authority to review designs and proposals for construction activities and new development and redevelopment sites to determine whether adequate BMPs will be installed, implemented, and maintained during construction and after final stabilization (post-construction).

6. All construction plans and applications for construction activity submitted to the city shall consider the potential for erosion and sedimentation at the construction site, and shall include appropriate erosion and sedimentation controls.

7. Erosion and Sediment Control Plan Requirements:

(a) An Erosion and Sediment Control Plan (ESCP) shall be required for:

(1) Any project subject to a grading permit under Chapter 15.28 Grading and Erosion Control;

(2) Any project subject to a building permit or other permit that has the potential for significant erosion and/or significant non-stormwater discharges of sediment and/or construction site waste;

(3) Any other project, as required by the authorized enforcement official, considering factors such as whether the project involves hillside soil disturbance, rainy season construction, construction near a creek or an intermittent or ephemeral drainage way, or any other condition or construction site activity that could lead to a non-stormwater discharge to a storm drain if not managed by effective implementation of an ESCP.

(b) The ESCP shall be submitted for review and approval by the authorized enforcement official. The project applicant shall follow guidance issued by the City Engineer in preparing the ESCP. At a minimum, the ESCP shall include:

(1) Description of the proposed project and soil disturbing activity;

(2) Site specific construction-phase BMPs;

(3) Rationale for selecting the BMPs, including if needed, soil loss calculations;

(4) List of applicable permits associated with the soil disturbing activity, such as: the State's Construction General Permit (CGP); Clean Water Act Section 404 Permit; Clean Water Act Section 401 Water Quality Certification; Streambed/Lake Alteration Agreement (1600 Agreements);

(5) Proof that the applicant has obtained the applicable permits associated with the soil disturbing activity that must be submitted prior to approval of the ESCP; and

(6) Project information including but not limited to:

- i. Owner and contractor contact information;
- ii. Site information (location, status, size of project, size of disturbed area);
- iii. Name and distance to the nearest receiving water; and
- iv. Planned start date and anticipated completion date.

(c) For projects subject to the State's General Construction Permit (CGP), project applicants may submit a Stormwater Pollution Prevention Plan (SWPPP) developed pursuant to the CGP in lieu of submitting an ESCP.

(d) Implementation of an approved ESCP shall be a condition of the issuance of a building permit, a grading permit, or other permit issued by the city for a project subject to this section. The ESCP shall be implemented year round and must be updated to reflect changing conditions on the project site. Any modifications to the ESCP shall be submitted to the city for review and approval.

#### E. Best Management Practices for New Development and Redevelopment.

1. Prior to and/or during construction, the authorized enforcement official may establish controls on the volume and rate of stormwater runoff from new developments and redevelopment as may be appropriate to minimize peak flows or total runoff volume, and to mimic the pre-development site hydrology. These controls may include limits on impervious area or provisions for detention and retention of runoff on-site.
2. The authorized enforcement official may require, as a condition of project approval, permanent structural controls designed for the removal of sediment and other pollutants, and for control on the volume and rate of stormwater runoff from the project's added or replaced impervious surfaces. The selection and design of such controls shall be in accordance with criteria established or recommended by federal, state, and local agencies, and where required, the *BASMAA Post Construction Manual*. Where physical and safety conditions allow, the preferred control measure is to retain drainage ways above ground and in as natural a state as possible, or by other biological methods such as bioretention areas.
3. Stormwater Control Plan Requirements:
  - (a) For each new development and redevelopment project subject to post construction measure requirements, or where required by the nature and extent of a proposed project and where deemed appropriate by the city, every applicant shall submit a Stormwater Control Plan (SCP) that meets the criteria in the most recent version of the *BASMAA Post Construction Manual*.

(1) Applicable new development and redevelopment projects subject to post construction measures include:

- i. *Small Projects.* Projects that create or replace between 2,500 and 5,000 square feet of impervious area, excluding *Linear Underground/Overhead Utility Projects*.
- ii. *Regulated Projects.* Projects that create or replace greater than or equal to 5,000 square feet of impervious area, excluding: detached single family residences that are not part of a common plan of development; interior remodels; routine maintenance or repair; *Linear Underground/Overhead Utility Projects unless the project has a discrete location of that has 5,000 square feet or more of newly constructed contiguous impervious area*
- iii. *Full Hydromodification Projects.* Regulated projects that create or replace greater than or equal to one acre of impervious area, with a net increase in impervious area.

(b) Applicants shall implement the controls identified in the SCP and required by the conditions of approval that reduce stormwater pollutant discharges through the construction, operation and maintenance of source control measures, low impact development design, site design measures, stormwater treatment measures and hydromodification management measures. Increases in runoff shall be managed in accordance with the post construction measures requirements.

(c) The SCP is separate and distinct from the ESCP requirements described in Section 15.64.090 (D).

(d) Where projects are required to have a SCP, project applicants shall follow the appropriate SCP template, based on the project type, in the *BASMAA Post Construction Manual*.

(e) Implementation of an approved SCP and submittal of an approved Stormwater Facilities Operation and Maintenance Plan by the applicant shall be a condition precedent to the issuance of a building permit or another city-issued permit for a project subject to this section.

(f) Financial security may be required to ensure that stormwater management facilities operate and are maintained following construction for a period which may be determined by the city. Financial security shall consist of an irrevocable letter of credit, cash deposit, or performance bond as determined by the city.

(g) When any work is being done contrary to the provisions of this article, the authorized enforcement official may order the work stopped by notice in writing served on any persons engaged in doing or causing the work to be done. Such work shall stop until the City Engineer authorizes the work to proceed. This remedy is in addition to and do not supersede or limit any and all other remedies, both civil and criminal provided in the BMC.

(h) All stormwater management facilities shall be designed in a manner to minimize the need for maintenance and reduce the chances of failure. Design guidelines are outlined in the *BASMAA Post Construction Manual*.

(i) All stormwater management facilities shall be maintained according to the approved Stormwater Facilities Operation and Maintenance Plan. The person(s) or organization(s) responsible for maintenance shall be designated in the plan.

Unless a different time period is provided for in the plan, those responsible for maintenance shall inspect the stormwater management facilities at least annually and submit a written report of the inspection to the City Engineer. The Stormwater Facilities Operation and Maintenance Plan shall describe how the maintenance costs will be funded. If the responsible person fails to maintain the stormwater management facilities in accordance with this chapter or the plan, the city may perform the maintenance and recover its costs from the responsible person as provided in Section 15.64.200.

(j) For each new development and redevelopment project subject to the post construction measures requirements, or where deemed appropriate by the city, access by the city to stormwater management facilities for inspections, as provided in Section 15.64.200, and through such means as may be appropriate, including, but not limited to, legal agreements, recorded covenants or easements, shall be provided by the property owner.

(k) All project proponents and their successors, or successors in fee title, in control of a new development and redevelopment project subject to the post-construction measures requirements, shall submit one of the following as a condition prior to final inspection and approval of building permit closure:

- (1) The project proponent's signed statement accepting responsibility for the operations and maintenance of stormwater management facilities until such responsibility is legally transferred to another entity;
- (2) Written conditions in the sales or lease agreements or deed for the project that requires the buyer or lessee to assume responsibility for the operations and maintenance of the stormwater management facilities until such responsibility is legally transferred to another entity;
- (3) Written text in project deeds, or conditions, covenants and restrictions for multi-unit residential projects that require the homeowners association or, if there is no association, each individual owner, to assume responsibility for the operation and maintenance of the stormwater management facilities until such responsibility is legally transferred to another entity; or
- (4) Any other legally enforceable agreement or mechanism, such as recordation in the property deed, that assigns the operation and maintenance of the stormwater management facilities to the project owner(s).

F. Notification of Intent and Compliance with General Permits. Each industrial discharger, discharger associated with construction activity, or other discharger, described in any general stormwater permit addressing such discharges, as may be adopted by the United States Environmental Protection Agency, the State Water Resources Control Board, or the California Regional Water Quality Control Board, San Francisco Bay Region, shall provide notice of intent, comply with, and undertake all other activities required by any general stormwater permit applicable to such discharges.

Each discharger identified in an individual NPDES permit relating to stormwater discharges shall comply with and undertake all activities required by such permit.

G. Compliance with Best Management Practices. Where Best Management Practices, guidelines or requirements have been adopted by any federal, State of California, and/or regional agency, or by the city, for any activity, operation, or facility that may cause or contribute to stormwater pollution or contamination, illicit discharges, and/or discharge of non-stormwater to the storm drain system, every person undertaking such activity or operation, or owning or operating such facility, shall comply with such guidelines or requirements as may be identified by the City Engineer.

H. Stormwater Pollution Prevention Plan. The City Engineer may require any business or utility in the city that is engaged in activities which may result in any discharges, lawful or otherwise, to develop and implement a stormwater pollution prevention plan (SWPPP), which must include maintenance, storage, manufacturing, assembly, equipment storage, vehicle loading, fueling, vehicle maintenance, food handling or processing or cleanup procedure that is carried out partially or wholly out of doors.

I. Coordination with Hazardous Materials Release Response and Inventory Plans. Any business subject to Hazardous Material Release Response and Inventory Plan, Division 20, Chapter 6.95 of the California Health and Safety Code (commencing with Section [25500](#)), shall include, in that plan, provision for compliance with this chapter, including the prohibition of non-stormwater discharges and the requirement to reduce release of pollutants to the maximum extent practicable.

#### **15.64.100 Tourtelot cleanup project.**

The Tourtelot cleanup project area consists of approximately 220 acres of the former Benicia Arsenal, north of Rose Drive and west of East 2nd Street. The site was used from 1944 to 1960 as part of the Benicia Arsenal. The site was known to contain ordnance and explosives and has been subject to a cleanup project. Because of various methods of detection and cleanup used on the site, areas of the site are subject to specific controls. Some areas are under the restriction of filing a plan for any work below grade. Other areas of the site also require the submittal of approved procedures prepared by a licensed engineer and observed by representatives of the State of California Division of Toxic Substances Control. No new discharges of any type or alteration of any existing discharge are allowed into the Tourtelot site without compliance with restrictions contained in the Tourtelot site contingency action plans and the operation and maintenance plan which are further cited in Chapter [15.28](#) BMC, Grading and Erosion Control.

#### **15.64.110 Watercourse protection.**

A. Every person owning property through which a watercourse passes, or such person's lessee or tenant, shall keep and maintain that part of the watercourse within the property reasonably free of trash, debris, excessive vegetation, and other obstacles which would pollute, contaminate, or significantly retard the flow of water through the watercourse; shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse; and shall not remove healthy bank vegetation beyond that actually necessary for maintenance, and not remove vegetation in such a manner as to increase the vulnerability of the watercourse to erosion.

B. No person shall commit or cause to be committed any of the following acts, unless a written permit has first been obtained from the City Engineer:

1. Discharge into or connect any pipe or channel to a watercourse;
2. Modify the natural flow of water in a watercourse;
3. Carry out development within the greater of 30 feet of the center line of any creek or 25 feet of the top of a bank wherein the "top of bank" is defined as the flatter of the actual top of bank or a projected top of bank from the toe of slope at 2 horizontal to 1 vertical bank slope;
4. Deposit in, plant in, or remove any material from a watercourse including its banks, except as required for necessary maintenance;
5. Construct, alter, enlarge, connect to, change, or remove any structure in a watercourse; or
6. Place any loose or unconsolidated material along the side of or within a watercourse or so close to the side as to cause a diversion of the flow, or to cause a probability of such material being carried away by stormwater passing through such watercourse.

**15.64.120 Authority to inspect.**

A. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever an authorized enforcement official has reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a violation of the provisions of this chapter, the enforcement official has the duty and the responsibility to inspect any and all locations for any violation of the provisions of this chapter. The authorized enforcement official may, within the limitations of applicable state and federal laws, enter any such building or any premises (including, but not limited to, facilities, equipment, practices, or operations) at all reasonable times to inspect the same for any or all of the following situations, as determined by the authorized enforcement official:

1. Routine inspections to ensure implementation of BMPs and other requirements of this chapter;
2. Active or potential stormwater discharges;
3. Whenever there is reasonable cause to believe that there exists any condition which constitutes a violation of the provisions of this chapter or the Phase II Stormwater Permit;
4. Actual violations of this chapter or the Phase II Stormwater Permit;
5. Whenever necessary to enforce any of the provisions of this chapter or the Phase II Stormwater Permit; or
6. To perform any duty imposed upon the official by this chapter.

B. Prior to entry for inspections, the authorized enforcement official shall comply with the following: (i) If the building or premises is occupied, the enforcement official shall first present proper credentials and request entry; (ii) If the building or premises is unoccupied, the enforcement official shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. Any such request for entry shall state that the property owner or occupant has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant by a duly authorized magistrate. In the event the owner and/or occupant refuses entry after such request has been made, the official is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

- C. The authorized enforcement official has the right to and shall conduct routine sampling and monitoring on, or adjacent to, the premises under review. Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this chapter, including but not limited to random sampling and/or sampling in areas with evidence of stormwater contamination, illicit discharges, discharge of non-stormwater to the storm sewer system, or similar factors. The cost of such routine sampling and/or monitoring activities, including test reports and results, shall be borne by the city. The authorized enforcement official may, within the limitations of law, enter such premises at reasonable times to conduct sampling and monitoring operations, provided that the official presents proper credentials to, and obtains consent from the owner or occupant to enter. In the event the owner and/or occupant refuses entry, the official shall request assistance of the city attorney to obtain an administrative warrant to enter the premises, pursuant to the provisions of state law.
- D. Authority to Sample and Establish Sampling Devices. The city shall have the right to establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the official may take any samples deemed necessary to aid in the pursuit of the inquiry or in the recordation of the activities on site.
- E. Notification of Spills. All persons in charge of a facility or responsible for emergency response for a facility have a responsibility to train facility personnel and maintain notification procedures to ensure that immediate notification is provided to the city of any suspected, confirmed or unconfirmed release of material, pollutants or waste creating a risk of discharge into the city stormwater system.
- F. As soon as any person in charge of a facility or responsible for emergency response for a facility has knowledge of any confirmed or unconfirmed release of materials, pollutants or waste that may result in pollutants or non-stormwater discharges entering the city stormwater system, such person shall take all necessary steps to ensure the discovery and containment and cleanup of such release and shall notify the city of the occurrence by telephoning the City Engineer during normal business hours and confirming the notification by correspondence. Outside of normal business hours telephone notice shall be made to the Benicia fire department.
- G. The city will identify, document and respond to pretreatment violations in accordance with its enforcement response plan.
- H. Requirement to Test or Monitor. Any authorized enforcement official may request that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to stormwater pollution or contamination, illicit discharges, and/or discharge of non-stormwater to the stormwater system, undertake such monitoring activities and/or analyses and furnish such reports as the official may specify. The burden and cost of undertaking such sampling and monitoring activities, including test results and reports, shall be borne by the owner of the premises under review. The type and method of sampling and monitoring shall bear a reasonable relationship to the need for testing and monitoring and to the benefits to be obtained, as determined by the enforcement official.
- I. Exigent circumstances. Whenever a condition is found to exist in violation of this chapter that presents an immediate and present danger to the public health, safety and welfare requiring immediate remedial action to prevent injury to persons or property, the authorized enforcement official shall take whatever reasonable and appropriate action is necessary to neutralize the danger, including but not limited to, entry upon private premises for inspection, sampling and monitoring, and abatement.

#### **15.64.130 Violations constituting misdemeanors.**

The violation of any provision of this chapter, or failure to comply with any of the mandatory requirements of this chapter, shall constitute a misdemeanor. However, any such violation constituting a misdemeanor under this chapter may, in the discretion of the city attorney, be charged and prosecuted as an infraction.

#### **15.64.140 Penalty for violation.**

Upon conviction of a misdemeanor, a person shall be subject to payment of a fine, or imprisonment, or both, not to exceed the limits set forth in California Government Code Section [36901](#).

Upon conviction of an infraction, a person shall be subject to payment of a fine, not to exceed the limits set forth in California Government Code Section [36900](#). After a third conviction for a violation of the same provision subsequent violations within a 12-month period may be charged as a misdemeanor.

#### **15.64.150 Continuing violation.**

Unless otherwise provided, a person, firm, corporation or organization shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued or permitted by the person, firm, corporation or organization and shall be punishable accordingly as herein provided.

#### **15.64.160 Concealment.**

Causing, permitting, aiding, abetting or concealing a violation of any provision of this chapter shall constitute a violation of such provision.

#### **15.64.170 Acts potentially resulting in violation of federal Clean Water Act and/or Porter-Cologne Act.**

Any person who violates any provision of this chapter, any provision of any permit issued pursuant to this chapter, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, may also be in violation of the federal Clean Water Act, the Porter-Cologne Act, and/or the Phase II Stormwater Permit, and may be subject to the sanctions of those Acts including civil and criminal penalty. Any enforcement action authorized under this chapter should also include notice to the violator of such potential liability.

#### **15.64.180 Violations deemed a public nuisance.**

In addition to the penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to the public health, safety and welfare, and is hereby declared and deemed a public nuisance, and may be summarily abated and original conditions restored by any authorized enforcement official, and/or by a civil action to abate, enjoin or otherwise compel the cessation of such nuisance brought by the city attorney.

The cost of such abatement and restoration shall be borne by the owner of the property and the cost thereof shall be a lien upon and against the property and such lien shall continue in existence until the same shall be paid. If the lien is not satisfied by the owner of the property within three months after the completion by the authorized enforcement official of the removal of the nuisance and the restoration of the property to its original condition, the property may be sold in satisfaction thereof in a like manner as other real property is sold under execution.

If any violation of this chapter constitutes a seasonal and recurrent nuisance, the city council shall so declare. Thereafter such seasonal and recurrent nuisance shall be abated every year without the necessity of any further hearing.

#### **15.64.190 California Code of Civil Procedure Section 1094.6.**

The provisions of Section 1094.6 of the California Code of Civil Procedure are applicable to judicial review of city decisions pursuant to this chapter.

#### **15.64.200 Civil actions.**

In addition to any other enforcement powers and/or remedies provided in this Chapter, any violation of this Chapter may be enforced by civil action brought by the city. In any such action, the city may seek, and the court shall grant, as appropriate, any or all of the following remedies:

A. A temporary and/or permanent injunction;

B. An action for an unlawful business practice pursuant to Business and Professions Code Section 17206;

C. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection;

D. Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation;

E. Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life. Assessments under this subsection shall be paid to the city to be used exclusively for costs associated with monitoring and establishing stormwater discharge pollution control systems and/or implementing or enforcing the provisions of this chapter;

F. The cost of maintenance and repair of any BMP or stormwater management facility that is not maintained in accordance with the guidebook or the stormwater control plan.

#### **15.64.210 Administrative enforcement powers.**

In addition to the other enforcement powers and remedies established by this chapter, any authorized enforcement official has the authority to utilize the following administrative remedies.

A. Cease and Desist Orders. When an authorized enforcement official finds that a discharge has taken place or is likely to take place in violation of this chapter, the official may issue an order to cease and desist such discharge, practice, or operation likely to cause such discharge and direct that those persons not complying: (1) comply with the requirement, (2) comply with a time schedule for compliance, and/or (3) take appropriate remedial or preventive action to prevent the violation from recurring. Upon the violator's failure to comply with such order, the city shall take further enforcement action as specified in this chapter, or in accordance with other appropriate provisions of local, state or federal law. At the discretion of the authorized enforcement official, orders to cease and desist may take the following form:

1. Verbal Warnings, as may be issued during inspections;
2. Warning Letters and Orders to Abate Pollution;
3. Warning Letters with requirements to submit written reports; or
4. Formal violations and legal action as described in this chapter and as authorized by Chapter 17.128 of the city of Benicia Municipal Code.

B. Notice to Clean. Whenever an authorized enforcement official finds any oil, earth, dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land, or upon any parcel of land or grounds, which may result in an increase in pollutants entering the city storm drain system or a non-stormwater discharge to the city storm drain system, the authorized enforcement official may give notice to remove such oil, earth, dirt, grass, weeds, dead trees, metal cans, rubbish, refuse, waste or other material, in any manner that the enforcement official may reasonably provide. The recipient of such notice shall undertake the activities as described in the notice.

#### **15.64.220 Remedies not exclusive.**

Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

A. Appeal. Any person, firm, corporation or organization required to perform monitoring, analyses, reporting and/or corrective activities by an authorized enforcement officer who is aggrieved by the decision of the authorized enforcement officer may appeal such decision to the City Engineer within 10 days following the effective date of the decision by writing the City Engineer in accordance with Chapter [1.44](#) BMC. Upon receipt of such request, the City Manager shall request a report and recommendation from the authorized enforcement officer and shall set the matter for hearing within 14 days. At said hearing, the City Manager may hear additional evidence, and may reject, affirm or modify the authorized enforcement officer's decision. Said decision shall be final unless appealed further in accordance with Chapter [1.44](#) BMC.

B. Disclaimer of Liability. The degree of protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific, engineering and other relevant technical considerations. The standards set forth herein are minimum standards and this chapter does not imply that compliance will ensure that there will be no unauthorized discharge of pollutants into the waters of the United States. This chapter shall not create liability on the

part of the city, any officer or employee thereof for any damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

**15.64.230 Coordination with hazardous materials inventory and response program.**

The first revision of the business plan for any facility subject to the city’s hazardous materials inventory and response program shall include a program for compliance with this chapter, including the prohibitions on non-stormwater discharges and illicit discharges, and the requirement to reduce stormwater pollutants to the maximum extent practicable.

**Section 2.**

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

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On motion of \_\_\_\_\_, seconded by \_\_\_\_\_, the foregoing ordinance was introduced at a regular meeting of the City Council on the 21st day of April, 2015, and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date

**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - APRIL 21, 2015**  
**BUSINESS ITEMS**

**DATE** : April 14, 2015  
**TO** : City Council  
**FROM** : City Manager  
**SUBJECT** : **STATUS OF MILLS ACT PROGRAM**

**RECOMMENDATION:**

Review the status of the City of Benicia's Mills Act program, evaluate the Historic Preservation Commission's recommendation for the Mills Act Program and provide direction to staff.

**EXECUTIVE SUMMARY:**

The Mills Act Program, enacted by the State of California in 1972, encourages the restoration and preservation of qualified historic buildings through economic incentive and authorizes its implementation by local governments. In 2003, Council approved the City of Benicia Mills Act Program and assigned initial review and recommendation of Mills Act Contract applications to the Historic Preservation Review Commission (Resolution No. 03-12). The City has 37 active Mills Act Contracts. At the November 18, 2014 City Council meeting, the City Council approved two Mills Act Contracts, which were anticipated to be the last two contracts approved under the program's current threshold that the program not cost the City (in staff time and reduced property tax revenue) more than \$35,000 annually. The Council directed staff to provide a status of the program along with an assessment of the benefits to the City of supporting a Mills Act Program.

**BUDGET INFORMATION:**

The City receives approximately 26% of the property taxes collected on parcels in Benicia. A property with a Mills Act Contract reduces the property taxes paid by these property owners. In December 2007, the Council amended the Mills Act Program to allocate up to \$35,000 annually toward the program, which includes annual staff costs of \$150 per contract. Two new contracts were approved in November 2014. The Program cost with the 37 contracts for fiscal year 2015/2016 will be over \$35,468 as shown in the table below.<sup>1</sup>

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<sup>1</sup> Staff notes that the Program spreadsheet originally included in the HPRC report was out of date and that a revised spreadsheet was provided by staff at the March 26, 2015 meeting.

Table 1. Summary of Estimated Program Costs FY2015/2016

	<b><u>ESTIMATED ANNUAL REVENUE LOSS</u></b>	<b><u>ANNUAL INSPECTION COSTS</u></b>	<b><u>2015/2016 ESTIMATED COSTS*</u></b>
37 Contracts	\$29,918	\$5,550	<b>\$35,468</b>

\*The County Assessor adjusts the base property value yearly in June. It is anticipated that property values will rise and that this number will be higher, therefore Program costs will be higher.

**GENERAL PLAN:**

Relevant General Plan Goals and Policies include:

- GOAL 3.1: Maintain and enhance Benicia's historic character.
  - Policy 3.1.2: Enhance the economic potential of historic and architectural assets.
  - Policy 3.1.4: Promote the preservation and enhancement of historic neighborhoods, commercial areas, and governmental districts.
  - Policy 3.1.6: Promote restoration of public and privately-owned historic and architecturally significant properties.

**STRATEGIC PLAN:**

There are no issues, strategies or actions related to preservation of private historic properties.

**SUMMARY:**

At the November 18, 2014 City Council meeting, the City Council directed staff to provide a status of the program along with an assessment of the benefits to the City of supporting a Mills Act Program. In order to obtain community input and because the Historic Preservation Review Commission (HPRC) has the responsibility of initial review and recommendation of Mills Act Contract applications, staff presented this item at the March 26, 2015 HPRC public hearing. Written notification of the meeting was sent to all 37 owners with Mills Act contracts prior to the HPRC meeting. Written notice was sent to all 37 owners again prior to the City Council meeting.

HPRC received public comment from 16 speakers and received six written letters, some of which were from the speakers. HPRC reviewed the information, as well as the staff report and directed staff to present HPRC's recommendation to the City Council.

A copy of all written communication received by HPRC, as well as the HPRC staff report is attached to this report. The HPRC staff report includes discussion of the Mills Act Program benefits and various options for the long-term sustainability of the Program.

Staff's goal for taking the discussion item to HPRC prior to the City Council was to engage the community and receive input from the HPRC given their important role in the program's implementation. This goal was achieved through the community input, the Commission's discussion and ultimately the Commission's recommendation to City Council. Of the 16 members of the community who spoke, 15 of were existing Mills Act Contract property owners. The property owners expressed a strong concern with one of the three recommendations made by staff which was to expand the program to new properties by providing letters of nonrenewal to the existing contract holders. The general message from those who spoke was that the reduction in property taxes not only helps them to complete their required work plan items, but also to maintain their property.

Staff's recommendation to the HPRC was to modify the Program to ensure long-term sustainability in consideration of the City's existing financial constraints and Council direction to maintain a "status quo" budget. The current dollar limit of the Program is \$35,000 threshold, which will be exceeded for the 2015/2016 fiscal year by the existing 37 contracts. (See Table 1, above.)

Staff's objectives for the three recommended changes were to:

- A. Modify the program by setting consistent criteria for granting Mills Act Contracts so that the thresholds are clear and the properties selected would result in greater impact;
- B. Ensure financial sustainability of the program given the City's economic constraints; and
- C. Provide expansion possibilities of the program so as to reach as many historic properties as possible.

*HPRC's Recommendation:*

The Commission discussed staff's recommendations, the input from the community and expressed interest in finding a long-term solution for the program. The Commission ultimately made the following recommendations:

1. Disperse new contracts among building types and/or through the districts
2. Connect the expansion of the program through an additional building permit fee for new residences. (For example: 1 new home equals 1 new contract)<sup>2</sup>
3. Establish criteria for future work plans and provide more detail on work items to be completed
4. More enforcement on noncompliant contracts
5. Continuance of the annual inspections
6. Expand the program to 50 contracts or more. The Commission does not support non-renewal of contracts
7. Establish a number of contracts vs. set monetary value

In addition to the recommendations made specifically on the program itself, the HPRC stated that they consider the threshold of \$35,000 to be a small commitment in the context of the City's budget and they also felt it would be helpful to do a study on the quantifiable benefits of the program.

Attachments:

- Mills Act Program Costs Summary (updated FY 2014-2015)
- Historic Preservation Review Commission Agenda Item March 26, 2015
- Historic Preservation Review Commission Draft Minutes March 26, 2015
- Written comment received by HPRC
- Revised spreadsheet given to the Commission at the March 26, 2015 meeting

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<sup>2</sup> Legal research is needed to determine the legality of this proposal.





**AGENDA ITEM**  
**HISTORIC PRESERVATION REVIEW COMMISSION MEETING: MARCH 26, 2015**  
**REGULAR CALENDAR**

**DATE** : February 19, 2015

**TO** : Historic Preservation Review Commission

**FROM** : Amy Million, Principal Planner

**SUBJECT** : **STATUS OF MILLS ACT PROGRAM**

**RECOMMENDATION:**

Review the status of the City of Benicia's Mills Act program, evaluate staff's recommendation for long-term sustainability of the Mills Act Program and provide a recommendation to City Council.

**EXECUTIVE SUMMARY:**

The Mills Act Program, enacted by the State of California in 1972, encourages the restoration and preservation of qualified historic buildings through economic incentive and authorizes its implementation by local governments. In 2003, Council approved the City of Benicia Mills Act Program and assigned initial review and recommendation of Mills Act Contract applications to the Historic Preservation Review Commission (Resolution No. 03-12). The City has 37 active Mills Act Contracts. At the November 18, 2014 City Council meeting, the City Council approved two Mills Act Contracts which were anticipated to be the last two contracts approved under the program's current threshold that the program not cost the City (in staff time and reduced property tax revenue) more than \$35,000 annually. The Council directed staff to provide a status of the program along with an assessment of the benefits to the City of supporting a Mills Act Program. Staff is presenting this item to the Historic Preservation Review Commission for a recommendation to City Council on the future of the program.

**BUDGET INFORMATION:**

The City collects approximately 26% of the property taxes collected on parcels in Benicia. A property with a Mills Act Contract reduces the property taxes paid by these property owners. In December 2007, the Council amended the Mills Act Program to allocate up to \$35,000 annually toward the program which includes annual staff costs of \$150 per contract. The City had 35 contracts in fiscal year 2013/2014 which resulted in an annual loss of revenue to the City of \$30,801. With the approval of two new contracts in November 2014, it is estimated that the total cost associated with the 37 contracts for fiscal year

2015/2016 will be \$33,540 as shown in the following table:

Table 1. Summary of Annual Program Costs

	<b><u>ESTIMATED ANNUAL REVENUE LOSS</u></b>	<b><u>ANNUAL INSPECTION COSTS</u></b>	<b><u>2015/2016 ESTIMATED COSTS</u></b>
37 Contracts	\$27,990	\$5,550	<b>\$33,540</b>

**GENERAL PLAN:**

Relevant General Plan Goals and Policies include:

- GOAL 3.1: Maintain and enhance Benicia's historic character.
  - Policy 3.1.2: Enhance the economic potential of historic and architectural assets.
  - Policy 3.1.4: Promote the preservation and enhancement of historic neighborhoods, commercial areas, and governmental districts.
  - Policy 3.1.6: Promote restoration of public and privately-owned historic and architecturally significant properties.

**STRATEGIC PLAN:**

There are no issues, strategies or actions related to preservation of private historic properties.

**SUMMARY:**

The Mills Act is a State law that allows cities and owners of historic structures to enter into contracts that decrease property tax in exchange for continued preservation of buildings and property. State law enables the City of Benicia to enter into contracts with owners of properties, by which owners agree to maintain and, if necessary, rehabilitate historic structures.

Property Owner's Benefits of the Mills Act Program

A property with a Mills Act Contract can reduce the property tax by 50 percent or more. The average savings for the 35 Mills Act Contracts in fiscal year 2013/2014 was \$2,807. The property tax savings for 4 of those properties were disproportionately higher at approximately \$6,000 per year raising the average. It appears that the savings for those 4 properties were so high because the non-Mills Act property value was greater than \$700,000. Excluding those 4 properties, the average saving for the remaining 31 contracts was \$2,371. The reduction in property taxes helps property owners offset the cost of the requirements of the contract, including rehabilitation work and overall maintenance of the historic structure. It is recognized that a reduction in property taxes afforded by the Mills Act serves as a key monetary incentive for citizens to acquire, maintain and restore historic properties within the City of Benicia. This benefit is ultimately reflected in the value of a well-maintained home.

### City's Benefits of the Mills Act Program

The City gains benefits from the preservation of its historic building stock. While difficult to quantify in monetary terms, most residents recognize that much of Benicia's charm and its attractiveness to business, residents and tourists rests in its historic character. As noted above, the General Plan is very clear on the importance the community places on preserving Benicia's built heritage. However, it is difficult to know with certainty how much the benefits provided by the Mills Act are a necessary incentive to homeowners to preserve and enhance historic buildings. It is quite clear that maintaining an historic home – and to do so in a manner that preserves its historic character – is not inexpensive. Maintaining historic integrity such as repairing, restoring or replacing wood windows in-kind, preserving historic detail or replacing deteriorated building elements with historically correct elements, is generally more expensive than simply eliminating the feature or putting in stock-modern windows. However, of the hundreds of well-maintained historic homes in Benicia, only a relative handful receive the benefit of a Mills Act contract. It is also true that as these buildings continue to age, the costs to maintain the structures also grows, and the Mills Act incentive helps owners to bear some of the costs of that maintenance.

There is little quantitative data of the economic benefits to the City for participating in the Mills Act Program. In a conversation with the California Office of Historic Preservation (OHP) staff, they confirmed that they do not have a study of the economic benefits of historic preservation through tax incentive programs such as the Mills Act Program. OHP has not had the budget to do so, but may look to complete something like this in the future.

With that said, OHP has a high level of involvement in each of the historic preservation programs state-wide and was able to provide anecdotal information from the State's perspective that Mills Act contracts make it financially more feasible for property owners to rehabilitate and maintain their qualified historic properties and that those properties help communities retain their sense of place. While the OHP does not have exact numbers, they have heard from communities that historic neighborhoods and commercial areas where properties had been rehabilitated and maintained held their value much better than surrounding areas during the economic downturn. In addition, jurisdictions have reported that for areas that value tourism, or even day travel, well-maintained downtown areas with a true sense of place help to “brand” an area and attract visitors.

There may also be other secondary local economic impacts such as the use of Benicia-based contractors increasing local employment.

### Calculating Property Tax

To better understand how to address the long-term sustainability of the program it is important to understand how the property taxes are calculated. The usual method of valuation for property tax is to determine the Base Property Value or the Fair Market Value based on comparable sales. However, under the Mills Act, valuation is determined by a capitalization of income method rather than on market value. To determine the amount of property taxes for a Mills Act Contract property, the County Assessor uses the lower of the Base Property Value, Fair Market Value, or Mills Act Property Value. For 36 of the City's 37 existing and proposed contracts, the Mills Act Property Value is the lesser.

The actual tax revenue lost each year to the City is based on the difference between the Mills Act Property Value and the Base Property Value **or** the difference between the Mills Act Property Value and the Fair Market Value. Using either the Base Property Value or Fair Market Value is based on whichever of those two values is less. The specific value (Base Property Value or Fair Market) that applies to each property is bolded and highlighted in the attached Mills Act Program Costs summary.

The Solano County Assessor determines the Mills Act Property Value using the capitalization of income method. Essentially the method is based on how much income earning potential the property has. For example: For a single-family residence, the assessor will evaluate the amount of rental income a property could potentially earn then subtracting expenses and factoring in the capitalization rate. Due to the fluctuation of property values and the changes in the rental market from year to year, the amount of city revenue loss changes slightly each year. This occurs regardless of whether or not new contracts are added to the program. Through the life of a contract, the tax savings to the property owner will increase as the base and market values assessment increases.

As a result, anticipating the exact year in which the city will reach or exceed any specific threshold, such as the current \$35,000 threshold, is very difficult.

### Contract's "10-year" Term

A Mills Act Contract is effective for an initial term of ten (10) years; however, the contract renews itself annually. Each year, one (1) year is automatically added to the term of the contract and it is only terminated if either the City or the property owner elects to not renew. Therefore, the property owner is always between 9 and 10 years from termination unless there is a notice of nonrenewal. If either City or property owner serves notice of nonrenewal in any year, the contract remains in effect for the balance of the 10 year term.

If rehabilitation work is required as part of the contract, that work is identified with a project schedule and completed during the initial 10-year term. Upon completion of the specified rehabilitation work, that portion of the contract is considered to be complete and the remaining obligation under the contract is for ongoing maintenance with no additional restoration or rehabilitation required. The table below provides a summary of the number of contracts for each year, the end of their initial 10 year term and the number of maintenance-only contracts. Over 40% of the existing contracts only require general property maintenance.

Table 1. Mills Act Contract Summary

Year Entered Into	No. of Contracts	End of Initial 10yr Term	No. of Maintenance-Only Contracts
1990	2	2000	2
2004	6	2014	5
2005	2	2015	2
2006	5	2016	3
2007	10	2017	2
2008	3	2018	0
2009	2	2019	1
2010	1	2020	0
2012	3	2022	1
2013	1	2023	0
2014	2	2024	0
<b>TOTAL</b>	<b>37</b>		<b>16</b>

Given the revolving nature of the contracts, the program will remain never ending unless modified. In response to nearing the program's monetary threshold of \$35,000, below is an overview of several options for the Commission's consideration for the long-term sustainability of the Mills Act Program.

**Option #1 – Change Threshold to Maximum Number of Contracts**

As previously stated, the specific amount of tax saving for each property with the Mills Act is based on many revolving factors and therefore changes every year. The changes in interest rates, property values, and ownership, etc. result in the tax savings being too difficult to estimate for purposes of setting a monetary cap. If the Council desires to expand the program, staff recommends that the approved number of Mills Act contracts be limited to a specified number of contracts each year instead of a fixed monetary cap. To better illustrate the budget impacts of each contract the following table is provided. The dollar amounts are based on the City's contribution of the average tax savings for current contracts. (26% of \$2,807)

Number of Contracts Annually	Estimated Tax Loss Annually
1	\$728
2-3	\$1,456-2,184
4-6	\$2,912-4,368
7-9	\$5,096-6,552

If the number of contracts is limited to a specific number, the City may wish to set forth specific criteria for selecting the most desirable contracts.

**Option #2 – Close the Program to New Contracts**

The City entered in to the Mills Act program in 2003; however, it has been participating in a property tax incentive program since 1990 with the approval of a “Historic Property Preservation Agreement” for 245 West K Street and 235 East L Street. Although under a different name, the agreement is executed in the same way. The agreements for 245 West K Street and 235 East L Street remain in place under the current Mills Act program.

One option is to close the program to new contracts only and allow for the existing contracts to continue. Due to the automatic renewal of the contracts, the existing 37 contracts would continue to participate in the program indefinitely unless the City or the property owner elects to not renew the contract at some point in the future. Due to the method used in determining the property tax for a Mills Act Contract property, the existing 37 contracts will most likely exceed the \$35,000 threshold in future years. Under this scenario, all 37 contracts would ultimately be “maintenance only” contracts, with no additional restoration or rehabilitation required.

**Option #3 - Terminate Existing Contracts and Open to New Contracts**

As outlined in the contract, the City may provide a notice of nonrenewal at any time. A terminated contact would continue for the remainder of a 10 year term then end. The property owner would continue to benefit from the property tax savings through the end of the contract. The intent of this option would be to provide monetary incentive for the rehabilitation of more properties through the program without the City incurring costs which are not sustainable.

One important consideration is how to fairly determine when the existing contracts will be terminated. The City can opt to terminate any number of contracts by notifying the property owner of non-renewal. If not all contracts are terminated during the same year, it is recommended that criteria for selection be established. The criteria to consider may include:

1. Length of contract
2. Type of contract (maintenance-only vs. rehabilitation)

3. Financial and historic value of the contract's rehabilitation work plan
4. Cost of completed rehabilitation work under the contract

Upon the end of the contract's 10-year term, the program would then be open for additional properties or the existing contract property could reapply with an updated work program for their property. It would be best to establish a maximum number of contracts so that at any one time there are no more than a specified number of contracts in the City. It is also recommended that specific criteria for selecting the properties be established. Please refer to staff's recommendations and the discussion below on "Updating Criteria for Selecting Eligible Properties".

#### **Option #4 – Maintain Current Implementation and Increase Threshold from \$35,000 to \$50,000**

In 2010, the Historic Preservation Review Commission (HPRC) reviewed the program in light of the economic realities of the time which included a suppressed housing market. Part of that review included research of other well-established Mills Act Programs, including the cities of San Diego and Pasadena, both of which have established thresholds. For example, the City of San Diego has a maximum threshold of \$200,000 annually. The City of Pasadena does not allow properties with a total assessed value over \$1.5 million to participate in the program. Pasadena also limits the number of new contracts each year to six for multiple-family, commercial or industrial properties and up to twenty contract agreements for single-family residential properties. At its July 22, 2010 regular meeting, HPRC recommended amendments to the program guidelines to address concerns over the monetary cost and revenue loss of the program. HPRC recommended establishing a monetary threshold of \$50,000 and/or a limit of five contracts per calendar year.

Subsequently, the City Council approved an increase to the threshold from \$30,000 to \$35,000 and decided continue to review and approve contracts on a case-by-case basis.

Although not recommended for the reasons stated in Option #1 above, this option would continue to operate the program as it is structured currently. Increasing the threshold to \$50,000 would allow for the approval of new contracts for the next several years.

#### **Updating Criteria for Selecting Eligible Properties**

Should the Council ultimately decide to open the Mills Act program to additional contracts, staff recommends that specific criteria for selecting the properties be established. With more than 10 years of program implementation, we can use our experience to reflect on the program and evaluate it for potential improvements. For example, currently the Mills Act Program is only

open to properties which are already designated as historic. Excluding non-historic properties within the historic districts from eligibility in the Mills Act Program is counterproductive to historic preservation efforts, if the integrity of those properties could be restored. There are many buildings in Benicia that are not designated as historic because they have lost historic integrity through the years by inappropriate alterations or additions. In many cases, those alterations and additions can be removed and the historic integrity improved. Providing a financial incentive for potentially eligible properties may encourage such preservation efforts and increase the number of historic buildings in the City.

Other possible criteria for selecting eligible properties include:

1. Maintenance Only Contracts vs. Rehabilitation Contracts:
  - Should there be a priority for “rehabilitation” contracts rather than maintenance projects?
2. Residential vs. Commercial Buildings:
  - The methodology used in calculating the property tax for residential and commercial properties under the Mills Act is different. Taxes are based on several factors including what is referred to as the “risk”. For residential properties the “risk” is lower than the “risk” for commercial properties. The result is a larger tax savings for residential properties.

#### **CONCLUSION/STAFF RECOMMENDATION:**

Staff is recommending that the City’s Mills Act program be modified in order to promote the long-term sustainability of the program. Based on the discussion above, staff recommends implementing **all three** of the following modifications to the program:

1. Option #1. The approved number of Mills Act contracts should be limited to a specific number and the fixed monetary cap disregarded. Staff is recommending the maximum be the current total of 40 contracts, thereby allowing the addition of 3 new contracts before closing the program to new contracts. See recommendation #2 below for next steps. A total of 40 contracts would equate to approximately \$30,000-\$40,000 annually which is consistent with the existing monetary commitment of \$35,000 annually.
2. Option #3. Termination of all existing contracts to allow for new contracts. This would allow for new properties to receive the financial incentive for maintenance and rehabilitation of the City’s historic resources and provide for long term sustainability of the program. The recommendation is to begin to phase out the existing contacts by providing a letter of non-renewal starting in 2015 as follows:

**2015:** All 'maintenance only' contracts and all contracts effective before January 1, 2010.

**2016:** All contracts effective before January 1, 2011

**2017:** All contracts effective before January 1, 2012

**2018:** All contracts effective before January 1, 2013

**2019:** All contracts effective before January 1, 2014

**2020:** All contracts effective before January 1, 2015

In acknowledgment of the fact that some contracts were approved more recently than others, phasing the termination would allow some of the more recent contracts minimum of 15 years. A letter of non-renewal would be provided resulting in the expiration of all 37 existing contracts by the end of 2030.

At the end of the contracts 10-year term, the Mills Act program would be open to new contracts including anyone of the previous contracts that chooses to re-apply. Staff further recommends that criteria for the selection of new contract should be established and include:

- a. All contract must have a work program thus eliminating the "maintenance only" contract
  - b. Inclusion of non-historic buildings in the program if integrity can be restored
  - c. For those properties that re-apply, those with a history of non-compliance or those who were nonresponsive during the time of annual report are not eligible.
  - d. At the time of each new contract issuance, the term shall be a maximum of ten years unless explicitly increased for a specific term when the contract is established. Based on this policy, non-renewal letters would generally be issued after the first year of the contract.
- 3. Updating Criteria for Selecting Eligible Properties.** Program eligibility to be expanded to allow for non-historic buildings within the historic district, if the integrity of those properties could be restored. This type of contract would require an extensive work program to improve the historic integrity. The ultimate benefit would be an increase in the number and integrity of historic resources in the City.

Staff is recommending that the Commission discuss and evaluate these options and provide a recommendation to City Council on the future of the Mills Act program.

**FURTHER ACTION:**

The Commission's recommendation will be forward to City Council with additional details of implementing the change, including a resolution modifying

the program.

Attachment:

- Mills Act Program Costs Summary

# City of Benicia Mills Act Program Costs

The Mills Act contracts will reduce the property tax paid by these properties. The City of Benicia receives approximately 25% of the property taxes collected on parcels in the City.

PROPERTY ADDRESS	DATE ENTERED INTO CONTRACT	BASE PROPERTY VALUE (as of Feb 2014)	PROPERTY TAX WITHOUT CONTRACT (1%)	CITY PROPERTY TAX REVENUE OF VALUE (25% OF PROPERTY TAX)	FAIR MARKET VALUE (as of Feb 2014)	PROPERTY TAX WITHOUT CONTRACT (1%)	CITY PROPERTY TAX REVENUE OF VALUE (25% OF PROPERTY TAX)	REASSESSED MILLS ACT PROPERTY VALUE (as of Feb 2012)	PROPERTY TAX WITH CONTRACT (1%)	CITY PROPERTY TAX REVENUE OF VALUE (25% OF PROPERTY TAX)	ESTIMATED TAX SAVINGS*	LOSS OF CITY REVENUE*
EXISTING CONTRACTS:												
245 West K Street - M	11/07/90	\$1,040,395	\$10,403.95	\$2,705.03	\$793,000	\$7,930	\$2,062	\$157,013	\$1,570.13	\$408.23	\$6,360	\$1,654
230 West L Street - M	08/11/90	\$676,111	\$6,761.11	\$1,727.89	\$613,000	\$6,130	\$1,594	\$228,691	\$2,287	\$595	\$3,843	\$999
230 West K Street - M	10/22/04	\$513,394	\$5,133.94	\$1,334.82	\$791,000	\$7,910	\$2,057	\$131,698	\$1,317	\$342	\$6,593	\$1,714
121 West J Street - M	12/03/04	\$405,983	\$4,059.83	\$1,054.52	\$715,000	\$7,150	\$1,859	\$193,652	\$1,937	\$503	\$2,119	\$551
185 East D Street - M	11/09/04	\$366,225	\$3,662.25	\$952.19	\$513,000	\$5,130	\$1,334	\$111,429	\$1,114	\$280	\$2,548	\$662
251 West J Street - M	12/17/04	\$287,671	\$2,876.71	\$747.94	\$332,000	\$3,320	\$863	\$95,545	\$955	\$248	\$2,365	\$615
401 First Street	10/15/04	\$1,040,114	\$10,401.14	\$2,704.30	\$1,390,000	\$13,900	\$3,614	\$1,078,115	\$10,781	\$2,800	\$-380	\$-99
166 West H Street - M	12/17/04	\$456,735	\$4,567.35	\$1,187.51	\$439,000	\$4,390	\$1,141	\$206,230	\$2,062	\$536	\$2,505	\$651
123 West D Street - M	12/27/05	\$764,494	\$7,644.94	\$1,987.68	\$716,000	\$7,160	\$1,862	\$111,429	\$1,114	\$290	\$6,046	\$1,572
1063 Jefferson Street - M	05/24/05	\$463,010	\$4,630.10	\$1,203.83	\$1,000,000	\$10,000	\$2,600	\$285,864	\$2,859	\$743	\$1,771	\$461
125 East I Street	12/20/06	\$887,808	\$8,878.08	\$2,308.30	\$765,000	\$7,650	\$1,989	\$187,853	\$1,879	\$488	\$5,771	\$1,501
159 West G Street - M	10/30/06	\$456,753	\$4,567.53	\$1,187.56	\$398,700	\$3,987	\$1,037	\$206,230	\$2,062	\$536	\$2,505	\$651
149 West G Street - M	10/30/06	\$671,168	\$6,711.68	\$1,750.04	\$290,000	\$2,900	\$754	\$81,039	\$810	\$211	\$2,090	\$543
145 East I Street	10/30/06	\$609,956	\$6,070.00	\$1,615.04	\$256,000	\$2,560	\$666	\$94,545	\$945	\$246	\$1,615	\$420
141 West H Street - M	12/18/07	\$450,290	\$4,502.90	\$1,170.76	\$322,000	\$3,220	\$837	\$112,380	\$1,124	\$292	\$2,096	\$545
1205 West Second Street	12/18/07	\$343,788	\$3,437.88	\$933.85	\$286,000	\$2,860	\$744	\$124,867	\$1,249	\$325	\$2,504	\$651
140 East G Street	12/18/07	\$414,516	\$4,145.16	\$1,077.74	\$300,000	\$3,000	\$783	\$233,075	\$2,331	\$606	\$4,737	\$1,231
392-396 East H Street - M	12/18/07	\$706,726	\$7,067.26	\$1,837.49	\$679,000	\$6,790	\$1,765	\$186,011	\$1,860	\$484	\$4,737	\$1,231
242 West I Street	12/18/07	\$598,939	\$5,989.39	\$1,585.94	\$254,000	\$2,540	\$660	\$99,472	\$995	\$259	\$1,545	\$402
171 West H Street	12/18/07	\$659,819	\$6,598.19	\$1,809.13	\$544,000	\$5,440	\$1,497	\$66,042	\$660	\$250	\$1,720	\$447
270 West H Street	12/18/07	\$1,414,398	\$14,143.98	\$3,677.43	\$3,050,000	\$30,500	\$7,933	\$1,553,325	\$15,533	\$404	\$4,887	\$1,271
441 West J Street	12/18/07	\$706,110	\$7,061.10	\$1,835.89	\$3,320,000	\$33,200	\$8,663	\$1,022,094	\$10,221	\$265	\$2,029	\$528
271 West J Street	12/02/08	\$805,331	\$8,053.31	\$2,103.86	\$458,000	\$4,580	\$1,191	\$94,545	\$945	\$246	\$1,931	\$502
141 West F Street	12/02/08	\$501,332	\$5,013.32	\$1,303.46	\$326,000	\$3,260	\$814	\$85,759	\$858	\$223	\$2,892	\$752
155 West J Street	12/02/08	\$490,289	\$4,902.89	\$1,274.75	\$726,000	\$7,260	\$1,888	\$116,612	\$1,166	\$303	\$3,737	\$972
182 East I Street - M	12/09/09	\$409,272	\$4,092.72	\$1,064.11	\$777,000	\$7,770	\$2,020	\$116,612	\$1,166	\$303	\$2,927	\$761
1101 West Second Street	12/09/09	\$596,054	\$5,960.54	\$1,549.74	\$404,000	\$4,040	\$1,050	\$112,442	\$1,124	\$292	\$2,916	\$758
395 West J Street	12/20/10	\$242,500	\$2,425.00	\$631	\$350,000	\$3,500	\$975	\$106,332	\$1,063	\$276	\$2,595	\$657
175 West H Street - M	12/05/12	\$313,803	\$3,138.03	\$816	\$575,000	\$5,750	\$1,483	\$99,472	\$995	\$259	\$2,143	\$557
288 West J Street	11/27/12	\$460,020	\$4,600.20	\$1,196	\$433,000	\$4,330	\$1,126	\$183,770	\$1,838	\$478	\$2,492	\$648
251 West G Street	12/10/13	\$287,671	\$2,876.71	\$748	\$332,000	\$3,320	\$863	\$94,545	\$945	\$246	\$1,931	\$517
153 West G Street	12/31/14	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
180 West H Street	12/31/14	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
EXISTING CONTRACTS ANNUAL COSTS: (\$150 per contract for annual inspections)		\$19,958,702	\$199,587	\$51,893	\$17,769,942	\$177,699	\$46,202	\$5,792,523	\$57,925	\$15,061	\$98,273	\$25,551
EXISTING CONTRACTS TOTAL:												\$5,250
2015 CONTRACTS PROPOSED:												\$30,801
2015 CONTRACTS ANNUAL STAFF COSTS (\$150 per contract for annual inspections)		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2015 CONTRACTS TOTAL:												\$30,801
CONTRACTS TOTAL INCL. ANNUAL STAFF COSTS (EXISTING AND PROPOSED):												\$30,801
TOTAL:												\$30,801

\* Tax savings are estimates and subject to change annually

M - Exhibit B "Maintenance Only" contract

\*\* Prior to 2003 City Council program authorization





**DRAFT**

**BENICIA HISTORIC PRESERVATION REVIEW COMMISSION  
REGULAR MEETING MINUTES**

**City Hall Commission Room  
Thursday, March 26, 2015  
6:30 P.M.**

**I. OPENING OF MEETING**

**A. Pledge of Allegiance**

**B. Roll Call of Commissioners**

Present: Commissioners Haughey, Macenski, McKee, Trumbly,  
Van Landschoot, von Studnitz and Chair Delgado  
Absent: None

Staff Present: Dan Marks, Interim Community Development Director  
Suzanne Thorsen, Associate Planner  
Amy Million, Principal Planner/Recording Secretary

**C. Reference to Fundamental Rights of Public**

**II. ADOPTION OF AGENDA**

On a motion of Commissioner Trumbly, seconded by Commissioner von Studnitz, the Agenda was approved by the following vote:

Ayes: Commissioners Haughey, Macenski, McKee, Trumbly, Van  
Landschoot, von Studnitz and Chair Delgado  
Noes: None  
Absent: None  
Abstain: None

**III. OPPORTUNITY FOR PUBLIC COMMENT**

**A. WRITTEN COMMENT-** None.

**B. PUBLIC COMMENT-** None.

**IV. CONSENT CALENDAR**

On a motion of Commissioner Macenski, seconded by Commissioner Haughey, the Agenda was approved by the following vote:

Ayes: Commissioners Haughey, Macenski, McKee, Trumbly, Van Landschoot, von Studnitz and Chair Delgado

Noes: None

Absent: None

Abstain: Commissioner McKee (Item IV. C.)

**A. APPROVAL OF MINUTES OF FEBRUARY 26, 2015 REGULAR MEETING**

**B. VON PFISTER GENERAL STORE NOMINATION TO NATIONAL REGISTER OF HISTORIC PLACES**

**C. DESIGN REVIEW FOR A RESIDENTIAL FOUNDATION, ADDITION, AND DETACHED GARAGE AT 470 WEST J STREET, AFTER A DETERMINATION THAT THE PROJECT IS EXEMPT FROM CEQA**

15PLN-00009 Design Review

470 West J Street

APN: 0089-031-030

**RESOLUTION NO. 15-6 OF THE HISTORIC PRESERVATION REVIEW COMMISSION OF THE CITY OF BENICIA APPROVING A DESIGN REVIEW FOR A RESIDENTIAL FOUNDITON, ADDITION AND DETACHED GARAGE AT 470 WEST J STREET (15PLN- 00009)**

**V. REGULAR AGENDA ITEMS**

**A. DESIGN REVIEW FOR EXTERIOR ALTERATIONS AND ADDITION AT 130 WEST E STREET, AFTER A DETERMINATION THAT THE PROJECT IS EXEMPT FROM CEQA**

15PLN-00006 Design Review

130 West E Street

APN: 0089-174-020

Ms. Thorsen provided an overview of the proposed project.

Commission requested clarification on the DMUMP requirements, landscaping and the existing sign.

Ms. McKee, representative of the architect, provided additional detail on the project.

Public comment was opened.

Jack Maccoun, commented that the story poles were helpful and spoke in support of the project noting the project's protection of the historic character. Recommends that the alley not be improved due to traffic concerns.

Public comment was closed.

The Commission requested clarification on the construction, improvement of the alley and the existing trees.

Commissioner Haughey stated her ex parte communication with the project applicant, Steve McKee, to discuss the view corridor.

Commissioner Van Landschoot made a motion seconded by Commissioner Haughey. Chair Delgado requested that the motion be amended to reflect preservation of the existing trees along the east property line, or replacement as necessary.

**RESOLUTION NO. 15-7 OF THE HISTORIC PRESERVATION REVIEW COMMISSION OF THE CITY OF BENICIA APPROVING A DESIGN REVIEW FOR EXTERIOR ALTERATIONS AND ADDITION TO 130 WEST E STREET (15PLN-00006)**

On a motion of Commissioner Van Landschoot, seconded by Commissioner Haughey, the above Resolution was approved with the addition of a condition of approval regarding preserving and/or replacing landscaping, by the following vote:

Ayes: Commissioners Haughey, Macenski, Trumbly, Van Landschoot, von Studnitz and Chair Delgado  
Noes: None  
Absent: None  
Abstain: Commissioner McKee

Commissioner Haughey stated her abstention on the Items V.B and V.C and recused herself.

Commissioner McKee returned to the meeting.

**B. DESIGN REVIEW FOR MODIFICATION OF FRONT ENTRANCE, INCLUDING REPLACEMENT OF FRONT DOOR AT 122 EAST J STREET, AFTER A DETERMINATION THAT THE PROJECT IS EXEMPT FROM CEQA**

15PLN-000013 Design Review  
122 East J Street  
APN: 0089-051-160

Ms. Thorsen provided an overview of the proposed project.

The Commission requested clarification on the history of the project.

Fred Railsback, applicant on behalf of St. Paul's Church, discussed prior repair and rehabilitation of the Church's buildings, funding resources for the rehabilitation work they have completed, the functionality of the buildings, purpose of the modifications, and design of the door which was installed at the time of siding replacement in 2014.

The Commission requested clarification on the modification to the door and the replacement of other doors on the property.

Larry Houseman, contractor, spoke regarding the history of work on the building and provided additional detail.

The Commission requested clarification on the scope of a prior building permit for siding replacement, shutters on the door and windows as shown in the HABS photographs, and the new door on the Rectory.

Public comment was opened.

Jack Maccoun stated that the proposed door is the wrong door for the building and recommended a wood door. He stated that the fiberglass door would set a bad precedent for the district.

Potts Cahill spoke on the history of the rectory building and the changes made to the exterior that have negatively impacted the building's historic integrity.

A Benicia resident stated that the prior wood door was less than 30 years old and not historic. He questioned whether changing the door really makes a difference and stated the new door is a small part of the building and should be left.

A Benicia resident stated that the church is not a museum, but a highly used facility. He spoke on the purpose and functionality of the door and expressed support for the project.

Angela Fortain, requested clarification on the process for analyzing the door on a highly use building and what the process would be if the door was of an aluminum material, but a compatible design.

Staff provided clarification on the analysis required for the subject proposal.

Jerry Hayes commented on his personal experience with the church and the Historic Preservation Review Commission, stating that the use of alternative materials such as fiberglass is a newer issue. He acknowledged that this was a difficult decision and thanked the Commissioners for their service.

Steve Rodecur stated that the church is very busy and described changes to doors on the church campus under a prior design review approval. The purpose of the new door on the Rectory is to make the church more accessible.

The Commission requested clarification on the previous approvals for the modification to the church, historic status, entry, use permit requirements, window material and precedents.

The Commission commented on the historic status, work completed without a permit, material, style of the building, appropriateness of the door, maintenance of wood doors, width of the door.

**RESOLUTION NO. 15-8 OF THE HISTORIC PRESERVATION REVIEW COMMISSION OF THE CITY OF BENICIA DENYING A DESIGN REVIEW FOR MODIFICATION OF FRONT ENTRANCE, INCLUDING REPLACEMENT OF FRONT DOOR AT 122 EAST J STREET (15PLN-00013)**

On a motion of Commissioner Van Landschoot, seconded by Commissioner Trumbly, the above Resolution was approved by the following vote:

Ayes: Commissioners Macenski, McKee, Trumbly, Van Landschoot, von Studnitz and Chair Delgado  
Noes: None  
Absent: None  
Abstain: Commissioner Haughey

### **C. STATUS OF MILLS ACT PROGRAM**

Ms. Million provided an overview of the program, points of discussion and staff's recommendations.

The Commission requested clarification about cancellation of contracts, annual inspections, subsequent owners who purchased a house with a Mills Act already in place, whether Mills Act has increased the designation status of a property, revenue loss in contrast to overall General Fund, and requirements for maintenance, concentration of contracts by location and style.

Jack Maccoun - Mills Act contract holder, stated the cost to city does not account for increased tax revenues as a result of Mills Act and making the town more desirable "a rising tide lifts all boats".

A Benicia resident stated he moved here due to Benicia's charm and character and respect that the community has for its history. Agrees with Jack Maccoun. He moved from Manhattan Beach that had changed over time due to developers who demolished historic building stock and built larger new homes.

Karen Hamilton – Mills Act contract holder, described original condition of Frisbee-Walsh home. She described the investments over time to restore the home and the benefits to the city of well-maintained historic homes.

Michael Navas – Mills Act contract holder, described his appreciation of his historic home and noted that Mills Act was the reason he purchased the home. The house requires maintenance as well as new projects, and his goal is for the home to stand for hundreds of years.

Judy Delgado - Mills Act contract holder, described the condition of her home at the time of purchase and the work that has gone into rehabilitation as well as maintenance. She stated that the savings on Mills Act are appreciated and do not cover the cost of maintenance. Feels that nonrenewal is unfair treatment of contract holders given the value of individual investments in historic properties in terms of preservation, tourism, schools, community and other areas.

Dadane Lane - Mills Act contract holder, described the commitment to owning an older home and appreciation for the diversity of the homes in the neighborhood.

Bill Venturelli - Mills Act contract holder, stated that participation in Mills Act has helped to pay for the cost of restoration to the home, which had suffered deferred maintenance. He expressed concerned about destroying the community's reputation for historic preservation.

Dave Delgado - Mills Act contract holder, noted that lots of time and effort goes into maintaining and restoring historic homes and the pride that people take in their homes is noticeable. Maintenance of a historic home is a ten-year cycle.

Toni Haughey - Mills Act contract holder, described the history and accomplishments of historic preservation in Benicia since 1998 and her experience as a Realtor. She stated that canceling contracts is a step backwards and if contracts are cancelled, people should not be required to continue with work plans. The City budget is \$30 million, the financial commitment to Mills Act is \$35,000. Property value increases due to the program bring money to the city. HPRC is charged with protecting the City's historic resources. Stated that maintenance contracts are part of the program and some of the maintenance holders did their work before entering the program. Maintenance results in long-term preservation. There is almost no history of canceling Mills Act contracts statewide.

Jose Coelho - Mills Act contract holder, commented that work visible from the street does not reflect investments on the interior. Many of the contract holders are older and rely on maintenance contract to help pay for building systems and repairs in retirement. He is in favor of letting additional people into the program because it is a city of historic homes, but should not penalize those that have already joined.

Crystal DiStefano - Mills Act contract holder, discussed the condition of her home at the time of purchase and described the work that was done to restore it over time. She expressed gratitude for the Mills Act program to enable the work that has been done and commented on the deterioration of paint over a short period of time.

Jon Van Landschoot - Mills Act contract holder, described the efforts to establish the Mills Act in Benicia. The program represents the City's commitment to repairing the stock of its historic buildings. Feels insulted by the \$35,000 limitation in the context of the City's budget. No City has ever re-thought the program in the way proposed by staff. The money spent under the program goes into the community. The City is getting a good deal out of the Mills Act Program. Agrees that the program should have better guidelines about requirements for contracts.

Patrick Ward - Mills Act contract holder, stated that contracts guarantee preservation and provide control over continued maintenance. Staff's recommendation in the staff report is in conflict with General Plan to maintain historic character of Benicia, and 74% of cost of Mills Act is paid for by the state. He also described his expenses/direct contributions of approximately \$200,000 to the local economy for design and contracting work on the home as well as indirect benefits through local spending, increased property tax, and heritage tourism. He stated that the only logical choice for the Commission is to suggest increasing Mills Act contracts, not terminating them. Annual costs for maintenance far exceed annual savings. Maintenance is often the first thing to go when there is no money available to do so. The Mills Act is the one tool available to the HPRC to actively promote historic preservation. Curious to know about tax escalation upon nonrenewal.

Tom Carroll stated that consideration should be given to the effectiveness of program to promote the city. Benicia is differentiated by the historic downtown and Arsenal. He noted that the consultant expenditures to market the downtown far exceed the annual commitment from the City for the Mills Act program and the Mills Act program is a great bargain for the tax dollar.

Leann Taagepera - Mills Act contract holder, stated that she spoke with Office of Historic Preservation, Solano County Assessor and reviewed other communities' programs. She commented that owning a historic home is stressful and expensive and all repairs are custom and require specialists. She stated her appreciation to the Commission for allowing for extensive public comment adding that there is value in staff reaching out to the community before recommendations are made and she is unclear on what problem is being addressed by the staff report. She stated that a CLG that professes to support historic preservation should not cancel contracts. She recommended that the City not issue a notice of non-renewal to any contracts as there are serious financial ramifications to property owners in cost of home and planning projects. She thinks that this item should have been considered after the new Community Development Director starts next week and recommends increasing program or finding other ways to cut costs, such as inspecting every five years vs. every year.

Judy Delgado stated that participants entered into contracts willingly and have lived up to the obligations and requests that the City live up to its commitments.

Melani Arment, Mills Act contract holder, stated that she agrees with those who have spoken before her, non-renewal of contract that increases taxes will impact maintenance, realtors, prospective buyers and visitors to Benicia will complement her home, which has been preserved due to the Mills Act.

Jon Van Landschoot stated that if property owners cannot do maintenance work, it will be done by local contractors and go back into the local economy.

The public hearing was closed.

Commissioner Macenski acknowledged that staff is directed to look at the program and appreciates the analysis. He does not support a mechanism that would diminish or discourage preservation, but seeks a more effective mechanism to do that. He recommends that increasing exposure to the program or its benefits should be considered. For example, dispersing contracts more evenly across the district or tying new building permits to funding for additional Mills Act contracts (one for one or a ratio of new permits to Mills Act contracts).

Commissioner McKee commented that the \$35,000 does not seem to be the issue. He suggested improvements to establish criteria for work plans; being more responsive to shirking on maintenance; agrees with annual inspections to hold contract owners accountable; expanding allowable number of contracts but moving away from the fiscal threshold which is a moving target.

Commissioner Trumbly provided some personal history on her move to Benicia. She described the benefits of the programs, stated that non-renewal should not be pursued, and that the program should be expanded. She recommended criteria for houses that enter into the program and allowing maintenance-only after completion of a work program.

Chair Delgado commented that the program should be expanded to 50 contracts and disagrees with discontinuing or scaling back the program. He commented on the cost of this program pales in comparison to other public benefits such as recreation programs and recommended that the City should study the benefits of the program on the back end. He stated some of the new contracts for maintenance were granted to homes for which major work had already been completed.

Commissioner Macenski stated that he wants to see the problem be solved only once. If a threshold of 50 Mills Act Contracts is set, there should be a mechanism by which the program automatically expands.

Ms. Million summarized the Commissioners' feedback:

- Disperse among building types or through the districts.
- Building permits for new residences tied to expansion of the program (for example, 1 new home equals 1 new contract).
- Criteria for future work plans and more detail on work items to be completed.
- More enforcement on noncompliant contracts.
- Supports the annual inspections
- Expanding the program to 50 contracts or more. The Commission does not support non-renewal of contracts.
- Establishing a number of contracts vs. set monetary value
- \$35,000 is a small commitment in the context of the City's budget.
- Deeper dive into the benefits of the program.

#### **D. CLG GRANT APPLICATION - 2015**

Ms. Thorsen provided an overview and requested the Commission select or two Commissioner to help in the review of the CLG application.

Commissioners Trumbly and Macenski volunteered and they were supported by the Commission.

#### **VI. COMMUNICATIONS FROM STAFF**

Ms. Thorsen introduced Ben Welsh, intern for the Community Development Department.

Ms. Thorsen provided an update on the new Community Development Director, Christina Ratcliffe, who will start on Monday, March 30.

Ms. Million reminded the Commission that the Form 700 is due by March 31.

#### **VII. COMMUNICATIONS FROM COMMISSIONERS**

Commissioner Trumbly announced that April 14 starts the Archeology Conference in San Francisco which also focuses on historic preservation. She encourages people to attend.

Commissioner Haughey noted there was a Mills Act webinar from OHP on Wednesday March 26.

Commissioners von Studnitz requested information on funding for the CPF Conference.

Commissioner Van Landschoot requested that staff schedule follow-up discussion about Vallejo's sub-committee process and plaque program.

**VIII. ELECTION OF OFFICERS**

Ms. Million noted that staff was recommending a change to have the new officer's start at the next meeting. The Commission agreed.

Commissioner Haughey motioned to nominate Commissioner Van Landschoot as Chair and Commissioner Trumbly as Vice-Chair.

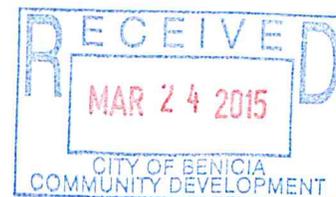
Ayes: Commissioners Haughey, Macenski, McKee, Trumbly, Van Landschoot, von Studnitz and Chair Delgado

**IX. ADJOURNMENT**

Chair Delgado adjourned the meeting at 10:02 p.m.



David H. Hofheimer  
121 West J Street  
Benicia, CA 94510  
(707)-745-9700



3/24/15

ATTN: Benicia City Council and Commissioners  
City of Benicia, CA  
250 East L St.  
Benicia, CA 94510

**RE: Mills Act Contract Concerns**

Dear Council members and Commissioners,

Being in an existing Mills Act contract involving the City of Benicia, I have the following preferences and concerns:

- 1) I strongly prefer to keep my existing Mills Act contract in force and unchanged as it is written, and that it not be terminated. Termination would have the effect of property tax returning to what it would ordinarily would be when I will be of retirement age. I will still most likely be paying a mortgage payment with higher taxes on top of that, at a time when income could be reduced from current levels.
- 2) I recommend that the city increase the yearly amount of tax money it will not receive based on Mills Act contracts, even if the city chooses to increase the number of Mills Act contracts signed with new property owners into the future. The greater beauty and character bestowed upon the city due to the preservation and/or improvement of properties within Benicia's historical district is worth considerably more than the associated loss of property tax revenue. This beauty and character in turn should and probably has resulted in increased revenues to the city from tourists and other visitors.
- 3) No change to any terms of existing Mills Act contracts should occur, as they would most probably violate the due process and contracts clauses of the United States Constitution and any similar clauses with the California Constitution.
- 4) If existing Mills Act contracts are terminated by the City of Benicia, the current and at least immediate subsequent property owners should be able to apply for new Mills Act contracts with
  - a. NO FEE of any kind, as any fees were paid in conjunction with the original application;
  - b. NO requirement of any new construction, as any requirements with the original Mills Act contracts for most property owners have already been completed and approved by the city (mine included). A key requirement of the original Mills Act contract was that the property owner had to spend at least as much as would be saved over the initial 10 years of the contract for the purpose of preserving and/or improving the given property. Since this requirement has already been completed for most Mills Act property owners, there would be no new construction to be performed. Having a requirement of there being new construction would be unfair to these property owners since there would be none do be done which would eliminate the possibility of obtaining a new Mills Act contract.

- c. Reduced property taxed being based on the original Mills Act contract for the given property. New Mills Act contracts based on future tax years could have higher amounts for property tax than those made at a considerably earlier point in time.

Thank you for attention to these matters and concerns.

Sincerely,

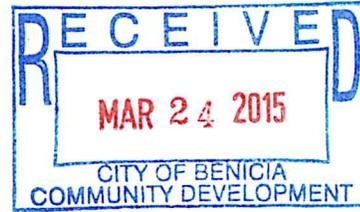
A handwritten signature in black ink, appearing to read "David H. Hofheimer", with a large, stylized flourish extending upwards and to the right.

David H. Hofheimer

TO: The Historic Preservation Review Commission

DATE: March 26, 2013

FROM: Donnell Rubay



### **The Mills Act in Benicia--Revised**

Several years ago, when Sally Field won her second Best Actress Oscar, she gave an acceptance speech in which she said "You like me! You really, really like me!"

If you are an historic property owner in Benicia, however, the message you get—loud and clear—from the City is: "We hate you. We really, really, hate you."

For years, as faithfully recorded in meeting minutes and in local newspapers, the City has resisted fairly applying the laws it imposed on historic property owners. One bright spot, one sign of affection and caring, however—was the creation of the Mills Act program.

#### **What Staff is asking you to do today is, essentially, to end the Mills Act.**

Immediately, the City will begin terminating contracts, which means tax savings will begin being reduced until all current Mills Act contracts have expired in 2030. Then, and not until then, will the City take on new Mills Act contracts.

Further, when these new contracts are entered into they will be cancelled in the first year. This means that the property owner will experience the full Mills Act tax savings for *only one year!*

**In addition, though the property owner's tax savings is decreasing—his obligations, which are subject to stiff penalties if he fails to meet them—remain.**

Also, it seems that Staff has forgotten why the City created a Mills Act program in the first place. Owning an historic home in Benicia is an expensive undertaking. These homes are under legal restrictions and cannot be altered unless proposed alterations comply with certain regulations. Specifically, the alterations must comply with Benicia's Historic Plan and the Secretary of the Interior's Standards for Rehabilitation so they can be exempted from the need to create an Environmental Impact Report, under the California Environmental Quality Act.

This means that when wooden windows need to be replaced they cannot be replaced with vinyl—factory made—windows. In fact, it's very likely they must be made to order. In addition, if the house comes without a garage, a second bathroom, a second story or all three (as is the case with my house)—it may not be possible to add these things within the restrictions of the Historic Plan. Further, each request

for alteration requires expensive fees, the preparation of documents and the attendance at hearings for City approval.

Next to the considerable restrictions and expenses associated with owning an historic home, a small item in the “benefits” column has been the Mills Act. Now why should the City care if there is any counter-balance to the negatives of owning an historic house? Because if these homes are too expensive to maintain, property owners will not want to own them causing the value of the homes to decline. Declining property values in Benicia’s historic downtown can, in turn, impact the property values of the entire City.

**This brings us to the primary reason for the City to have a Mills Act program: the fact that the biggest beneficiary of the program is the City.** For example, the City cares enough about history to give the Benicia Historical Museum—each year with no questions asked—\$50,000. The Mills Act Program currently costs the City per year roughly only \$35,000—a smaller amount than that given to the Museum and a fraction of the City’s more than thirty million dollar budget.

In return for this small expense, the City gets the benefit of thirty-seven property owners, in the heart of Benicia’s downtown, spending tens of thousands of dollars on maintenance and repair of their properties. These properties help to create the “Living Museum” of an historic town center, that is Benicia’s downtown. Such a downtown encourages visitors to the downtown.

In addition to yielding tourist dollars, an attractive downtown leads to increased property values for all of Benicia.

Some other interesting City expenditures: It spends \$50,000 per year on Jack Wolf and Associates, primarily to promote the downtown. Also it spends \$100,000 per year on Main Street, primarily to put on the Fourth of July and Christmas Parades.

Thus the City is spending \$150,000 to promote and showcase its historic downtown, yet wants to cut the \$35,000 that allows the City to leverage tens of thousands of homeowner dollars, all going to making the downtown worth showcasing.

Now, it may be that the City believes that all in the historic district are such lovers of history that they will carefully maintain their homes even without a Mills Act. This, however, is not the case. The house below, for example, **is in the heart of Benicia’s downtown historic area and only a few lots from First Street.** This house does not have a Mills Act maintenance contract:



Also, this property is an example of what can—very easily—happen once the City's Mills Act contracts begin to expire. Currently, it costs roughly \$15,000 to \$20,000 to paint a smallish historic area home. This amount will only be higher in ten years when the first contracts expire completely. Currently, the City can threaten stiff Mills Act fines, which will yield the City either a portion of the fines or action—that

of the homeowner painting the house, and creating an asset in the downtown. However, once contracts have expired—there may no longer be a desire to paint the house anytime soon.

And, of course, painting is but a small cost of historic home upkeep. With older homes there is often needs for window, door, roof, and porch repair, sidewalk, driveway, retaining wall and crumbling chimney problems, as well as problems with collapsed walls and foundational issues. Not to mention decaying water and sewer pipes, old gas lines and electrical wiring, as well as wood-burning fireplaces needing to be replaced.

Here's the house across the street from the above house, even closer to First Street and also without a Mills Act contract:



**FOR SALE!**  
**Fixer Upper Special**

Circa: 1880  
 Greek Revival w/  
 Queen Anne Details  
 Seller asking only \$449,000!

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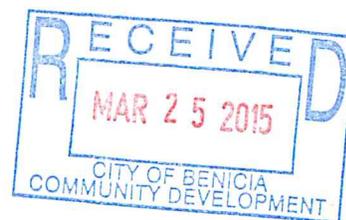
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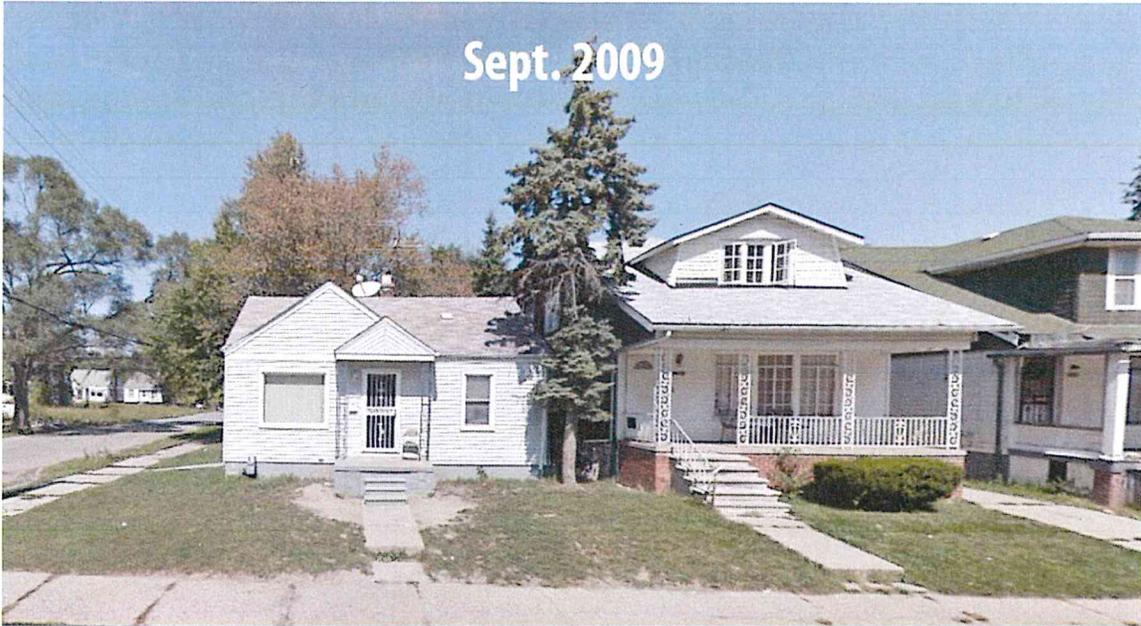
I should note—no attempt has been made to examine all the older homes in Benicia looking for a lack of maintenance. The above two houses just happen to be on my street.

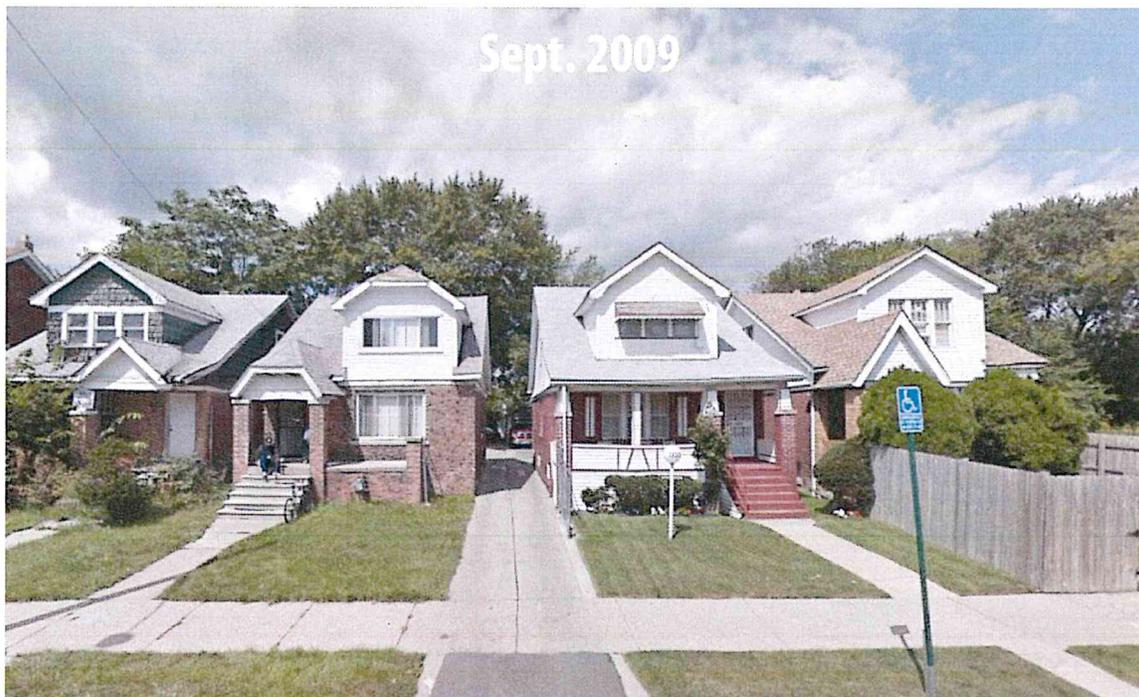
As shown by the “For Sale” banner in the above picture, lack of maintenance at the above home has contributed to the Seller asking \$449,000 for this house. However, a house of the **same size and from the same era**, two doors down, which has been well-maintained and has the Mills Act, sold this past December for \$733,000 (see [www.Zillow.com](http://www.Zillow.com).) The second house does have some extras, like a small mother-in-law unit in the back and the use of two half-garages shared with neighboring properties. In this single situation the Mills Act house is almost \$300,000 more valuable than the house without the Act, however. And even if the price difference between the two homes was but \$100,000—similar contributions to Benicia’s property values, from each of its thirty-seven Mills Act properties, yields **millions of dollars in increased Benicia property values**.

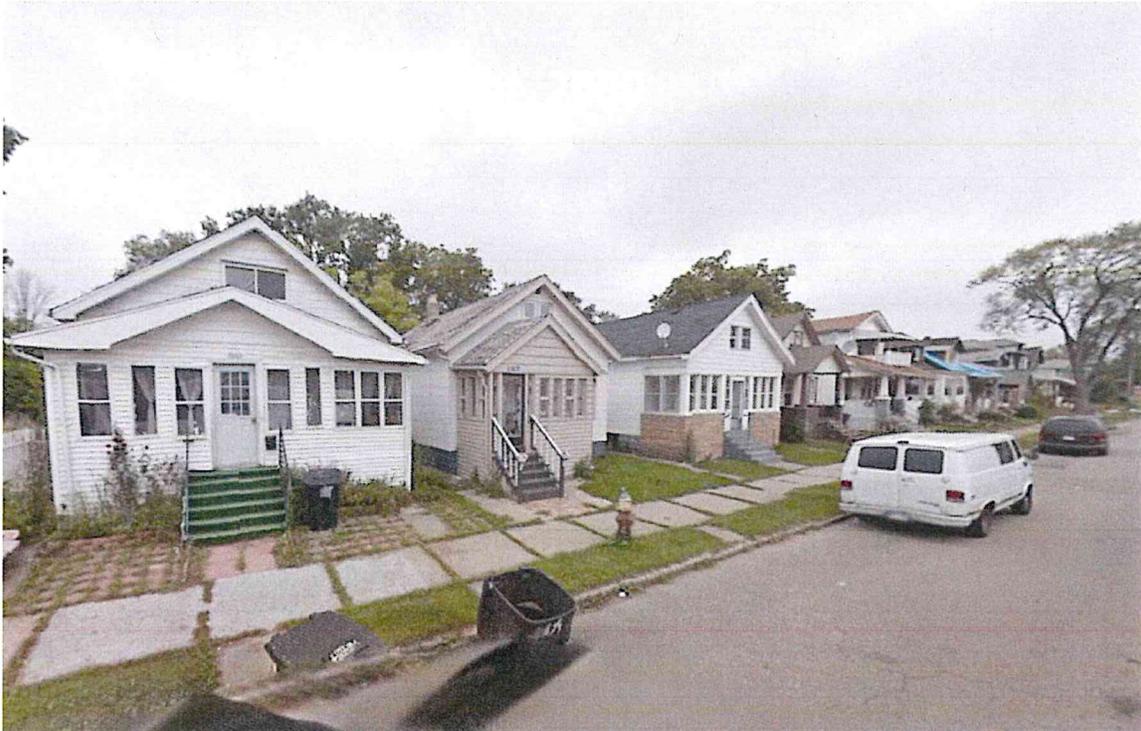
**The natural direction of older neighborhoods is to decline.** For more on the importance of home maintenance to a surrounding area, below are some pictures from areas around Detroit, a city that does not have the Mills Act. The decline of these homes and neighborhoods took only four years:



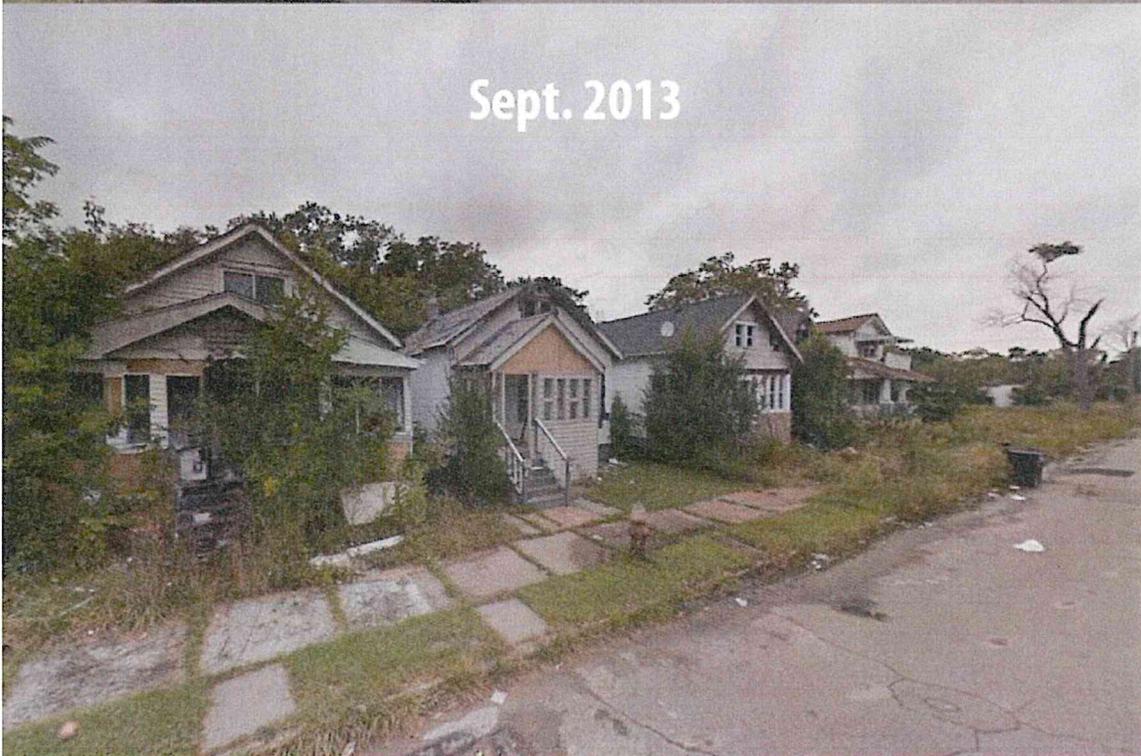








Sept. 2013



Source: <http://motorcitymuckraker.com/2014/06/06/up-close-8-most-abandoned-neighborhoods-in-detroit/>

One more thought: When the City entered into each Mills Act contract, it represented that it was supportive of historic preservation and valued the home owner's efforts to enhance the city asset of Benicia's historic downtown. Therefore, if the City does eliminate the Mills Act, it may save \$35,000 per year, and in the City's world—where money appears to be all—that may be all that matters. The City, however, will have lost something some may view as more valuable even than money—the trust and respect of its citizens.

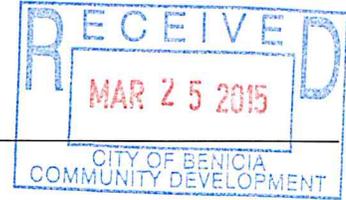
To conclude:

1. The city is, in effect, canceling its Mills Act Program;
2. If contracts are cancelled Mills Act property owners will remain bound by the terms of their contracts for ten years, though their tax benefits will begin to decline, immediately;
3. The City is the primary beneficiary of the Mills Act Program;
4. Without the Mills Act, the City will lack the power given it by Mills Act contracts, to prevent the deterioration of historic homes in its downtown area, and therefore the deterioration of the downtown itself.
5. The lack of maintenance of an historic home has caused it to be worth almost \$300,000 *less* than a neighboring Mills Act house of the same age and size.
6. Homes, and neighborhoods, can deteriorate—significantly—in as little as four years.
7. Benicia entered into the Mills Act contracts while representing that it valued the preservation efforts of historic property owners. Cancelling the contracts puts the lie to that representation, putting in jeopardy the trust and respect of all its citizens.

## MEMORANDUM

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**DATE:** March 25, 2015  
**TO:** Historic Preservation Review Commission  
**REGARDING:** Agenda Item V.C. - March 26, 2015 - Status of Mills Act Program  
**FROM:** Bob Berman  
250 West K Street  
Benicia, CA 94510  
bob@nicholsberman.com



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**MESSAGE:**

I find it somewhat odd that the City of Benicia city council and/ or staff seem intent on making changes to the City's Mills Act program that will result, in my opinion, in a scaling back in the extent and effectiveness of the program.

The City staff report does discuss some of the benefits that accrue to the City through the implementation of the Mills Act program. Greater importance should, however, be placed on the importance of preserving Benicia's built heritage. The history of Benicia (including the maintenance of Benicia's historic homes) truly provides the most important element of so many of the various efforts that are undertaken to promote and "sell" Benicia to the public. Let's make efforts to expand the effectiveness of the program.

After a review of the staff report and recommendations I offer the following recommendations to the commission.

1. Disregard the fixed monetary cap and expand the maximum number of Mills Act contracts. I would recommend that there be no limit on the number of contracts.
2. Establish a maximum number of years for all contracts - I recommend 15 years. Begin to phase out those existing contracts so they do not exceed 15 years.
3. Reconsider the issue of rehabilitation versus maintenance-only contracts. The focus should be on rehabilitation contracts. If maintenance-only contracts continue they should include specific yearly maintenance requirements that can be monitored for each house.

Thank you

I have been an advocate for Historic Preservation in Benicia since 1998. At that time there was no Historic Commission and the Historic Conservation Plan was not being adhered to. At the first preservation conference I went to (I went on my own to learn) members of other communities expressed shock that Benicia had no commission. I was surprised how aware they were of our Historic Assets.

Since that time we have had an advisory commission, then an actual bona fide commission, a new inventory completed and a Historic Context written and of course the 37 Mills Act contracts. THE COMMANDING OFFICER'S QUARTERS HAS BEEN RESTORED. The von Pfister is applying for the National Register. All of this done in the interest of celebrating and appreciating what makes Benicia a special place in the Bay Area. Our reputation is about downtown and our history which encompasses our buildings and Historic Homes. We are home to California's earliest State Capitol Building and the historic Fischer-Hanlon House which bring visitors. If you haven't taken a tour lately you should.

People do not come here to traverse Rose Drive or stroll through Southampton Shopping center or tour the Valero Facility.

Each year the Historic society has a very successful house tour. People come from all over to view the homes. A great many of the homes with Mills Act contracts have participated in these tours sometimes more than once.

This is **only one** way to evaluate the benefit to the community in having a restored district.

As a realtor I have a list of people wanting to purchase homes downtown, I'm sure every realtor has a list. A recent Mills Act Home went into escrow 4 days after being listed and sold for \$20,000 over asking price. Another Mills Act property recently sold for \$733000 while two doors down from a house with almost the same square footage but in **need of repair** is in escrow listed at \$449,000.

This agenda item about sustaining the Mills Act and suggestions to cancel contracts of over 30 of Benicia's historic homes is a step backward which not only will impact the homeowners but the town as well. I believe staff was asked for the status of the Mills Act by the City council not suggestions on reorganizing it and eliminating it.



## POINTS TO CONSIDER:

If the idea is to cancel contracts than those with work plans should not have to continue their work plans.

The city budget is \$30,000,000. We are talking about \$35,000 for contracts which includes staff time. Rather than this subject being agendized it should have been a workshop. The table you are looking at is not current. Every Mills act participant has had their taxes raised. In fact the recession is over and all property value has increased bring more money to the city.

The HPRC 's charge is to protect the Historic assets of Benicia. **Description:** The purpose of the Commission is to identify, register, designate, preserve, protect, enhance and perpetuate those historic structures, districts and neighborhoods which contribute to the cultural and aesthetic heritage of Benicia.

The City of Benicia's Mills Act Program states under **Exhibit A- Type and Extent of Proposed Work** that the applicant will propose a schedule of proposed preservation, **maintenance** and/or improvements to the building to protect its historical value.

Also see California Government Code 50281.

Staff seems to indicate that maintenance contracts do not have the same value as those with work plans. Let's remember that people on maintenance contracts have done their major work and are obligated to continue upkeep as are future owners.

What that results in is **long term preservation**.

Staff states that one reason to eliminate current Mills Act contracts is to allow for homes not designated as historic to receive the Mills Act and improve their properties. **This is not in compliance with state law. The law provides that a Mills Act can only be awarded to a designated structure.** You cannot give benefits to a property that is in disarray and not designated.

There are over 87 cities in California participating in the Mills Act.  
Only one contract has ever been cancelled and that was due to a breach  
of contract on the part of the homeowner.

Does the city of Benicia which is known for its Historic value really want  
to be setting this kind of example. Not only is it embarrassing but it is a  
slap in the face to homeowners and all of us who have worked to  
communicate the value of this town to the rest of the State .

*Autouca M. Douglas*  
*March 26, 2015*

## Amy Million

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**From:** Leann Taagepera <leannst@sbcglobal.net>  
**Sent:** Wednesday, March 25, 2015 6:37 PM  
**To:** Amy Million  
**Subject:** Memo for HPRC for 3 26 15 Meeting



Hi Amy,

Thank you for speaking to me on the phone today. Please pass this along to the HPRC. I am sorry I do not have more time to organize this memo, but my time is limited. I have already spent time researching the issues of the cancellation/non-renewal of Mills Acts and spoken with the Office of Historic Preservation and the Solano County Tax Assessor to better understand the situation and financial implications of staff's recommendations.

Thank you,

Leann Taagepera

Hello HPRC Commissioners,

As my time is constrained, I am providing you brief comments on the proposal to issue non-renewal contracts to all 37 Mills Act contract holders. This recommendation by staff to affect all contract holders is apparently unprecedented by any other municipality as OHP staff indicates that they have never heard of such an action. It certainly came as a surprise to Mills Act contract historic property owners.

**First of all, I ask that the City turn this into a series of workshops.** I also see value in presenting the issue to the HPRC and public and asking for their suggestions and ideas *prior* to staff coming up with their own recommendation. There can be a lot of value in talking to the public and gaining expertise from various stakeholders. I don't think staff should discount the importance of involving the public and having more of a collaborative effort to come up with solutions. At least the public would feel that they have been heard and their ideas considered. From speaking with Solano County Tax Assessor staff, I realize that this issue is complicated and would have tax ramifications the very next year after a non-renewal was issued. He stated that it could be beneficial for their staff to hold a workshop in Benicia to inform property owners about the financial effects of staff's recommendations.

The workshops should be held when they do not conflict with a major event for the parents of Benicia high school students, after the Community Development Director starts work at the City. This hearing conflicts with the high school's once-a-year Open House.

**I request that the City engage in a real dialog with the public, without limits on the amount of time that people can speak, and with an opportunity for questions and answers, in the spirit of both Benicia's Open Government Ordinance and the requirements of the CLG program.**

In response to Council's direction to "provide a report on the status of the program, along with an assessment of the benefits of the City," staff is recommending that all 37 contracts be cancelled, starting with non-renewal notices being sent out this year. I see no connection between the request of the City Council and the recommendation by staff. The public and City staff should have the opportunity to discuss what the problem is and what possible solutions might be. At this point, the staff report does not identify what problem would be solved by cancelling all of the contracts. Again, I request that this hearing be turned into a workshop.

If the problem is that the City has suddenly realized that it is reaching the identified cap to the cost of the program, suggestions to consider would be having staff discontinue unnecessarily personally inspecting every property every year, as the Mills Act legislation requires inspection once every five years. Why don't inspections take place at the end of a work plan project instead of in years in which there is no project going on? Another suggestion would be to charge a reasonable fee to cover the inspections. Other jurisdictions do this.

I also think it would be consistent with Benicia's Open Government Ordinance if the public notice postcard and agenda more accurately and specifically describe that staff is recommending that the City issue non-renewal notices for all Mills Act contracts this year, after which the contract cancellation process would begin. Benicia's Open Government Ordinance states that "It is the goal of this title to make it easier for people to access city government so that they may be more informed about what their city is doing and so that they may be involved in a more meaningful and knowledgeable way." The recommendation to cancel the contracts is not found in the notice or in the agenda.

As a certified CLG, Benicia is required to "IV Provide for adequate public participation in the local historic preservation program: A - The CLG shall provide opportunities for public participation in all responsibilities delegated to the CLG, in accordance with appropriate regulations, standards, and guidelines"

(<http://ohp.parks.ca.gov/pages/1072/files/clgrequirements.pdf>.) Not involving the public in staff's creation of recommendations is not consistent with this public participation requirement of CLGs.

Mills Act contract holders have a ten-year contract with the City. I am not in favor of issuing notices of non-renewal for anyone, but certainly not for those whose contract hasn't even expired yet.

I also believe that contract holders with projects that would continue to take place after their initial contract period is over, should be allowed to reapply as soon as they are issued a non-renewal (if that situation happens) to allow a new Work Plan to be written to include the items that could not be included in the Work Plan due to time and financial constraints.

Staff should to consider that they are proposing taking away money from people and this is very real to people when they have already obligated their finances and made budget assumptions based on having the Mills Act. So, this item is hitting on historic preservation and people's personal finances, with serious ramifications. I think that the perspective of staff and that of the public are vastly different here and that staff should try to think of the lay-person, member of the community that hasn't gone to the Council and HPRC meetings, and hasn't kept up with issues and has no idea that there could be any issue with the Mills Act. Even then, the public would have had to read between the lines to understand that when staff was going to provide a description of the benefits of the Mills Act and the status of the program to Council, to staff this meant a recommendation to lower the cost by issuing non-renewal notices which lead to the cancellation of contracts. The public didn't think that staff would be proposing these solutions to the problem they didn't know existed.

Further, I read that a new Community Development Director was hired and will start on Monday, March 30. I think that such an important issue should wait for the new head of the department to be present. I do not understand the sudden rush to introduce these issues and move them forward quickly.

The idea of staff suddenly recommending that the City issue notices of non-renewal to historic property owners, none of which have breached their contracts, is really shocking and completely unheard of in California. Benicia, one of the most historic cities in California, is apparently wanting to lead the way in the termination of the program that OHP calls "the single most important economic incentive program in California for the restoration and preservation of qualified historic buildings by private property owners."

Thank you for your thoughtful response to this difficult and complicated situation.

Sincerely,

Leann Taagepera

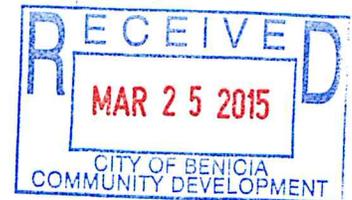
# 12 Economic Benefits of Historic Preservation

## 1 Rehab Costs Are Roughly the Same as Building New

- If no demolition is required, a major rehabilitation will cost between 12% less and 9% more than new construction.
- If constructing a new building requires demolition of a significant existing structure, the cost savings from rehabilitation will be between 3% and 16%.
- Life spans for new buildings are often 30-40 years vs. more than 100 years for most historic structures.

## 2 Creates Jobs

- In a typical rehabilitation project, 60% to 70% of the total cost is labor.
- Laborers are almost always hired locally. They, in turn, spend their money locally, supporting the local economy.
- A California study found that rehabilitation resulted in 10% greater wholesale purchases and 43% greater retail purchases from suppliers than the same amount spent on new construction activity.
- \$1M spent on building rehabilitation creates:
  - 12 more jobs than \$1M spent on manufacturing in Michigan
  - 20 more jobs than \$1M spent mining coal in West Virginia
  - 29 more jobs than \$1M spend pumping oil in Oklahoma
  - 22 more jobs than \$1M spend cutting timber in Oregon



## 3 Increases Property Values

- In a study of National Register districts in Philadelphia, homes in historic districts received a sales price premium of 131% over comparable properties in undesignated neighborhoods.
- A study of nine Texas cities found that local designation increased property values from between 5% and 20%.

## 4 Conserves Resources

- Approximately 25% of the material being added to the landfills is demolition and construction waste.
- Demolishing one typical two story commercial building on Main Street eliminates all of the environmental benefits of recycling 1,344,000 aluminum cans.
- Historic buildings contain significant *embodied energy*. That's the amount of energy associated with extracting, processing, manufacturing, transporting and assembling building materials.

## 5 Uses Existing Public Investments

- Every community has significant investments in public infrastructure, including roads, sewers, parks and schools.
- Historic preservation directs development to places where infrastructure is already in place.
- Rehabbing historic schools instead of building new saves money for education and often creates a better learning environment.

## 6 Supports Small Business

- 75% of all net new jobs in the U.S. are created by small businesses.
- Older buildings make ideal locations for small, independent businesses and for start-ups.
- 60 cents of every dollar spent at independent businesses remains in the local economy vs. less than 10 cents at national discounters.

## 7 Revitalizes Main Street

Since 1980, local Main Street programs have:

- Stimulated **\$48.9 billion** in total private and public investment.
- Created **94,176** net new businesses.
- Generated **417,919** net new jobs.
- Generated a reinvestment ratio of **\$27 to \$1** per community.\*

\* The average number of dollars generated in each community for every dollar used to operate the local Main Street Program.

## 8 Attracts Investment

*"In economics, it is the differentiated product that commands a high premium.*

*If in the long run we want to attract capital, to attract investment in our communities, we must differentiate them from anywhere else."*

-Donovan Rypkema

## 9 Attracts Visitors

- **78%** of U.S. leisure travelers (118 million adults) participate in cultural and/or heritage activities when traveling.
- Cultural heritage travelers spend, on average, **\$994** per trip compared to **\$611** for all U.S. travelers.
- Cultural/heritage travelers took an average of **5** trips in 2008-2009 compared with slightly less than **4** trips for non-cultural/heritage travelers.

## 10 Prevents Sprawl

- Saving historic buildings and keeping our towns and cities healthy reduces the pressure to **pave the countryside**.
- In 1970, the state of Maine spent **\$8.7M** to bus students to and from school. By 1995, with fewer students enrolled, the cost had risen to **\$54M**.
- When we reinvest in older neighborhoods, we are reinvesting in **inherently sustainable communities** that are generally dense, walkable, transit-accessible, and feature mixed-uses.

## 11 Creates Affordable Housing

- To replace the current housing units occupied by lower income residents would cost **\$335 billion**.
- In 2005, **1,101** units of affordable housing were created in historic buildings using the federal rehabilitation tax credits.
- Historic structures are often located close to services and public transportation, reducing transportation costs for residents.

## 12 Is Good Economic Development

- In Nebraska, historic preservation generates **\$170 million per year**:
  - Between 2001 and 2005, an estimated total of **\$1.5 billion** was spent on rehabilitation of buildings.
  - **Twenty-two jobs** are created for every **\$1M** spent on historic preservation, which supported **3,869 jobs** in the state in 2009.
  - Historic designation of neighborhoods and downtowns enhances and protects property values. Of the districts studied, property values as a whole showed increases in historic districts.

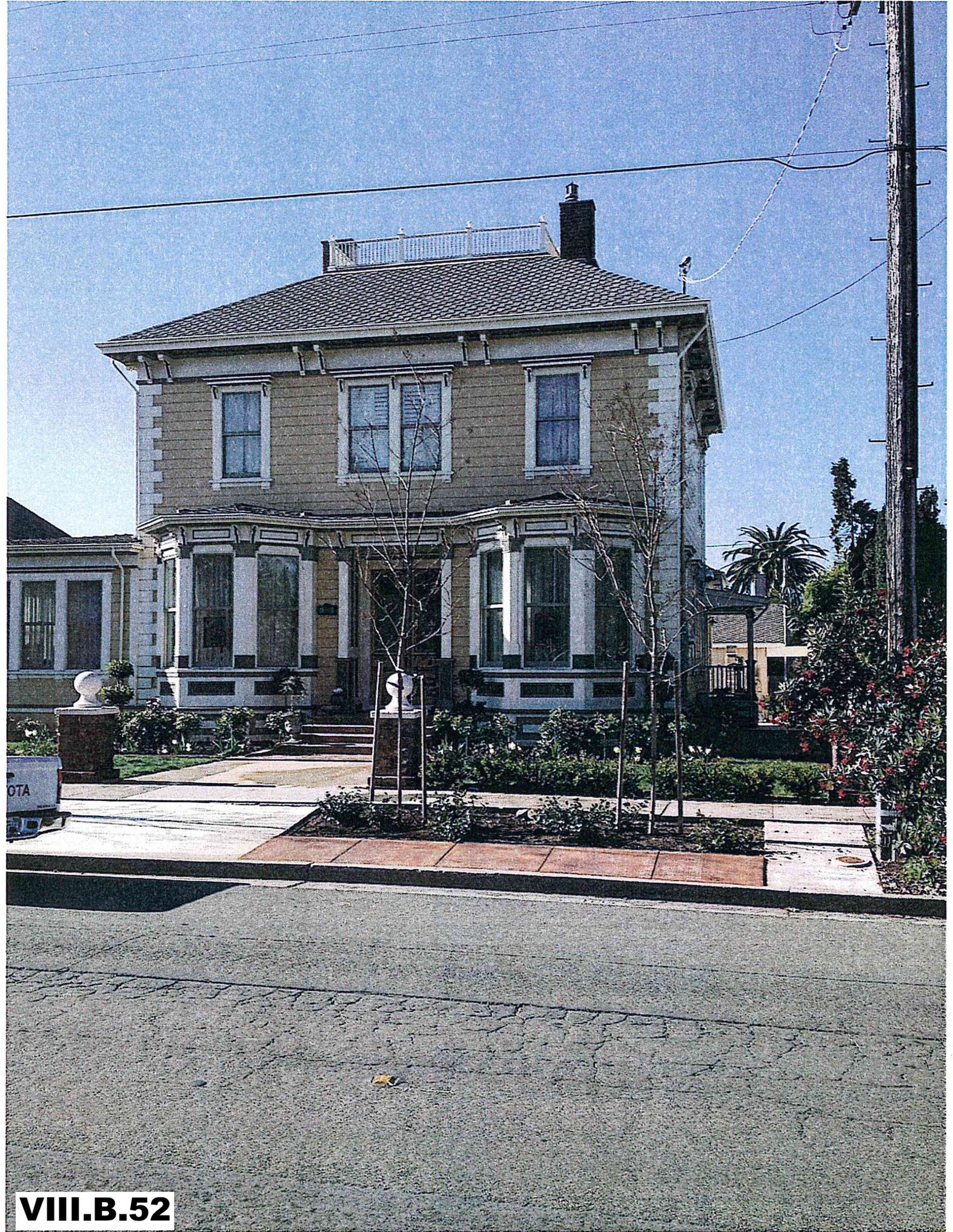
### References

- Lahr, Michael L., David Listokin, et al. *Economic Impacts for Historic Preservation in Nebraska*. New Brunswick, New Jersey: Center for Urban Policy Research, Rutgers, The State University of New Jersey, October 2007.
- Mandala Research, LLC. "The Cultural and Heritage Travelers Study." 2009.
- Rypkema, Donovan D. *The Economics of Historic Preservation: A Community Leader's Guide*. Washington, D.C.: National Trust for Historic Preservation, 1994.

**VIII.B.50** Economics, Sustainability, and Historic Preservation." Speech presented at the National Preservation Conference, Oregon, October 1, 2005.



**VIII.B.51**



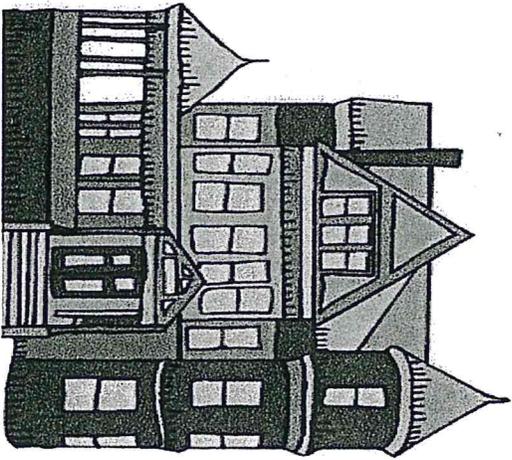
VIII.B.52

# Preservation Awards 2006

*Presented to:*

Patrick Ward & Patricia Dillon  
For

230 West K Street



Description:

- Restored Home to period — Huge undertaking perfectly executed!
- Complete restoration of facade.
- They have taken a '70's monstrosity and returned it to its Victorian splendor.

*Shelley McCord*  
Benicia Main Street Design Committee

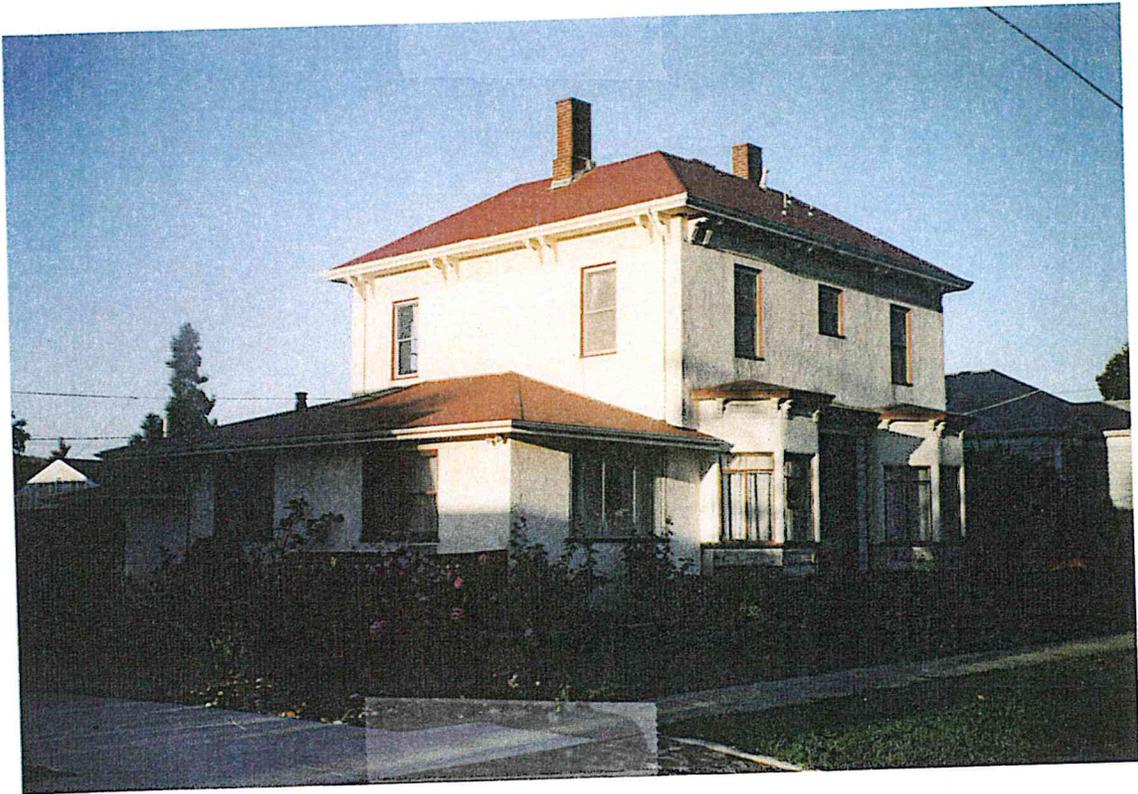
*Janice J. Silvers*  
Historical Society

*Loni Halsey*  
Historical Preservation Commission

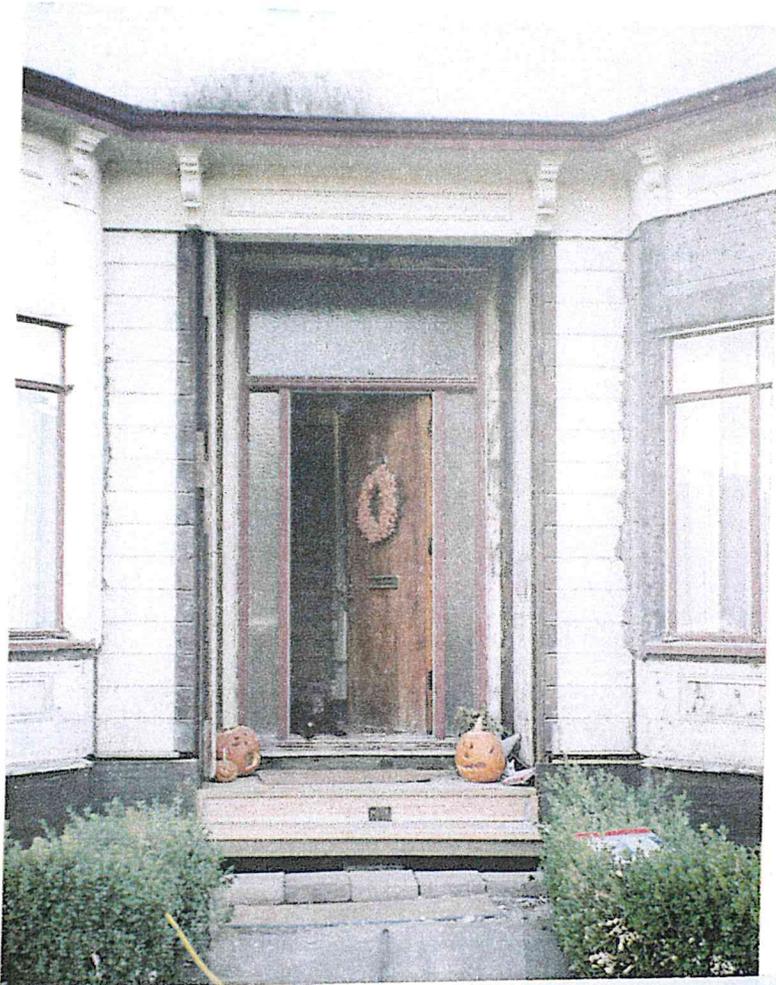


**VIII.B.54**





**VIII.B.56**

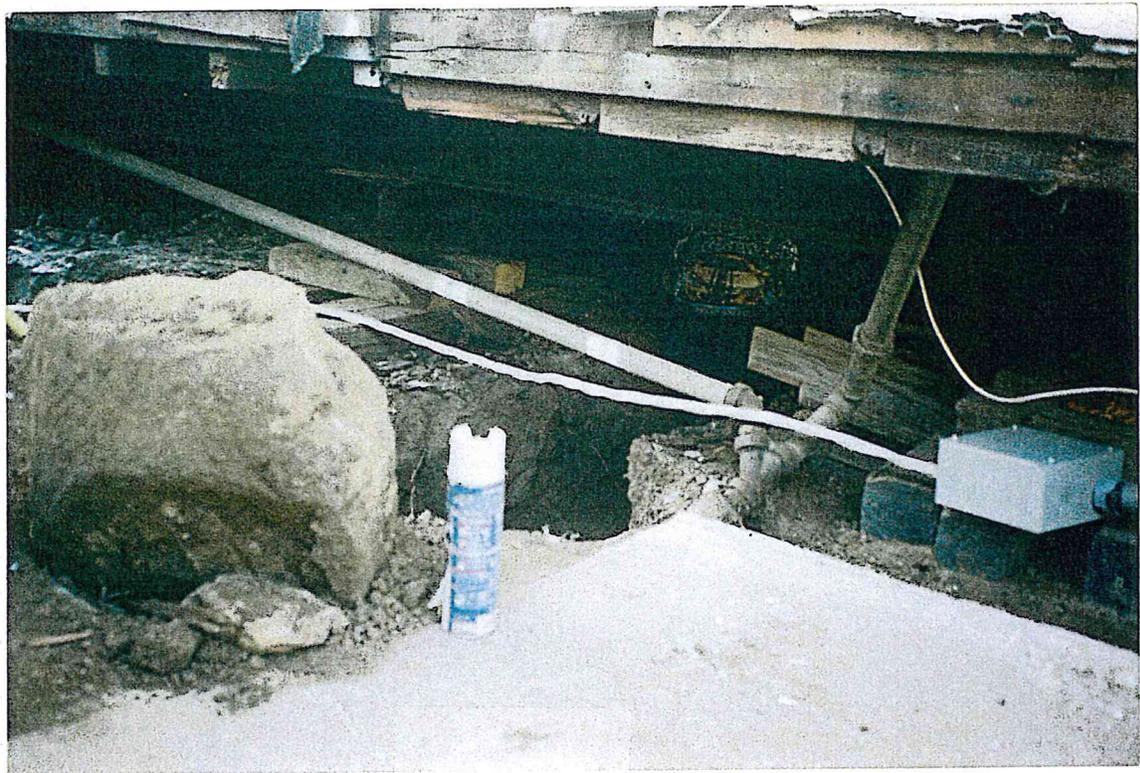
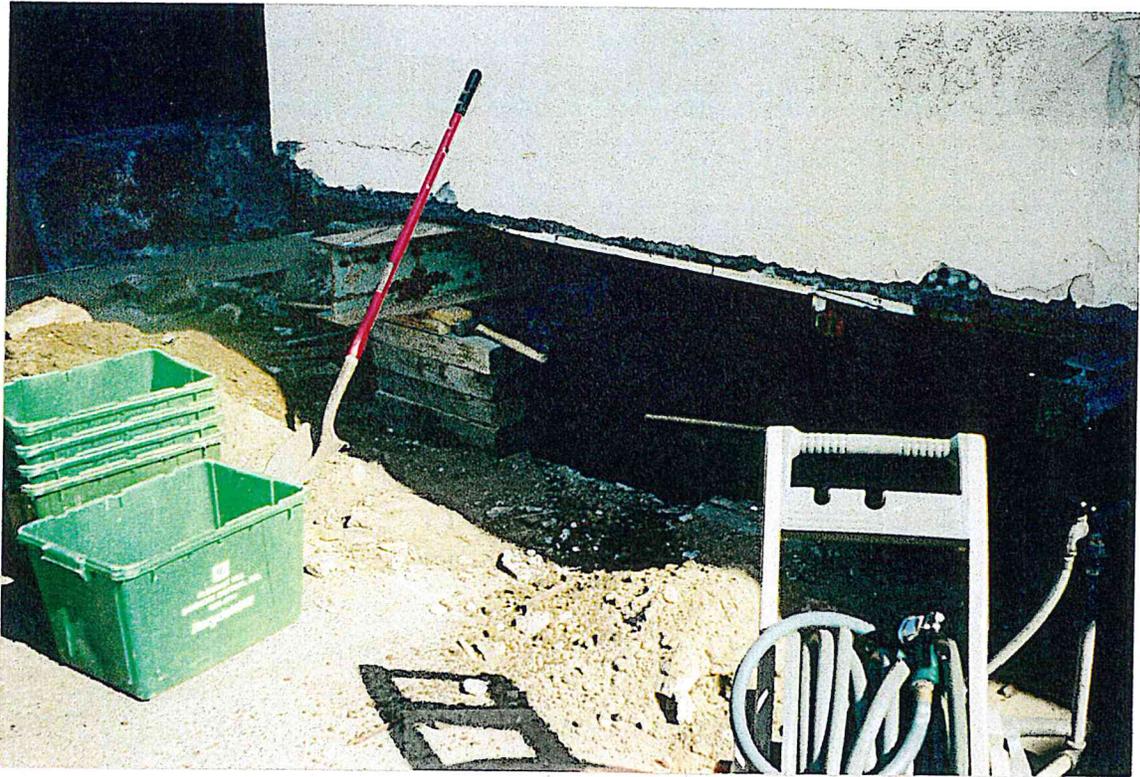


**VIII.B.57**



**VIII.B.58**





**VIII.B.60**





**VIII.B.62**



Community Development Department  
**MEMORANDUM**

**Date:** April 15, 2015  
**To:** Christina Ratcliffe, AICP, Community Development Director  
**From:** Suzanne Thorsen, Associate Planner  
**Re:** Mills Act Contract Cost Estimates for HPRC Review in March, 2015

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On March 26, 2015 the Historic Preservation Review Commission (HPRC) reviewed a report on the status of the Mills Act Program. The Program Costs spreadsheet, which was included in the HPRC packet, included the most recent figures according to the staff from the County Assessor in email correspondence at the beginning of the calendar year. Based upon staff's understanding at the time that the packet was distributed, new assessment numbers (and therefore, update program costs) would not be available until June, 2015.

During the week of March 23, after the HPRC packet had been distributed, staff attended a meeting at the office of the County Assessor to gain a better understanding of assessment methods for the program, particularly relating to non-renewed contracts. In the course of that meeting, the Program Costs spreadsheet was discussed and staff learned that the County had updated assessment data as of June, 2014 which were not reflected in the spreadsheet that had been distributed to the HPRC. Because City staff did not specifically request updated figures for Fiscal Year 14-15 (which runs from June to May), the County staff misunderstood the request to update the spreadsheet.

The Program Costs spreadsheet included in the HPRC packet was based upon Fiscal Year 13-14. It should have been updated to Fiscal Year 14-15 prior to distribution. Once this error was discovered, staff from the City and County worked together to update the information and it was provided to the HPRC and the public in hard copy at the meeting on March 26.

To avoid future error, the fiscal year will be noted at the top of the Program Costs spreadsheet. Therefore, the most accurate accounting of Program Costs will be found on the spreadsheet labeled "City of Benicia Mills Act Program Costs FY14-15".



# City of Benicia Mills Act Program Costs FY14-15

The Mills Act contracts will reduce the property tax paid by these properties. The City of Benicia receives approximately 26% of the property taxes collected on parcels in the City.

PROPERTY ADDRESS	DATE ENTERED INTO	PROPERTY TAX WITHOUT CONTRACT (1%)	CITY PROPERTY TAX REVENUE OF REASSESSED VALUE (26% OF PROPERTY TAX)	PROPERTY TAX WITHOUT CONTRACT (1%)	CITY PROPERTY TAX REVENUE OF REASSESSED VALUE (26% OF PROPERTY TAX)	PROPERTY TAX WITHOUT CONTRACT (1%)	CITY PROPERTY TAX REVENUE OF REASSESSED VALUE (26% OF PROPERTY TAX)	PROPERTY TAX WITH CONTRACT (1%)	CITY PROPERTY TAX REVENUE OF REASSESSED VALUE (26% OF PROPERTY TAX)	ESTIMATED TAX SAVINGS*	LOSS OF CITY REVENUE*
245 West K Street** - M	11/07/80	\$1,045,118	\$2,717.31	\$795,000	\$2,067	\$7,950	\$2,067	\$1,570.13	\$408.23	\$6,380	\$1,659
235 East L Street** - M	06/11/90	\$679,181	\$1,765.87	\$700,000	\$1,820	\$7,000	\$1,820	\$2,368	\$621	\$4,404	\$1,145
230 West K Street - M	10/22/04	\$516,267	\$1,342.29	\$700,000	\$1,820	\$7,000	\$1,820	\$1,449	\$377	\$3,713	\$965
121 West J Street - M	12/03/04	\$407,424	\$1,059.30	\$508,000	\$1,321	\$5,080	\$1,321	\$1,991	\$518	\$2,083	\$542
185 East D Street - M	11/09/04	\$367,888	\$956.51	\$475,000	\$1,235	\$4,750	\$1,235	\$1,219	\$317	\$2,460	\$640
251 First Street	12/17/04	\$289,067	\$751.57	\$420,000	\$1,092	\$4,200	\$1,092	\$988	\$257	\$1,903	\$495
401 First Street	10/15/04	\$1,044,828	\$2,716.55	\$1,390,000	\$3,614	\$13,900	\$3,614	\$10,462.40	\$2,720	\$14	-\$4
166 West H Street - M	12/17/04	\$733,000	\$1,905.80	\$733,000	\$1,906	\$7,330	\$1,906	\$2,100	\$546	\$5,230	\$1,360
123 West D Street - M	12/27/05	\$767,965	\$1,996.71	\$581,000	\$1,511	\$5,810	\$1,511	\$1,237	\$322	\$4,573	\$1,189
1063 Jefferson Street - M	05/24/05	\$465,112	\$1,209.29	\$625,000	\$1,625	\$6,250	\$1,625	\$988	\$257	\$3,663	\$952
125 East I Street	12/20/06	\$391,839	\$2,318.78	\$498,000	\$4,980	\$4,980	\$1,295	\$1,982	\$515	\$2,998	\$780
159 West G Street - M	10/30/06	\$455,899	\$1,185.34	\$498,000	\$4,980	\$4,980	\$1,295	\$1,449	\$377	\$3,110	\$809
163 West J Street - M	10/30/06	\$614,594	\$1,597.94	\$330,000	\$858	\$3,300	\$858	\$899	\$231	\$2,411	\$627
149 West G Street	10/30/06	\$405,402	\$1,054.05	\$491,000	\$1,277	\$4,910	\$1,277	\$1,420	\$369	\$2,634	\$685
145 East I Street - M	10/30/06	\$609,712	\$1,585.25	\$432,000	\$1,123	\$4,320	\$1,123	\$1,021	\$265	\$3,299	\$858
141 West H Street	12/18/07	\$452,334	\$1,176.07	\$401,000	\$1,043	\$4,010	\$1,043	\$1,211	\$315	\$2,799	\$728
120 West D Street	12/18/07	\$376,948	\$980.06	\$581,000	\$1,511	\$5,810	\$1,511	\$1,338	\$348	\$2,432	\$632
1025 West Second Street	12/18/07	\$345,349	\$897.91	\$350,000	\$910	\$3,500	\$910	\$1,030	\$268	\$2,423	\$630
140 East G Street	12/18/07	\$709,935	\$1,845.83	\$588,000	\$1,529	\$5,880	\$1,529	\$2,334	\$607	\$3,546	\$922
302-306 East H Street	12/18/07	\$417,402	\$1,085.25	\$600,000	\$1,560	\$6,000	\$1,560	\$1,808	\$470	\$2,366	\$615
224 West I Street - M	12/18/07	\$664,240	\$1,727.02	\$528,000	\$1,373	\$5,280	\$1,373	\$1,622	\$422	\$3,658	\$951
171 West I Street	12/18/07	\$601,116	\$1,562.90	\$433,000	\$1,126	\$4,330	\$1,126	\$1,104	\$287	\$3,226	\$839
242 West I Street	12/18/07	\$698,878	\$1,817.08	\$455,000	\$1,186	\$4,560	\$1,186	\$1,037	\$270	\$3,523	\$916
270 West H Street	12/18/07	\$1,420,819	\$3,694.13	\$645,000	\$1,677	\$6,450	\$1,677	\$1,647	\$428	\$4,803	\$1,249
441 West J Street	12/18/07	\$709,312	\$1,844.21	\$397,000	\$1,032	\$3,970	\$1,032	\$1,189	\$309	\$2,781	\$723
271 West J Street	12/02/08	\$507,822	\$1,320.34	\$462,000	\$1,201	\$4,620	\$1,201	\$1,252	\$325	\$3,368	\$876
141 West F Street	12/02/08	\$808,987	\$2,103.37	\$581,000	\$1,511	\$5,810	\$1,511	\$1,672	\$435	\$4,138	\$1,076
155 West J Street	12/02/08	\$503,605	\$1,309.37	\$395,000	\$1,027	\$3,950	\$1,027	\$872	\$227	\$3,078	\$800
182 East I Street - M	12/09/09	\$492,515	\$1,280.54	\$524,000	\$1,362	\$5,240	\$1,362	\$1,271	\$330	\$3,654	\$950
1101 West Second Street	12/09/09	\$411,130	\$1,068.94	\$606,000	\$1,576	\$6,060	\$1,576	\$1,271	\$330	\$2,840	\$739
395 West J Street	12/20/10	\$598,760	\$1,556.78	\$482,000	\$1,201	\$4,820	\$1,201	\$1,186	\$308	\$3,434	\$893
175 West H Street - M	11/27/12	\$243,601	\$633	\$398,000	\$1,295	\$4,980	\$1,295	\$1,171	\$304	\$1,265	\$329
288 West J Street	12/05/12	\$315,228	\$820	\$392,000	\$1,019	\$3,920	\$1,019	\$1,137	\$296	\$2,015	\$524
135 East J Street	11/27/12	\$482,108	\$1,201	\$569,000	\$1,479	\$5,690	\$1,479	\$1,863	\$484	\$2,758	\$695
251 West G Street - M	12/10/13	\$405,402	\$1,054	\$491,000	\$1,277	\$4,910	\$1,277	\$1,420	\$369	\$2,634	\$697
153 West G Street	12/08/14	\$281,301	\$731	\$374,000	\$972	\$3,740	\$972	\$1,021	\$265	\$2,634	\$666
180 West H Street	12/24/14	\$494,000	\$1,284	\$494,000	\$1,284	\$4,940	\$1,284	\$1,252	\$325	\$3,688	\$959
<b>TOTAL VALUE:</b>		<b>\$21,214,086</b>	<b>\$55,157</b>	<b>\$20,003,000</b>	<b>\$52,008</b>	<b>\$200,030</b>	<b>\$52,008</b>	<b>\$60,860</b>	<b>\$15,824</b>	<b>\$115,070</b>	<b>\$29,918</b>
EXISTING CONTRACTS ANNUAL COSTS: (\$150 per contract for annual inspections)											
EXISTING CONTRACTS TOTAL:											
2015 CONTRACTS PROPOSED:											
N/A											
<b>TOTAL VALUE:</b> \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0											
<b>2015 CONTRACTS ANNUAL STAFF COSTS:</b> (\$150 per contract for annual inspections)											
<b>2015 CONTRACTS TOTAL:</b>											
<b>CONTRACTS TOTAL INCL. ANNUAL STAFF COSTS (EXISTING AND PROPOSED):</b>											
<b>TOTAL:</b> \$35,168 \$35,168											

\* Tax savings are estimates and subject to change annually

\*\* Prior to 2003 City Council program authorization



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - APRIL 21, 2015**  
**BUSINESS ITEMS**

**DATE** : April 15, 2015

**TO** : City Manager

**FROM** : Public Works Director

**SUBJECT** : **APPROVAL OF BENICIA LOCAL AGENCY PRIORITY PROJECTS TO BE LISTED IN THE SOLANO TRANSPORTATION AUTHORITY'S UPDATED COMPREHENSIVE TRANSPORTATION PLAN AND PROVIDE DIRECTION ON THE SOLANO RAIL FACILITIES PLAN UPDATE**

**RECOMMENDATION:**

Adopt a resolution approving the list of Benicia local agency priority projects to be listed in the Solano Transportation Authority's updated Comprehensive Transportation Plan and provide direction on the Solano Rail Facilities Plan Update.

**EXECUTIVE SUMMARY:**

At the request of the Solano Transportation Authority (STA), each local agency within Solano County will submit their list of local projects to be included in the update to the STA's Comprehensive Transportation Plan (CTP). Staff is recommending the addition of six new projects and update of one project to the previous list in the 2009 CTP to be submitted to the STA for inclusion in the updated CTP for future federal and state funding consideration. Staff is also seeking direction on the Solano Rail Facilities Plan Update.

**BUDGET INFORMATION:**

The list of local priority projects to be included in the STA's updated Comprehensive Transportation Plan (CTP) will be eligible for future federal and state funding consideration. This action will have no negative budget impact.

**STRATEGIC PLAN:**

Relevant Strategic Plan Goals and Strategies:

Strategic Goal 4.00: Preserve and Enhance City Assets and Infrastructure

- Strategy 4.10: Provide a balanced street system to serve automobiles, pedestrians, bicycles and transit (G.P. Goal #2.20)

Strategy 4.40: Improve and maintain facilities and infrastructures

## **BACKGROUND:**

The Comprehensive Transportation Plan (CTP) for Solano County was originally adopted by the Solano Transportation Authority (STA) Board in 2005. The plan was updated in 2010. The CTP identifies plans and prioritizes the transportation needs of Solano County through the year 2035. The CTP consists of three main elements: Alternative Modes; Arterials, Highways and Freeways; and Transit. The CTP has a list of capital projects that the seven cities and the County have identified that will help achieve a countywide goal of “providing mobility, safety and economic vitality” for the county.

In 2015, the STA Board initiated an update to the CTP and has asked that each agency update their community's list of local priority projects to include in the updated CTP. These priority projects would be eligible for future federal and state funding programs that the STA would be responsible for administering to each local agency. The STA encourages each agency to submit projects that have a regional benefit in order to receive this funding. The STA has asked each jurisdiction to categorize each project as either a Tier 1 (can be built or implemented within the next five years) or Tier 2 (can be built or implemented in the five to 25 year timeframe) project and that each project be consistent with that jurisdiction's General Plan.

Staff has prepared an updated list of local priority projects to be included in the updated STA's CTP (Attached). This updated list includes all the planned projects from the 2009 list; identifies each project as either Tier 1 or Tier 2; and includes the General Plan goal/policy/program. In addition staff recommends that the following amendments and new projects be added to the Benicia Project List of the CTP:

1. Military West and West 7th Street Intersection. Improve the safety and circulation of the West 7th Street and Military West with adjacent intersection of West 7th Street and Carolina Drive/Buena Vista.
2. Park Road between Sulphur Springs Creek and Industrial Way. Realign and reconstruct Park Road.
3. Park Road between Oak Road and new roadway. Widen Park Road to include bike lanes.
4. Install Citywide Bike Improvements per General Plan.
5. Install Citywide Walkway Improvements per General Plan.
6. Install Citywide Traffic Calming Improvements.
7. Amend Columbus Parkway Reliever Route project from Tier 2 to Tier 1 for improvements to be constructed in the next 5 years.

Seven projects were completed from the 2009 CTP list and will be included in the updated list of local priority projects (see attached Benicia Project List in the 2009 CTP for Solano County).

Attached for the City Council's consideration is the proposed resolution approving the list of these priority projects for submittal to the STA for inclusion in the updated CTP for consideration for future federal and state funding.

In addition, the April 15 STA Board Agenda recommends releasing the draft Solano Rail Facilities Plan Update (SRFPU) for a 30-day public comment period with comments heard at the May 13 STA Board meeting. It is anticipated that the STA Board will approve the SRFPU on June 11 and incorporate its recommendations into the CTP. A copy of the Plan is available at: <http://www.sta.ca.gov/docManager/1000005329/STA%20Rail%20Facilities%20Plan%20DRAFT%20Mar%202015%20v10.pdf>.

In that the recommendations of the SRFPU have a direct impact on the City's CTP project list, namely the Intermodal Transportation Station (ITS) or Multi-Modal Rail Station as it has been alternatively called, staff is seeking direction from City Council on the draft SRFPU and provide any comments to the STA Board, include whether or not to retain the ITS as one of Benicia's CTP priority projects.

As currently written in the draft SRFPU, a train station in Benicia at Lake Herman Road is not being recommended as a facility to be considered as a future Capitol Corridor stop. In Section 2.6.2 of the Plan: **FUTURE CAPITAL CORRIDOR/AMTRAK STATIONS - Benicia: major changes since 1995** (Page 56) the report states the following:

- *Both the railroad and passenger operators are concerned about train movement reliability and delays at the Benicia narrows imposed by ship traffic through the existing movable span rail bridge. They are actively exploring alternatives for a high-level passenger only crossing. Although such a major project would be a very long-term project (well beyond the 10-year Plan horizon), it would by necessity bypass any of the downtown Benicia locations reviewed in the 1995 plan.*
- *In addition, the Capitol Corridor station criteria adopted since the 1995 plan was prepared require a minimum of 5 mile station spacing and proximity to the Martinez station would eliminate all but the Lake Herman Road location.*

*The lower track location at Lake Herman Road is at 1ft elevation and likely impacted by future sea level rise (see Chapter 5 below). This was not a major consideration or concern at the time of the previous rail facilities plan 20 years ago, but is a significant issue now and in the future.*

**There are no other locations on the UPRR main line in Solano County that could be considered for future passenger rail service at this time. Of the two locations identified in the 1995 Plan, the Dixon location is the recommended facility for longer-term service if additional Capitol Corridor stops in Solano County are to be considered.**

*The Dixon location should be carried forward for consideration when the Solano Rail Facilities Plan is next updated, a task anticipated for the timeframe of 2020 to 2025."*

In addition in Chapter 5 of the SRFPU: **Conclusions and Recommendations – Policies for future stations** (attached) the report states that Dixon and not the Benicia station be carried forward in the current plan as follows:

*The Plan has articulated a Solano county-level enhancement of existing adopted CCJPA a policies governing the requirements for new stations to be served by Capitol Corridor trains. The Solano-specific station policy was adopted by the STA Board during the course of the plan development and included in Appendix 3.*

*In summary, the Solano stations policy:*

- Matches the physical design and minimum ridership standards set by the CCJPA board.*
- Refines the requirements to tie future approval of stations to completed PDA/station area plans, complete funding packages and approval in principle with the infrastructure owners (primarily Union Pacific Railroad) and CCJPA, via a memorandum of understanding, prior to any substantive design effort being expended by the sponsoring city.*
- Only one of the two additional locations identified in the original 1995 Solano rail plan, Dixon (downtown), is proposed to be carried forward within the current plan, although its ability to meet the Solano station criteria means that their development is likely to be beyond the current plan 10-year horizon. Because of concerns about potential ridership, location and ability to meet CCJPA and Solano station criteria, the Benicia (Lake Herman) location is not recommended for future re-evaluation."*

The Benicia ITS has been under discussion by the City since 1994. The Benicia General Plan adopted in 1999 included Goal 2.18 “Encourage the provision of convenient rail service to Benicia with a station near the Benicia Bridge”. In 2000, the Benicia City Council approved Resolution No. 00-52, which provided funding for a project study report that identified and compared three sites. The preferred site selected was a parcel between Interstate 680 and Goodyear Road. Between 2001 and 2004 the City completed a project study report and conceptual design for the station and attempted to negotiate purchase of the site, but was unsuccessful.

At the time the conceptual design work was done in 2004, which included an initial CEQA scoping process, the City received significant opposition from a number of duck clubs that owned property east of the proposed station location. They voiced very strong opposition to the proposed station location based upon the potential noise and air quality impacts on the migratory birds that utilize the area for nesting, even threatening potential litigation. In addition, the cost of the project, estimated to be between \$30 million to \$40 million, became a major impediment to pursuing the project given that both STA and MTC have indicated that any station in Benicia would need to be funded by the City. Finally the viability of a station in Benicia in regards to adequate ridership numbers, due to its proximity to the Martinez station, has been questioned on several occasions including within the Nelson/Nygaard 2005 Benicia Transit Short Range Transit Plan. The Transit Plan recommended postponing the ITS and called for further study of ferries and bus with park-and-ride facilities.

As a result of the above issues the ITS was formally placed on hold by the City Council in 2005. It continued to be included in the updates of the Benicia Transit Short Range Transit Plans even as recently as 2009; the last year the plan was updated prior to the consolidation of the Benicia and Vallejo transit agencies into SolTrans in 2010/11. The recommendation was to focus on the development of the park and ride lots and seek funding for a new feasibility study for the ITS.

Though the City Council allocated over \$1 million in funding in the transit agency budget for the planning, design and construction of the ITS, no further action was taken to the knowledge of current staff. In 2012 the City Council “loaned” the ITS funding to the City’s Economic Development Program to assist in implementing the action items contained in the Council adopted Business Development Action Plan, this included \$750,000 to assist in funding the development of broadband in the Benicia Industrial Park

Therefore staff is requesting City Council direction regarding any formal input the City wishes to send to the STA Board regarding the recommendations of the SRFPU and whether or not to retain the ITS as a priority project for Benicia in the STA CTP.

Attachments:

- Proposed Resolution with Benicia Local Agency Priority Projects for the updated CTP (Exhibit "A")
- Benicia Project List in the 2009 CTP for Solano County
- Draft Solano Rail Facilities Plan Update – Chapter 5, Conclusions and Recommendations

**RESOLUTION NO. 15 –**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING A LIST OF BENICIA LOCAL AGENCY PRIORITY PROJECTS TO BE LISTED IN THE UPDATED SOLANO TRANSPORTATION AUTHORITY’S COMPREHENSIVE TRANSPORTATION PLAN**

**WHEREAS**, the Solano Transportation Authority (STA) has requested that each local agency within Solano County submit their list of local agency priority projects to be included in the update to the STA’s Comprehensive Transportation Plan (CTP); and

**WHEREAS**, the STA is responsible for administering the allocation of funding to each local agency within Solano County and wants to finalize a countywide list of local agency priority projects eligible for future federal and state funding; and

**WHEREAS**, the STA requests that each local agency submit projects that will help achieve a countywide goal of “providing mobility, safety and economic vitality” for the county.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby approves the attached list of Benicia local agency priority projects (Exhibit “A”) for submittal to the STA for inclusion in the updated CTP for future state and federal funding consideration.

\* \* \* \* \*

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 21<sup>st</sup> day of April, 2015 and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date



**Exhibit "A"**  
**Benicia Project List -- CTP for Solano County**

CTP Element	Project Name	Tier*	Consistency with General Plan Goal/Policy/Program
<b>Arterials Element</b>	Improve I-680/Lake Herman Road Interchange	2	2.24,2.27.1, 2.28, 2.20. J & K
	Widen I-680 from Benicia Bridge to I-80	2	2.27.1
	Military West/West 7th Street Intersection Improv.	2	2.26.2, 2.27.1, 2.28, 2.20. J & K
	Install I-780 (Col. Pkwy to Military W) Aux Lanes	2	2.26.2, 2.27.1, 2.28, 2.20. J & K
	Improve I-680/Bayshore/Indust/Interchange Conn.	2	2.27.1, 2.28, 2.20. J & K
	Improve I-780 East 2nd/Interchange Ramps	2	2.27.1, 2.28, 2.20. J & K
	Improve Park Rd - Sulfur Spring Ck to Industrial Wy	2	2.28, 2.4.1, 2.20.1, 2.20. J & K
	Improve Park Rd - Oak Rd to New Road	2	2.28, 2.4.1, 2.20.1, 2.20. J & K
	Columbus Pkwy Reliever Route (Rose Dr to City Limits)	1	2.28, 2.4.1, 2.20.1, 2.20. J & K
<b>Alternative Modes</b>	Bike and Walkway Connections for Bay Trail & Ridge Trail	1	2.15B
	Bay Trail Shoreline Connections Between Vallejo and the Benicia Bridge	2	2.15B
	Install Citywide Bike Path Improv. Per General Plan/CIP	1	2.15, 2.21, 2.28, 2.20. J & K
	Install Citywide Walkway Improv. Per General Plan/CIP	1	2.14, 2.15, 2.21, 2.28, 2.20 J & K
	Install Citywide Traffic Calming Improvements	1	2.14, 2.20F, 2.28, 3.9.5, 2.20 J & K
<b>Transit Element</b>	Construct Benicia Multi-Modal Rail Station	2	2.18
	Construct Benicia Intermodal Transportation Station	2	2.17, 2.21, 2.28
	First Street and Waterfront Ferry	2	2.18

\* Tier 1 = Projects/programs that can be built or implemented in next 5 years.

Tier 2 = Projects/programs that can be built or implemented in next 5 - 25 years.



**Exhibit "A"**  
**2009 Benicia Project List -- CTP for Solano County**

<b>CTP Element</b>	<b>Project Name</b>	<b>Tier*</b>	<b>Project Status</b>
<b>Arterials Element</b>	Improve I-680/Lake Herman Road Interchange	2	Planned
	Widen I-680 from Benicia Bridge to I-80	2	Planned
	Install I-780 (Col. Pkwy to Military W) Aux Lanes	2	Planned
	Improve I-680/Bayshore/Indust/Interchange Conn.	2	Planned
	Improve I-780 Southampton/W 7th Interchange Conn	2	Planned
	Improve I-780 East 2nd/Interchange Ramps	2	Planned
	Columbus Pkwy Reliever Route (Rose Dr to City Limits)	2	Planned
<b>Alternative Modes</b>	First Street Streetscape Project	1	Completed
	Park Road (Adams to Oak) Bike/Pedestrian Imp. Bike and Walkway Connections for Bay Trail & Ridge Trail	1	Completed Planned
	Bay Trail Shoreline Connections Between Vallejo and the Benicia Bridge	2	Planned
	Rose Drive Bike/Pedestrian Overcrossing		Completed
	<b>Transit Element</b>	Construct Benicia Multi-Modal Rail Station	2
Improve or Replace Bus Shelters		Completed	
Construct Benicia Intermodal Transportation Station	2	Planned	
New Transfer/Park-n-Ride Facilities:		Completed	
- Military at First St/Downtown (Rte 78), Military		Completed	
- Military at Southampton Rd (Rte 78)		Completed	
- Park Rd/Industrial Way (Rte 40)		Construction 2015	
Provide more joint bus operations		Completed	
First Street and Waterfront Ferry	2	Planned	

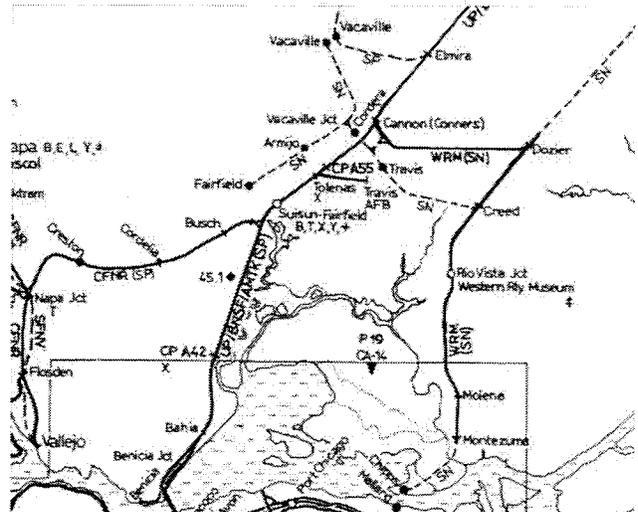
\* Tier 1 = Projects/programs that can be built or implemented in next 5 years.

Tier 2 = Projects/programs that can be built or implemented in next 5 - 25 years.





# Solano Rail Facilities Plan Update



## Chapter 5

# CONCLUSIONS AND RECOMMENDATIONS

## 5 CONCLUSIONS AND RECOMMENDATIONS

### 5.1 DRAFT CONCLUSIONS

#### 5.1.1 Freight Demand Needs: Future 10-year

- Freight train numbers may have not recovered to pre-recession levels, and it is unclear when or even if they will within the 10-year horizon.
- Depending on shippers' schedule needs, there are potentially slots available for *all* of the anticipated major growth on mainline-served freight demand in Solano i.e.
  - A daily full CBR train serving Valero
  - Several Busch-scale production facilities in the three potential Fairfield sites (unlikely even to total a daily trainload)
  - Several large production facilities to be designated in the unincorporated County east of Dixon

#### 5.1.2 Passenger Service Development: Future 10-year

##### Service levels:

- Within the 10-year horizon, service levels will remain broadly the same, at 30 trains daily.
- However, expansion of CCJPA service beyond the current Oakland-Sacramento core of the corridor will mean that significant additional regional trips will be available from Solano stations within the Plan's 10-year horizon to destinations on the western Oakland-San Jose segment and the Sacramento Roseville eastern segment.
- Previous concepts of additional regional overlay service in the county (such as Dixon to Auburn) that had been considered in previous plans during the past 20 years are unlikely to be feasible within the 10 year horizon: the current agreement precludes expansion beyond the current ceiling of 30 daily trains and headways of more than 40 minutes within peak periods.
- The CCJPA will continue as the primary forum for Solano jurisdictions to advocate for passenger rail service to their communities. As service levels and station concepts evolve beyond the 10-year horizon, Solano communities should actively prioritize their future investments at a county level, in order to gain most from the

competitive funding and policy environment. This is especially important after new service commences at the second (FFV) station, likely in 2018, while communities in other counties may advocate for reduction in station stops in the Corridor overall.

- The four daily long distance Amtrak services connecting the Bay Area with destinations north to Seattle, south to Los Angeles and east to Reno and Chicago do not currently serve Solano communities directly. As one of the largest service areas (by population) on those routes without a station stop, Solano should consider advocating for a Solano stop at SUI or FFV by these trains: these services that are less schedule-critical than Capitol Corridor, and may be accommodated. They have ridership potential for leisure travelers (including Solano's gateway role to the Napa Valley), Travis personnel and their families, and business travelers using business class product on the Coast Starlight service. Because long distance trains may have longer dwell times at station stops at some locations than a Capitol Corridor train, additional main line capacity may be necessary if these trains were to stop in Solano County.

#### **Travel time improvements:**

- Speed and Reliability improvements will be the primary gains in service quality envisaged within the Plan 10-year horizon.
- Overall, improvements in end-to-end corridor travel times (Auburn/Roseville and San Jose end points) can be expected of the order of 10-15 minutes.
- Travel time improvements within Solano County will be at the order of 5 minutes eastbound and westbound from both SUI and FFV stations.

#### **Station provision**

- Within the 10-year horizon of the plan, two stations will serve the county – the existing SUI station and the new FFV station, likely to commence service around 2018.
- Both stations will be conventional CCJPA facilities, with parking to meet forecast demand within the 10-year horizon, opportunities for local transit connections and improved bike and pedestrian access.
- Neither station facility will be staffed by Amtrak (although SUI currently has STA

commute consultant customer service representatives during the morning commute). Checked baggage service will not be provided, even if long-distance Amtrak service does make calls in future at the stations in the 10-year horizon.

### Local station connections

- Reliable and seamless local connections for transferring transit passengers, bike users and pedestrians will remain essential to the success for growth in utilization of both SUI and the future FFV stations.
- However, based on no one mode of access data, the majority of trips to and from the station are still likely to occur by automobile.
- Both the SUI and FFV will have parking provision that appears relatively unconstrained during the 10-year plan horizon.
- SUI station provision parking will likely remain shared with the parking lot for commuters on the SR-12 corridor. FFV parking provision in the first phase appears adequate to meet demand within the plan horizon.
- Both parking facilities serving the stations are proposed to remain free for users. The absence of user charge or any demand management system will likely limit the potential for mode of access to shift significantly to alternative modes (although the bike access mode has grown significantly in recent years).
- Without constraints on capacity management of parking demand at the stations, substantial costs may be incurred in serving a relatively small proportion of riders with dedicated connecting local transit service. Should the local station sponsors wish to actively manage modal shift in access to the stations, some capacity and demand management would likely be required.
- The significant growth in a long-term mixed-use development around the FFV and SUI stations will however generate more pedestrian and bicycle trips to the station even above the currently substantial levels.

### Policies for future stations

The Plan has articulated a Solano county-level enhancement of existing adopted CCJPA a

policies governing the requirements for new stations to be served by Capitol Corridor trains.

The Solano-specific station policy was adopted by the STA Board during the course of the plan development and included in Appendix 3.

In summary, the Solano stations policy:

- Matches the physical design and minimum ridership standards set by the CCJPA board.
- Refines the requirements to tie future approval of stations to completed PDA/station area plans, complete funding packages and approval in principle with the infrastructure owners (primarily Union Pacific Railroad) and CCJPA, via a memorandum of understanding, prior to any substantive design effort being expended by the sponsoring city.
- Only one of the two additional locations identified in the original 1995 Solano rail plan, Dixon (downtown), is proposed to be carried forward within the current plan, although its ability to meet the Solano station criteria means that their development is likely to be beyond the current plan 10-year horizon. Because of concerns about potential ridership, location and ability to meet CCJPA and Solano station criteria, the Benicia (Lake Herman) location is not recommended for future re-evaluation.

### Growing Ridership

- Overall ridership growth of the order of 10-20% can be expected within the 10-year horizon.
- The opening of an additional station at Fairfield-Vacaville will likely add up to 15% to the total ridership within the county.
- Although the new FFV station may initially share some of the catchment of the current SUI station, growing mixed-use development in the immediate vicinity of both stations will lift ridership levels overall beyond their current totals at each location.
- Depending on the final assumptions in the priority development area (PDA) plan effort for both Suisun (SUI) and the Fairfield-Vacaville (FFV) station area, growth could be at the upper end of this range.
- Full buildout to the FFV station will likely enhance ridership significantly beyond this level, including a substantial walk-shed. Most of this growth will likely be beyond the 10 year horizon.

### **Infrastructure requirements: 10-year horizon**

Improvements to corridor infrastructure required to achieve both the eastern and western extensions to intercity service and travel time improvements will mainly be located outside Solano County and include:

#### **3rd Main Track between Sacramento and-Roseville**

**Additional capacity and running time reductions between Oakland and San Jose**

**Ongoing capitalized maintenance to maintain reliability to CCJPA's high standards**

**CCJPA is investigating the potential effects of sea level rise on its operations (considered in a separate chapter of the plan). An internal CCJPA study is underway to determine the scope of the issue. Once complete, the scope of potential mitigations can be better identified.**

Within the county, minor improvements required to maintain these faster schedules will include:

#### **Ongoing Capitalized Maintenance – approx. \$1-3 million/year**

**Positive Train Control (PTC) – installed as part of a larger, system wide program on most Union Pacific main lines to improve overall operations safety.**

This project is underway, with the majority of the costs borne by UP. The PTC project may set the stage, in the future, for discussion with Union Pacific and regulatory agencies about higher top speeds along the corridor. If realized, these higher speeds could result in 1-2 minute running time reductions within Solano County alone.

#### **Improvements in the vicinity of Bahia to promote fluid freight switching.**

Depending upon the suite of improvements, the order of magnitude costs could range from \$1 million to \$20 million (not currently programmed by CCJPA)

#### **Ground improvements in the Suisun Marsh area.**

Depending upon the geotechnical remediation approach, scope contemplated, and permitting constraints, this could be a \$20-\$100 million project, possibly performed in conjunction with a program addressing sea level rise.

### **Infrastructure needs and opportunities: beyond the 10-year Plan horizon**

Although beyond the horizon year of the Rail Plan update, significant infrastructure enhancement concepts are currently being considered as part of vision efforts for the Capitol Corridor. These could reconfigure CCJPA service in the long term, increasing the total daily trains beyond the current 30 weekday trains and the 40-minute peak period headways. Some may have implications for Solano's very long-term (25+ years ahead) service levels and station locations. These may include:

- Purchase of new right of way
- Partially new alignments potentially revitalizing the former Sacramento Northern line that may ease the service constraints currently imposed by UPRR trackage agreements
- Benicia Narrows high-level rail crossing by passing downtown Benicia

## 5.2 DRAFT RECOMMENDATIONS

### Service levels:

Solano jurisdictions, coordinated by STA, should establish a passenger rail service and stations priority program to determine the county's focus in station openings and future infrastructure investment on Capitol Corridor.

The cities served by the Suisun-Fairfield and Fairfield-Vacaville stations should determine the benefits and costs of establishing a station stop for the four daily Amtrak long distance services, and when agreed, advocate the appropriate station stop via STA, with Amtrak for the additional daily trains.

### Travel time improvements:

Upgrades to the Bahia viaduct could result in increased speeds and a reduction in travel time.

Additional infrastructure to allow freight trains to conduct switching operation off the main line at Benicia Industrial Park could improve reliability and possibly result in a modest reduction in scheduled running time.

Ground improvements in the vicinity of the Suisun Marsh to stabilize the soils and possibly reduce the frequency of temporary speed restrictions and improve reliability. The feasibility and extent of such work would need to be investigated, possibly in conjunction with infrastructure considerations of sea level rise.

### Station improvements

Within the 10 year Verizon, station capacity is adequate for forecast growth. Towards the end of the 10-year horizon and beyond, two enhancement projects should be revisited:

**Suisun-Fairfield station:** center island platform, related track improvements and grade separated pedestrian access to eliminate current hold out arrangements and improve service reliability.

**Fairfield-Vacaville station:** replacement of planned surface lot with future parking structure to enable station adjacent development to proceed (it should be noted that the current surface lot proposed is adequate for 10 year needs).

**Future Dixon station: grade separation of A street crossing (assumes that other CCJPA/Solano policy station policy criteria are met, including MOU/intent with railroad). A major project which would be a precursor to future station opening, beyond the 10-year horizon of the plan.**

#### **Policies for future stations**

**Future stations will be guided by, and adhere to by the CCJPA stations policy and the Solano specific station policy adopted October 2014. Based on the criteria, after the future Fairfield-Vacaville station is open, Dixon will be the next prioritized station for Solano County.**

#### **Local station connections**

**Station transit connections to rail service will remain the responsibility CCJPA's local transit partners in the County. Although the goal will be to provide seamless transfer for all trains that stop in the county, local providers will determine the level of service, transfer policy based on their priorities and measures of cost effectiveness.**

#### **Accommodating Growing Ridership**

**The second station in the county at Fairfield – Vacaville will meet of the near-term growth potential: its early opening is key to the success of growing rail ridership and delivery of a successful station area development program. There is not currently committed target date for opening. Additional passenger equipment may be necessary to accommodate increased ridership; in conjunction with other agencies, CCJPA has already begun the process of acquiring additional rolling stock (needs confirmation). Strengthening train length is the most cost-effective way of delivering capacity quickly, in the absence of the ability to increase the frequency of trains.**

#### **Infrastructure safety enhancements: 10-year horizon:**

**Based on the safety analysis undertaken, multiple crossing improvements are recommended, prioritized as follows:**

- A. E Tabor Avenue, Fairfield, CA**
- B. 1st Street, Dixon, CA**

- C. Canon Road, Fairfield, CA
- D. Midway Road, Unincorporated County of Solano, CA
- E. Fry Road, Vacaville, CA
- F. A Street, Dixon, CA
- G. Pedrick Road, Dixon, CA
- H. Pierce Lane, County of Solano, CA

**Rail Infrastructure capacity enhancements: 10-year horizon:**

**Ongoing Capitalized Maintenance (approx. \$1-3 million/year)**

**Positive Train Control (PTC) – installed as part of a larger, system wide program on most Union Pacific main lines to improve overall operations safety.**

This project is underway, with the majority of the costs borne by UP. The PTC project may set the stage, in the future, for discussion with Union Pacific and regulatory agencies about higher top speeds along the corridor. If realized, these higher speeds could result in 1-2 minute running time reductions within Solano County alone.

**Improvements in the vicinity of Bahia to promote fluid freight switching.**

Depending upon the suite of improvements, the order of magnitude costs could range from \$1 million to \$20 million (not currently programmed by CCJPA)

**Ground improvements in the Suisun Marsh area.**

Depending upon the geotechnical remediation approach, scope contemplated, and permitting constraints, this could be a \$20-\$100 million project, possibly performed in conjunction with a program addressing sea level rise.

The Plan Recommendations are summarized in Figure 27. Indicative costs are allocated to each, and a lead agency for the project. Secondary agencies are not shown, but each project is likely to have several funding partners.

Figure 27 Solano Rail Facilities Plan Recommendations Summary Table

Solano Rail Facilities Plan Update 2015

**Plan Recommendations Summary**

Topic	Recommendation	Benefit	Cost (\$000)	Target Year	Lead Agency
Station improvements	Suisun-Fairfield station: center island platform, related track improvements and grade separated pedestrian access to eliminate current hold out arrangements	eliminate current hold out arrangements and improve passenger safety service reliability.	\$ 20,000	2020	City of Suisun City/STA
	Fairfield-Vacaville station: replacement of planned 300 space surface lot with future parking structure	enable station adjacent development to proceed, supporting use of station	\$ 12,000	2025	Cities of Fairfield & Vacaville
	Future Dixon station: grade separation of A street crossing (assumes that other CCJPA/Solano station policy criteria are met, including MOU/intent with railroad).	precursor to future station opening, beyond the 10-year horizon of the plan	\$ 25,000	2025+	City of Dixon/STA
Local station connections	local providers will determine the level of service, transfer policy based on their priorities and measures of cost effectiveness	Provide clarity in level of connecting service to both SUI and FFV stations	\$ -	2018	Cities, FaST, CityCoach
Passenger Service levels	establish a passenger rail service and stations priority program to determine the county's focus in station openings and future infrastructure investment	Provides clear framework for directing investment in the county on rail service / stations	-	2016	STA
	determine the benefits and costs of establishing a station stop for the four daily Amtrak long distance services	serves growing leisure, base personnel and business travelers. Reinforces Solano gateway role to Napa Valley	\$ 10	2018	Cities of Fairfield/ Suisun City
Accommodating Growing Ridership	establish target date for near term Fairfield-Vacaville station opening	key to the success of growing rail ridership and delivery of a successful station area development program	\$ -	2015	City of Fairfield/STA
	Additional passenger equipment to strengthen train length, deliver passenger capacity	the most cost-effective way of delivering capacity quickly	\$ -	2017	CCJPA/State
Infrastructure safety enhancements	<i>Crossing improvements prioritized as follows:</i>				
	A. E Tabor Avenue, Fairfield, CA	safer crossing for peds/vehicles	\$ 600	2016	Fairfield
	B. First Street, Dixon	safer crossing for peds/vehicles	\$ 20	2016	Dixon
	C. Canon Road, Fairfield	safer crossing for peds/vehicles	\$ 200	2017	Fairfield
	D. Midway Road, Solano Co.	safer crossing for peds/vehicles	\$ 150	2018	Solano Co.
	E. Fry Road, Vacaville, CA	safer crossing for peds/vehicles	\$ 20	2018	Vacaville
	F. A Street, Dixon	safer crossing for peds/vehicles	\$ 150	2018	Dixon
	G. Pedrick Road, Dixon, CA (monitor only)	safer crossing for peds/vehicles	\$ -	annual	Dixon
H. Pierce Lane, Solano Co., CA (monitor)	safer crossing for peds/vehicles	\$ -	annual	Solano Co.	
Rail Infrastructure capacity enhancements	Positive Train Control (PTC)	higher top speeds on corridor that could result in 1-2 minute running time reductions within Solano	TBD	2015 (mandate)	UPRR/CCJPA
	Upgrades to the Bahia viaduct	increased speeds and a reduction in travel time within Solano	TBD	2025	UPRR/CCJPA
	Additional infrastructure to allow freight trains to conduct switching operation off the main line at Benicia Industrial Park /Bahia	promotes fluid freight switching, improves reliability and possible reduction in scheduled running time	\$ 20,000	2020	UPRR/CCJPA
	Ground improvements in the vicinity of the Suisun Marsh to stabilize the soils	reduce the frequency of temporary speed restrictions and improve reliability	\$ 50,000	2020	UPRR/CCJPA
	Ongoing Capitalized Maintenance (annual)	maintains state of good repair	\$ 3,000	annual	CCJPA/STA



**AGENDA ITEM  
CITY COUNCIL MEETING: APRIL 21, 2015  
COUNCIL MEMBER COMMITTEE REPORTS**

**DATE** : April 14, 2015  
**TO** : Mayor Patterson  
**FROM** : City Manager  
**SUBJECT** : **MAYORS' COMMITTEE MEETING**

The following information is provided for your committee report at the April 21, 2015 City Council meeting.

The Mayors' Committee meetings are held quarterly in Dixon. The next meeting is April 22, 2015 and the agenda for that meeting is attached.

Attachment:

- Mayor's Committee Meeting Agenda



# SOLANO COUNTY MAYOR'S COMMITTEE MEETING

Cattlemens Restaurant  
250 Dorset Court  
Dixon, California

Wednesday  
April 22, 2015

6:00 PM

## AGENDA

1. **Roll Call/Call to Order**
2. **Introductions by Mayor Jack Batchelor**
3. **Public Comment**  
*(Members of the public may address the Committee on matters not listed on the agenda, but within the jurisdiction of the committee.)*
4. **Business:**
  - A. Approve the Minutes of the January 29, 2015 Mayor's Committee Meeting.
  - B. Roundtable Discussion of City Issues of Mutual Interest
5. **Adjournment to the Mayors Committee Meeting of June 17, 2015.**

# SOLANO COUNTY MAYOR'S COMMITTEE MEETING

Cattlemens Restaurant  
250 Dorset Court  
Dixon, California

Thursday  
January 29, 2015

6:00 PM  
(Immediately following the City Selection Committee Meeting)

## MINUTES

**1. Roll Call/Call to Order**

Mayor Batchelor calls the meeting to order.

**2. Introductions by Mayor Jack Batchelor**

Mayor Batchelor does introductions.

**3. Public Comment**

*(Members of the public may address the Committee on matters not listed on the agenda, but within the jurisdiction of the committee.)*

No public comment.

**4. Business:**

A. Roundtable Discussion of City Issues of Mutual Interest

Mayor Harry Price suggested that Jim Lindley join the Travis support group.  
Mayor Norm Richardson opened a discussion on water and wastewater issues.  
Mayor Jack Batchelor discussed transportation issues in the County areas.

**5. Adjournment to the Mayors Committee Meeting of April 15, 2015.**

Meeting adjourned at 8:15 P.M.

**AGENDA ITEM**  
**CITY COUNCIL MEETING: APRIL 21, 2015**  
**COUNCIL MEMBER COMMITTEE REPORTS**

**DATE** : April 7, 2015

**TO** : Vice Mayor Mark Hughes  
Council Member Alan Schwartzmann

**FROM** : City Attorney

**SUBJECT** : **ABAG COMMITTEE MEETING**

The following information is provided for your committee report at the April 21, 2015 Council meeting.

- The next meeting will be the Spring General Assembly on Tuesday, April 14, 2015.
- The Spring Assembly will be held at the Oakland Asian Cultural Center, from 3:00 p.m. until 6:00 p.m.
- The Agenda has not been released yet.



**AGENDA ITEM  
CITY COUNCIL MEETING: APRIL 21, 2015  
COUNCIL MEMBER COMMITTEE REPORTS**

**DATE** : April 6, 2015

**TO** : Council Member Strawbridge  
Vice Mayor Hughes

**FROM** : Assistant City Manager

**SUBJECT** : **FINANCE COMMITTEE REPORT**

The following information is provided for your committee report at the April 21, 2015 Council meeting.

The last Finance Committee meeting was held on March 19, 2015; draft minutes for the meeting are attached for your review. The next meeting will be on Thursday, April 23, 2015 at 9:00 a.m.

Attachment:

- March 19, 2015 Draft Meeting Minutes



**Finance Committee  
SPECIAL MEETING AGENDA  
Commission Room  
March 19, 2015 - 9:00 AM**

- I. Call to Order at 9:01 a.m.
- II. Roll Call  
Attended by Chairperson Michael Clarke; Committee Members Alan Nadritch, John Potter; City Treasurer Ken Paulk; Councilmembers Mark Hughes and Christina Strawbridge  
Absent:  
Staff present: Anne Cardwell, Assistant City Manager;  
Karin Schnaider, Finance Director; Greg Henry, Management Analyst
- III. Pledge of Allegiance
- IV. Notice to the Public  
A plaque stating the Fundamental Rights of each member of the public is posted at the entrance the Commission Room per Section 4.04.0300 of City of Benicia Ordinance No. 05-6 (Open Government Ordinance)
- V. ACTION ITEMS
  - A. **Approval of Agenda**– moved and seconded  
Ayes: Chairperson Clarke; Committee Members Nadritch, Potter  
Noes: none
  - B. **Approval of minutes for meeting held on February 26, 2015** - moved and seconded.  
Committee member Potter asked if the assumptions in the 10 year forecast represented a “worst case” scenario, and Finance Director Schnaider clarified that the forecast was a most probable case but with some conservative assumptions as appropriate. She noted that the assumptions were in the accompanying staff report but not broken out in tables. In the future, staff will provide key assumptions as a chart as part of the report. Chairperson Clarke asked that assumptions be shared with the committee prior to the next update. Staff replied that they will be with sufficient time.  
Ayes: Chairperson Clarke; Committee Members Nadritch, Potter  
Noes: none
  - C. **Consideration of developing Request for Quote for banking services.**  
Finance Director Schnaider informed the committee that the City’s banking provider Bank of America the City’s fees will be increased. The last Request For Quote (RFQ) had been issued more than 5 years ago, and with the new Enterprise Resource Planning (ERP) software pending, now was an optimum time to issue a new request. She then asked if the

committee would like for a member to join staff and the City Treasurer in evaluating the options. Discussion as to time commitment, Bank of America's awareness of City's intent and timeframe were raised and Council Member Nadritch volunteered. Committee approved.

VI. **DISCUSSION ITEMS**

A. **Review Warrant Register for the Month of December 2014**

Questions were received prior to the meeting and responses were provided in the packet. Those questions were reviewed.

The committee asked more detail regarding line item 7, a risk management claim. Finance Director Schnaider explained that liability claims are confidential.

B. **Update on Citywide Fee Study.**

Finance Director Schnaider informed the Committee that the Citywide Fee Study was still in the draft stages. Results of the citywide fee study will be presented to the different boards and commissions by the Finance Director. She also mentioned that staff would be going to the Benicia Industrial Park Association (BIPA) at least once and would be willing to go again to discuss any issues, concerns they have. Due to the changed completion date, that study won't be part of the budget process but would allow for greater public outreach. She expected that the Study would go to the Council in July. She warned that dates may continue to slip as the data is so large. Finance Director Schnaider informed the committee that she is the lead for this project.

City Treasurer Paulk noted that Parks and Recreation fees have been updated recently. Finance Director Schnaider replied that some fees had been updated in the last five years, but that this is the first City wide update in quite some time.

There were concerns raised by the public and Assistant City Manager Cardwell assured the committee that the report would look at benchmarks & analyze task costs to provide Council with a foundation upon which the actual charge could be built. Council Member Hughes felt that benchmarking with other Cities ensured that fees would not be totally out of line.

Questions were raised as to the flexibility of changing rates and Council member Strawbridge stated that the Council considers industrial park to be a priority, therefore any increased fees would be well scrutinized. She felt that knowledge was powerful regarding the cost of services provided.

Council member Strawbridge inquired if it would it advantageous to wait until the new ERP had been implemented and Finance Director Schnaider replied that it would make the ERP implementation easier if the new fees are already done.

Council member Strawbridge asked that staff ensure the Economic Development was involved in the process. Assistant City Manager

Cardwell reminded the committee that this item would go to council at least twice and so there was a minimum of seven opportunities for the public to speak on the record.

C. **Finance Committee Work Plan**

Finance Director Schnaider explained that the work plan had been updated to show fee study being moved back and that the ERP Request for Proposal had been issued. She highlighted the tentative April 28<sup>th</sup> joint meeting with City Council and the committee when the 10 year forecast for Water & Wastewater, the first Drought surcharge report, and the response to the City's RFQ for new water meters would be presented.

Committee member Potter if, as opposed to replacing the meters, would it be possible to calculate the percentage loss due to the older meters and simply increase usage by that amount. Finance Director Schnaider replied that she didn't believe such a methodology would be possible, but she would look into it further.

City Treasurer Paulk asked about brown sediment in water in his water. Assistant City Manager Cardwell replied that could be answered by public works staff at the joint meeting in April.

Finance Director Schnaider noted that the next item on the work plan, the draft budget, was expected to come before the committee at the May 28<sup>th</sup> meeting.

VII. **Public Comment**

Chairperson Clarke read excerpts from a Benicia Herald article regarding the March 16 Community Sustainability Commission (CSC) meeting. He took offence to reported comments made by commission members during the meeting. He was also concerned over the reported increase in hourly costs for the Climate Action Plan Coordinator. Council Member Strawbridge suggested that he attend a CSC meeting and share his opinion.

VIII. **Adjournment** – adjourned at 9:58 a.m.



**AGENDA ITEM  
CITY COUNCIL MEETING: APRIL 21, 2015  
COUNCIL MEMBER COMMITTEE REPORTS**

**DATE** : April 14, 2015

**TO** : Mayor Patterson  
Vice Mayor Hughes

**FROM** : City Manager

**SUBJECT** : **LEAGUE OF CALIFORNIA CITIES**

The following information is provided for your committee report at the April 21, 2015 City Council meeting.

The next North Bay Division General Membership Meeting is scheduled for June 29, 2015 and will be hosted by the City of Greenbrae.



**AGENDA ITEM**  
**CITY COUNCIL MEETING: APRIL 21, 2015**  
**COUNCIL MEMBER COMMITTEE REPORTS**

**DATE** : April 14, 2015

**TO** : Vice Mayor Hughes  
Council Member Strawbridge

**FROM** : City Manager

**SUBJECT** : **CITY COUNCIL/SCHOOL BOARD LIAISON COMMITTEE**

The following information is provided for your committee report at the April 21, 2015 City Council meeting.

This committee meets quarterly. Meetings for 2015 will be held at the Benicia Unified School District's Board Room located at 350 East K Street.

The next scheduled meeting is June 11, 2015 at 8:30 a.m. at the District Office Board Room, and the agenda for that meeting is not yet available.



**AGENDA ITEM  
CITY COUNCIL MEETING: APRIL 21, 2015  
COUNCIL MEMBER COMMITTEE REPORTS**

**DATE** : April 9, 2015

**TO** : Vice Mayor Hughes  
Council Member Campbell

**FROM** : City Manager

**SUBJECT** : **SKY VALLEY OPEN SPACE COMMITTEE**

The following information is provided for your committee report at the April 21, 2015 Council meeting.

The meetings of the Committee are now scheduled on an as-needed basis. At this time, the next meeting date is unknown.



**AGENDA ITEM  
CITY COUNCIL MEETING: APRIL 21, 2015  
COUNCIL MEMBER COMMITTEE REPORTS**

**DATE** : April 4, 2015

**TO** : Vice Mayor Hughes  
Council Member Strawbridge

**FROM** : City Manager

**SUBJECT** : **SOLANO EDC BOARD OF DIRECTORS**

The following information is provided for your committee report at the April 21, 2015 Council meeting.

The last Board of Directors meeting was held on March 12, 2015. The agenda for that meeting was previously issued. The minutes are not yet available.

The next Board of Directors meeting is scheduled for Thursday, May 14, 2015 at 9:00 a.m. at Jelly Belly Candy Company. The agenda for this meeting is not yet available.



**AGENDA ITEM  
CITY COUNCIL MEETING: APRIL 21, 2015  
COUNCIL MEMBER COMMITTEE REPORTS**

**DATE** : April 14, 2015

**TO** : Mayor Patterson  
Council Member Campbell

**FROM** : Director of Public Works

**SUBJECT** : **SOLANO TRANSPORTATION AUTHORITY**

The following information is provided for your committee report at the April 21, 2015 City Council meeting.

The Minutes from the March 11, 2015 Regular Board meeting are attached as well the agenda for the April 15, 2015 meeting. The next regular meeting will be on May 13, 2015 at Suisun City Hall and the agenda for that meeting is unavailable.

Attachments:

- Minutes from the March 11, 2015 Regular Board Meeting
- Agenda for the April 15, 2015 Regular Board Meeting





**SOLANO TRANSPORTATION AUTHORITY**  
**Board Minutes for Meeting of**  
**March 11, 2015**

**1. CALL TO ORDER**

Chair Patterson called the regular meeting to order at 6:00 p.m. A quorum was confirmed.

**MEMBERS**

**PRESENT:** Elizabeth Patterson, Chair City of Benicia  
Norman Richardson, Vice Chair City of Rio Vista  
Jack Batchelor City of Dixon  
Harry Price City of Fairfield  
Pete Sanchez City of Suisun City  
Len Augustine City of Vacaville  
Osby Davis City of Vallejo  
Jim Sperring County of Solano

**MEMBERS**

**ABSENT:** None.

**STAFF**

**PRESENT:** Daryl K. Halls Executive Director  
Bernadette Curry Legal Counsel  
Janet Adams Deputy Exec. Director/Dir. of Projects  
Robert Macaulay Director of Planning  
Johanna Masielat Clerk of the Board/Office Manager  
Liz Niedziela Transit Manager  
Judy Leaks Transit and Rideshare Program Manager  
Robert Guerrero Project Manager  
Sarah Fitzgerald Program Services Administrator – SR2S  
Ryan Dodge Associate Planner  
Betsy Beavers Walking School Bus Coordinator  
Karin Bloesch Walking School Bus Coordinator  
Ward Stewart Walking School Bus Coordinator  
Esther Wan Customer Service Representative

**ALSO PRESENT: (In alphabetical order by last name.)**

Nathan Atherstone Fairfield and Suisun Transit (FAST)  
Kevin Berryhill Presenter, City of Fairfield  
Amanda Dum City of Suisun City  
Bill Emlen County of Solano  
Kevin Green Daily Republic

Steve Hartwig  
Dan Kasperson  
Brian McLean  
Rischa Slade  
Graham Wadsworth

City of Vacaville  
City of Suisun City  
Vacaville City Coach  
Presenter, Solano Community College  
City of Benicia

**2. CALL TO ORDER**

Chair Patterson called the regular meeting to order at 6:00 p.m. A quorum was confirmed.

**3. CONFIRM QUORUM/STATEMENT OF CONFLICT**

A quorum was confirmed by the Clerk of the Board. There was no Statement of Conflict declared at this time.

**4. APPROVAL OF AGENDA**

On a motion by Board Member Price, and a second by Board Member Batchelor, the STA Board approved the agenda. (8 Ayes)

**5. SWEARING-IN OF NEW STA BOARD ALTERNATE MEMBERS**

- **Vice Mayor Chuck Timm**

Alternate Member representing the City of Fairfield

**6. OPPORTUNITY FOR PUBLIC COMMENT**

None presented.

**7. EXECUTIVE DIRECTOR'S REPORT**

- Board of Equalization (BOE) Vote to Reduce Gas Tax - Could Result in Loss of \$5 million for Solano County's Local Streets and Roads Funding
- STA Soundwall Retrofit Policy
- Pacific Gas & Electric (PG & E) Project Cost Increases
- Safe Routes to School Program Update - School Surveys Needed
- Solano Community College Proposal for New Student Transit Fee
- Second Quarter Budget Report for FY 2015-16
- SNCI Program/Call Center/Transportation Info Depot Update
- Mobility Management Program Update
- STA Staff Update

**8. REPORT FROM THE METROPOLITAN TRANSPORTATION COMMISSION (MTC)**

None presented.

**9. STA PRESENTATION**

**A. Presentation on Fairfield/Vacaville Train Station**

*Presented by Kevin Berryhill, City of Fairfield*

**B. Presentation on Proposed Solano Community College Student Transportation Fee**

*Presented by Rischa Slade, Solano Community College*

**C. Presentation on Safe Routes to School Program Update**

*Presented by Sarah Fitzgerald, STA*

**D. Directors Reports**

**1. Planning**

**2. Projects**

**3. Transit/Rideshare**

## 10. CONSENT CALENDAR

On a motion by Board Member Batchelor, and a second by Vice Chair Richardson, the STA Board unanimously approved Consent Calendar Items A-E. (8 Ayes)

### A. **Minutes of the STA Board Meeting of February 11, 2015**

#### Recommendation:

Approve STA Board Meeting Minutes of February 11, 2015.

### B. **Draft Minutes to the TAC Meeting of February 25, 2015**

#### Recommendation:

Approve TAC Meeting Minutes of February 25, 2015.

### C. **Fiscal Year (FY) 2014-15 Second Quarter Budget Report**

#### Recommendation:

Receive and file.

### D. **Contract Amendment - Travel Demand Model Validation Services**

#### Recommendation:

Authorize the Executive Director to amend the contract with Cambridge Systematics for validation of the Napa Solano Travel Demand Model for an amount not to exceed \$70,049.

### E. **Safe Routes to School (SR2S) GIS Mapping Contract**

#### Recommendation:

Authorize the Executive Director to enter into an agreement with Brian Fulfroost and Associates for an amount not-to-exceed \$17,000 as specified in Attachment A.

## 11. ACTION – FINANCIAL ITEMS

### A. **I-80 Cordelia Truck Scales and I-80/I-680/State Route (SR) 12 Interchange – Response to Pacific Gas and Electric (PG&E) Project Cost Increases**

Janet Adams and Bernadette Curry, Legal Counsel, has been coordinating with Pacific Gas & Electric on the relocation of a Gas Valve Lot associated with the construction of the I-80/I-680/State Route 12 Interchange Phase 1 construction project and on the relocation of a electric distribution line associated with the I-80 Cordelia Truck Scales Relocation Project. Both relocation projects have been managed by PG&E and both have experienced significant project cost increases. STA staff and legal counsel have reviewed both requests from PG&E for additional project cost compensation and are recommending the STA Board deny both requests

#### **Public Comments:**

None presented.

#### **Board Comments:**

After discussion, the STA Board suggested to modify the first paragraph of the letter and list the following important points:

1. *For PG&E to take responsibility for the misuse of taxpayer's money;*
2. *The project's benefit provided to PG&E by the two STA projects; and*
3. *Mismanagement of the projects by PG&E.*

Recommendation:

Authorize the Executive Director to send the letters as shown in Attachments C and D to PG&E denying their requests for additional payment for allocation costs associated with the Cordelia Truck Scales and I-80/I-680/SR 12 Interchange Projects.

On a motion by Vice Chair Richardson, and a second by Board Member Sperring, the STA Board approved the recommendations to amend the letter to include comments listed above as shown in ***bold italics***. (8 Ayes)

## 12. ACTION – NON-FINANCIAL ITEMS

### A. STA Soundwall Retrofit Policy

Robert Guerrero reviewed the STA staff's proposed version of a Soundwall Policy which he outlined in two phases:

1. *Phase 1: Initial Screening Process*

This Phase defines how requests are submitted and the procedures needed to initially justify constructing a Soundwall.

2. *Phase 2: Noise Barrier Scope Summary Report Process (NBSSRP)*

This phase requires more detailed studies to determine the feasibility and eligibility of the Soundwall. He added that in addition to the analysis, the local jurisdiction is responsible for having an inclusive public forum to solicit input from residents affected by the new Soundwall facility and will then need to certify by resolution of support with specific language outlined for the STA to consider the Soundwall as part of future STIP allocation.

#### Public Comments:

None presented.

#### Board Comments:

Based on input, the STA Board directed STA staff to work with the TAC to include additional text that emphasizes how low of a priority Sound Wall Retrofit Projects are for STIP funding. The STA Board also agreed that STIP funding should be concentrated on regionally significant countywide priority projects.

After further discussion, the STA Board requested to table this item for further discussion and consideration by the STA TAC and bring back at a future meeting.

### B. Legislative Update

Jayne Bauer summarized and outlined the four (4) bills listed below and recommended to take the following positions as listed below in ***bold italics***:

- ***Watch*** - Assembly Bill (AB) 4 (Linder) - Prohibiting the transfer of weight fee revenues from the State Highway Account to the Transportation Debt Service Fund;
- ***Support*** - Assembly Bill (AB) 227 (Alejo) – Prohibiting the transfer of weight fee revenues from the State Highway Account to the Transportation Deb Service Fund and extending P3 authorization;
- ***Support*** - Assembly Constitutional Amendment (ACA) 4 (Frazier) - Lower the voter approval requirements from 2/3 to 55 percent for the imposition of special taxes used to provide funding for transportation purposes; and
- ***Support in Concept*** - Senate Bill (SB) 321 (Beall) - Stabilization of the gasoline excise tax.

**Public Comments:**

None presented.

**Board Comments:**

None presented.

**Recommendation:**

Take the following positions:

- Assembly Bill (AB) 4 (Linder) - Prohibiting the transfer of weight fee revenues from the State Highway Account to the Transportation Debt Service Fund; *Watch*
- Assembly Bill (AB) 227 (Alejo) – Prohibiting the transfer of weight fee revenues from the State Highway Account to the Transportation Deb Service Fund and extending P3 authorization; *Support*
- Assembly Constitutional Amendment (ACA) 4 (Frazier) - Lower the voter approval requirements from 2/3 to 55 percent for the imposition of special taxes used to provide funding for transportation purposes; *Support*
- Senate Bill (SB) 321 (Beall) - Stabilization of the gasoline excise tax; *Support in concept*

On a motion by Board Member Batchelor, and a second by Vice Chair Richardson, the STA Board approved the recommendations. (8 Ayes)

**13. INFORMATIONAL**

**A. Solano County Pothole Report Update – Impact of Proposed State Excise Tax on Gasoline Funding Cuts on Solano County**

Robert Guerrero provided an update of the proposed cut in state funding and the impact on each community's local streets and roads funding. He reported that the Board of Equalization (BOE) voted to reduce the State excise tax, from 18 cents to 12 cents a gallon, resulting in a 24% reduction in state transportation gas revenues to local streets and roads, the State Transportation Improvement Program (STIP), and the State Highway Operation and Protection Program (SHOPP). He noted that the Governor released his initial Budget proposal that included a significant reduction in state funding for transportation resulting from the decrease in revenues from the excise tax funds dedicated to the State Highway Account (SHA). He also noted that with the repayment of the three transportation bonds given preference for Truck Weight Fees revenues in the Governor's proposed State Budget, the reduction in the SHA will be absorbed by state funds traditionally dedicated to cities and counties for road rehabilitation (44%), the State Transportation Improvement Program (STIP) for capacity projects (44%), and the State Highway Operation and Protection Program (SHOPP) for maintenance of the state highway system (12%). He outlined that for Solano County's seven cities and the County, this is a projected reduction of \$5 million for just local streets and roads for Fiscal Year (FY) 2015-16. Solano County's State Transportation Improvement Program (STIP) allocation for the 2016 STIP is also projected to decrease. Solano County's roads currently average a Pavement Condition Index (PCI) rating of 64 and are projected to decrease to a PCI rating of 49 by 2028.





**MEETING AGENDA**

**6:15 p.m., STA Board Regular Meeting  
 Wednesday, April 15, 2015  
 Suisun City Hall Council Chambers  
 701 Civic Center Drive  
 Suisun City, CA 94585**

**Mission Statement:** To improve the quality of life in Solano County by delivering transportation system projects to ensure mobility, travel safety, and economic vitality.

**Public Comment:** Pursuant to the Brown Act, the public has an opportunity to speak on any matter on the agenda or, for matters not on the agenda, issues within the subject matter jurisdiction of the agency. Comments are limited to no more than 3 minutes per speaker unless modified by the Board Chair, Gov't Code § 54954.3(a). By law, no action may be taken on any item raised during the public comment period (Agenda Item IV) although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the agency. **Speaker cards are required in order to provide public comment. Speaker cards are on the table at the entry in the meeting room and should be handed to the STA Clerk of the Board. Public comments are limited to 3 minutes or less.**

**Americans with Disabilities Act (ADA):** This agenda is available upon request in alternative formats to persons with a disability, as required by the ADA of 1990 (42 U.S.C. §12132) and the Ralph M. Brown Act (Cal. Govt. Code §54954.2). Persons requesting a disability related modification or accommodation should contact Johanna Masiclat, Clerk of the Board, at (707) 424-6008 during regular business hours at least 24 hours prior to the time of the meeting.

**Staff Reports:** Staff reports are available for inspection at the STA Offices, One Harbor Center, Suite 130, Suisun City during regular business hours, 8:00 a.m. to 5:00 p.m., Monday-Friday. You may also contact the Clerk of the Board via email at [jmasiclat@sta-snci.com](mailto:jmasiclat@sta-snci.com). **Supplemental Reports:** Any reports or other materials that are issued after the agenda has been distributed may be reviewed by contacting the STA Clerk of the Board and copies of any such supplemental materials will be available on the table at the entry to the meeting room.

**Agenda Times:** Times set forth on the agenda are estimates. Items may be heard before or after the times shown.

**ITEM**

**BOARD/STAFF PERSON**

- |  |   |
|--|---|
| <p><b>1. CALL TO ORDER/PLEDGE OF ALLEGIANCE</b><br/>(6:15 – 6:20 p.m.)</p> <p><b>2. CONFIRM QUORUM/ STATEMENT OF CONFLICT</b><br/>An official who has a conflict must, prior to consideration of the decision; (1) publicly identify in detail the financial interest that causes the conflict; (2) recuse himself/herself from discussing and voting on the matter; (3) leave the room until after the decision has been made. Cal. Gov't Code § 87200.</p> <p><b>3. APPROVAL OF AGENDA</b><br/>(6:20 – 6:25 p.m.)</p> <p><b>4. OPPORTUNITY FOR PUBLIC COMMENT</b><br/>(6:25 – 6:30 p.m.)</p> | <p>Chair Patterson</p> <p>Chair Patterson</p> |
|--|---|

**STA BOARD MEMBERS**

Elizabeth Patterson (Chair)	Norman Richardson (Vice Chair)	Jack Batchelor, Jr.	Harry Price	Pete Sanchez	Len Augustine	Osby Davis	Jim Spering
City of Benicia	City of Rio Vista	City of Dixon	City of Fairfield	City of Suisun City	City of Vacaville	City of Vallejo	County of Solano

**STA BOARD ALTERNATES**

Tom Campbell	David Hampton	Jerry Castanon, Jr.	Chuck Timm	Lori Wilson	Curtis Hunt	Jesse Malgapo	Erin Hannigan
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- 5. EXECUTIVE DIRECTOR’S REPORT – Pg. 9** Daryl K. Halls  
(6:30 – 6:35 p.m.)
- 6. REPORT FROM THE METROPOLITAN TRANSPORTATION COMMISSION (MTC)** Jim Spering,  
(6:35 – 6:40 p.m.) MTC Commissioner
- 7. STA PRESENTATIONS**  
(6:40 – 6:50 p.m.)
- A. Presentation: Safe Routes to School Program Video** Sarah Fitzgerald
  - B. Directors Reports:**
    - 1. Planning** Robert Macaulay
    - 2. Projects** Janet Adams
    - 3. Transit/Rideshare** Judy Leaks
- 8. CONSENT CALENDAR**
- Recommendation:  
Approve the following consent items in one motion.  
(Note: Items under consent calendar may be removed for separate discussion.)  
(6:50 – 6:55 p.m.)
- A. Minutes of the STA Board Meeting of March 11, 2015** Johanna Masiclat  
Recommendation:  
Approve STA Board Meeting Minutes of March 11, 2015.  
**Pg. 15**
  - B. Draft Minutes to the TAC Meeting of March 25, 2015** Johanna Masiclat  
Recommendation:  
Approve TAC Meeting Minutes of March 25, 2015.  
**Pg. 21**
  - C. Lifeline Advisory Committee Recommendation for Lifeline Funding** Liz Niedziela  
Recommendation:  
Approve the following:
    - 1. The Lifeline Advisory Committee’s Funding Recommendations for allocation of Solano Lifeline Funding for Fiscal Year (FY) 2014-15 through FY 2016-17 as specified in Attachment A;
    - 2. STA Resolution No. 2015-04; and
    - 3. Authorize the Executive Director to enter into an agreement with Faith in Action (FIA) to pass through Lifeline State Transit Assistance Funds (STAF) funding for FIA volunteer driver program not to exceed \$75,535.**Pg. 27**
  - D. SolanoExpress Intercity Transit Consortium 2015 Work Plan** Liz Niedziela  
Recommendation:  
Approve the SolanoExpress Intercity Transit Consortium 2015 Work Plan as shown in Attachment A.  
**Pg. 37**

- E. Fiscal Year (FY) 2015-16 Transportation Fund for Clean Air (TFCA) 40% Program Manager Funds** Drew Hart  
Recommendation:  
 Approve the following:
1. \$220,000 from FY 2015-16 TFCA Program Manager Funds for the Solano Napa Commuter Information Program; and
  2. Authorize the Executive Director to issue a call for projects for the remaining balance of FY 2015-16 TFCA Program Manager Funds in the amount of \$108,076.
- Pg. 41**
- F. Solano Pedestrian Advisory Committee (PAC) Member Appointment** Ryan Dodge  
Recommendation:  
 Approve the following:
1. Appoint Jody Lane representing Bay Area Ridge Trail Council to the PAC for a term to expire December 31, 2017; and
  2. Authorize the STA Chair to forward a letter to Kathy Hoffman thanking her for many years of service on the STA PAC.
- Pg. 43**
- G. Contract Amendment for Engineering Services During Construction for the I-80 Eastbound Cordelia Truck Scales Relocation Project** Janet Adams  
Recommendation:  
 Approve a contract amendment for HDR in the not-to-exceed amount of \$144,129, to cover engineering services during construction of the I-80 Eastbound Cordelia Truck Scales Relocation project.
- Pg. 49**
- H. Rio Vista Transit Outreach and Analysis Study Request for Proposal (RFP)** Liz Niedziela  
Recommendation:  
 Authorize the Executive Director to:
1. Release a Request for Proposal for Rio Vista Transit Outreach and Analysis Study;
  2. Enter into a Funding Agreement with Rio Vista for \$12,950 for the Project Management Study; and
  3. Execute a contract with a Consulting Team for an amount not-to-exceed \$112,900 to conduct the Rio Vista Transit Outreach and Analysis.
- Pg. 59**
- I. Safe Routes to School Walking School Bus Program – Participant Recognition** Betsy Beavers  
Karin Bloesch  
Ward Stewart  
Recommendation:  
 Approve the following Safe Routes to School proclamations to be presented to the recipients at relevant School District Board Meetings:
1. Walking Wednesdays at Matthew Turner Elementary School, Benicia USD;
  2. Walking School Buses at Callison Elementary School, Vacaville USD;

3. Walking School Bus at Center Elementary, Travis USD;
4. Walking School Bus at B. Gale Wilson K-8 School, Fairfield-Suisun USD; and
5. Walking Wednesdays at Grace Patterson Elementary, Vallejo City USD

**Pg. 61**

**J. Solano Safe Routes to School (SR2S) High School Pilot Program** Sarah Fitzgerald

Recommendation:

Authorize the Executive Director to enter into a Funding Agreement with the Vallejo City Unified School District in the amount of \$20,000 for a high school trip reduction pilot program.

**Pg. 69**

**K. Cap and Trade Program Resolution of Support - Fairfield/Vacaville Intermodal Station** Drew Hart

Recommendation:

Approve the attached STA Resolution No. 2015-03 supporting the application to SGC's Affordable Housing Sustainable Communities grant program for the Fairfield-Vacaville Intermodal Station to be submitted by the City of Fairfield with STA as a co-applicant.

**Pg. 71**

**L. SolTrans Reduced American with Disabilities Act (ADA) Paratransit Certified Fare for SolanoExpress Routes 78, 80 and 85** Elizabeth Romero, SolTrans

Recommendation:

Approve the following:

1. Authorize SolTrans to charge ADA Paratransit Certified Clients and Personal Care Attendants (PCAs) a \$0.50 per ride cash fare each on the SolanoExpress Routes 78, 80 and 85 under a 3-year pilot program from the date of implementation through Fiscal Year (FY) 2018, per attachment Attachment A; and
2. Request SolTrans provide annual reports to the Consortium and STA Board.

**Pg. 75**

**M. STA Soundwall Retrofit Policy** Robert Guerrero

Recommendation:

Approve the STA Sound Wall Retrofit Policy as specified in Attachment A.

**Pg. 95**

## 9. ACTION FINANCIAL ITEMS

### A. I-80 Express Lanes Projects – PS&E Consultant Selection

Janet Adams

#### Recommendation:

Authorize the Executive Director to enter into an agreement with AECOM Technical Services, Inc. to provide detailed preliminary engineering and final design services for the entire I-80 Express Lanes – Red Top Road to I-505 project for a not-to-exceed amount of \$12.5 million, subject to BAIFA providing funding for the East Segment.

(6:55 – 7:00 p.m.)

**Pg. 107**

## 10. ACTION NON-FINANCIAL ITEMS

### A. Solano Rail Facilities Plan Update

Robert Macaulay  
David McCrossan,  
Menzies &  
McCrossan, LLC

#### Recommendation:

Release the Draft Solano Rail Facilities Plan Update provided as Attachment A, for a 30-day public comment period.

(7:00 – 7:15 p.m.)

**Pg. 113**

### B. Bay Trail - Vine Trail Feasibility Study

Drew Hart

#### Recommendation:

Approve the Bay Trail-Vine Trail Feasibility and Engineering Study as shown in Attachment A.

(7:15 – 7:25 p.m.)

**Pg. 115**

### C. Legislative Update

Jayne Bauer

#### Recommendation:

Approve the following positions:

- AB 194 (Frazier) authorizing a regional transportation agency to apply to the California Transportation Commission to operate a high-occupancy toll (HOT) lane; *Support in concept*
- HR 1308 (Lowenthal) establishing the Freight Transportation Infrastructure Trust Fund; *Support*

(7:25 – 7:30 p.m.)

**Pg. 117**

### D. State Route (SR) 12 East Gap Closure Project

Janet Adams

#### Recommendation:

Authorize the Chair to forward a letter to Caltrans to:

1. Complete the SR 12 Gap Closure Project Study Report to be completed by June 2015; and
2. Support funding for the SR 12 Gap Closure Project in the 2016 SHOPP for rehabilitation including constructing standard cross-section of 8 foot shoulders and 12 foot lanes.

(7:30 – 7:35 p.m.)

**Pg. 139**

- E. Active Transportation Program (ATP) Update - Candidate Projects Recommendation:** Drew Hart
- Approve the following:
1. Authorize the Executive Director to sign letters of support for the following ATP applicants:
    - i. Vallejo – Bay Trail/Vine Trail
    - i. Suisun City – McCoy Creek Trail
    - ii. Fairfield – East Tabor Avenue
    - iii. Solano County – Farm to Market
    - iv. Fairfield – Transportation Center Gateway
    - v. Rio Vista – Active Transportation Plan
  2. Authorize the STA Executive Director to apply to the Active Transportation Program (ATP) for a Safe Routes to School grant consisting of non-infrastructure programs and infrastructure projects in the cities of Benicia, Rio Vista, and Vallejo.
- (7:35 – 7:40 p.m.)  
**Pg. 149**

**11. INFORMATIONAL ITEMS – NO DISCUSSION**

- A. Regional Transportation Impact Fee (RTIF) - FY 2014-15 2nd Quarter Revenue Update** Robert Guerrero  
**Pg. 157**
- B. Fiscal Year (FY) 2014-15 Abandoned Vehicle Abatement (AVA) Program Second Quarter Report** Judy Kowalsky  
**Pg. 161**
- C. Intercity Taxi Scrip Program Update** Liz Niedziela  
**Pg. 163**
- D. Consolidated Transportation Services Agency (CTSA)/Mobility Management Program Update** Kristina Holden  
**Pg. 167**
- E. Bike to Work Week May 11-15, 2015** Judy Leaks  
**Pg. 173**
- F. SNCI Call Center/Transportation Info Depot Update** Judy Leaks  
**Pg. 175**
- G. Summary of Funding Opportunities** Drew Hart  
**Pg. 177**
- H. STA Board and Advisory Committee Meeting Schedule for Calendar Year 2015** Johanna Masiclat  
**Pg. 181**

**12. BOARD MEMBERS COMMENTS**

**13. ADJOURNMENT**

The next regularly scheduled meeting of the STA Board is at **6:00 p.m., Wednesday, May 13, 2015**, Suisun Council Chambers.



**AGENDA ITEM**  
**CITY COUNCIL MEETING: APRIL 21, 2015**  
**COUNCIL MEMBER COMMITTEE REPORTS**

**DATE** : April 14, 2015

**TO** : Mayor Patterson  
Council Member Campbell  
Vice Mayor Hughes

**FROM** : Director of Public Works

**SUBJECT** : **SOLANO COUNTY WATER AGENCY**

The following information is provided for your committee report at the April 21, 2015 City Council meeting.

The draft minutes of the March 12, 2015 meeting are attached. The agenda for the regular meeting on April 9, 2015 is attached. The next meeting is scheduled for May 14, 2015.

Attachments:

- Draft minutes of the March 12, 2015 regular meeting
- Agenda for April 9, 2015 regular meeting



**SOLANO COUNTY WATER AGENCY  
BOARD OF DIRECTORS MEETING MINUTES**

**MEETING DATE: March 12, 2015**

The Solano County Water Agency Board of Directors met this evening at the Solano County Water Agency. Present were:

Mayor Harry Price, City of Fairfield  
Mayor Len Augustine, City of Vacaville  
Mayor Pete Sanchez, City of Suisun City  
Mayor Elizabeth Patterson, City of Benicia  
Mayor Osby Davis, City of Vallejo  
Councilmember Scott Pederson, City of Dixon  
Mayor Norm Richardson, City of Rio Vista  
Supervisor Erin Hannigan, Solano County District 1  
Supervisor Linda Seifert, Solano County District 2  
Supervisor Jim Spering, Solano County District 3  
Supervisor John Vasquez, Solano County District 4  
Supervisor Skip Thomson, Solano County District 5  
Director J. D. Kluge, Solano Irrigation District  
Manager Don Holdener, Maine Prairie Water District  
Director Dale Crossley, Reclamation District 2068

**CALL TO ORDER**

The meeting was called to order at 6:30 P.M. by Chairman Crossley.

**APPROVAL OF AGENDA**

On a motion by Director Holdener and a second by Supervisor Spering the Board unanimously approved the agenda.

**PUBLIC COMMENT**

There were no public comments.

**CONSENT ITEMS**

Staff gave the Board additional details regarding Item 5D. On a motion by Supervisor Spering and a second by Mayor Price the Board unanimously approved the Consent Items.

- (A) Minutes
- (B) Expenditure Approvals
- (C) Request to Maintain Funding for the Cooperative Endangered Species Conservation Fund
- (D) Amendment to the Agreement with Electric Gas and Industries Association (EGIA) for the Installation of High-Efficiency Toilets
- (E) Resolution for CalPERS Public Employee's Pension Reform Act of 2013 (PEPRA) to Tax Defer Member Paid Contributions

**BOARD MEMBER REPORTS**

Director Crossley announced the General Manager's Recruitment Committee has selected four candidates to interview for the General Manager position on March 26, 2015. After discussion, the Committee will be recommending two of the interviewed candidates the Board on April 9<sup>th</sup> to be discussed in a closed session.

**GENERAL MANAGER'S REPORT**

There are no additions to the written report.

**SCWA STRATEGIC PLANNING**

Chairman Crossley established a SCWA Strategic Planning Stakeholder Group consisting of six SCWA Board members, five SCWA Advisory Commission members to be appointed by the Commission, the Chair of the SCWA Flood Control Advisory Committee, and to invite a staff representation from Fairfield Suisun Sewer and Vallejo Sanitation and Flood Control Districts to participate in the development of the SCWA 2015 Strategic Plan. Supervisors Seifert and Vasquez; Mayors Batchelor, Patterson, and Price; and Director Kluge were appointed to the Group by the Chairman with Director Kluge as the chair of the Group.

On a motion by Mayor Patterson and a second by Mayor Richardson the Board unanimously authorized staff to proceed with solicitation of Requests for Qualifications and Proposals to hire a consultant to assist the Group in preparing the SCWA 2015 Strategic Plan.

**DELTA ISSUES**

Supervisor Seifert reported there was a Water Policy Committee meeting on March 9, 2015 where there were informative presentations on groundwater. She reported the groundwater conditions in Yolo and Solano counties are sustainable and that both counties have groundwater monitoring programs. Both counties are organizing to develop groundwater sustainability plans and are forming groundwater sustainability agencies.

Supervisor Thomson reported that some members of Delta Counties Coalition travelled to Washington D.C. in March and met with representatives to discuss the Bay Delta Conservation Plan, water rights and storage, and invasive species.

Chairman Crossley reported that the Legislative Committee met with Assembly member Dodd and Senator Wolk and provided them with SCWA's Annual Report to the California State Legislature.

**WATER CONSERVATION LANDSCAPE REBATE PROGRAM**

On a motion by Mayor Patterson and a second by Mayor Sanchez the Board unanimously approved additional funding up to \$300,000 for water conservation landscape rebates.

**TIME AND PLACE OF NEXT MEETING**

The next regularly scheduled meeting will be Thursday, April 9, 2015 at 6:30 p.m. in the Berryessa Room located at the Solano County Water Agency offices.

**ADJOURNMENT**

This meeting of the Solano County Water Agency Board of Directors was adjourned at 7:07 p.m.

---

David B. Okita, General Manager  
and Secretary to the Board of Directors of the  
Solano County Water Agency

# SOLANO COUNTY WATER AGENCY



## BOARD OF DIRECTORS:

### **Chair:**

*Director Dale Crossley*  
Reclamation District No. 2068

### **Vice Chair:**

*Supervisor Erin Hannigan*  
Solano County District 1

*Mayor Len Augustine*  
City of Vacaville

*Mayor Jack Batchelor*  
City of Dixon

*Mayor Osby Davis*  
City of Vallejo

*Director John D. Kluge*  
Solano Irrigation District

*Mayor Elizabeth Patterson*  
City of Benicia

*Mayor Harry Price*  
City of Fairfield

*Mayor Norm Richardson*  
City of Rio Vista

*Director Gene Robben*  
Maine Prairie Water District

*Mayor Pete Sanchez*  
City of Suisun City

*Supervisor Linda Seifert*  
Solano County District 2

*Supervisor Jim Spering*  
Solano County District 3

*Supervisor Skip Thomson*  
Solano County District 5

*Supervisor John Vasquez*  
Solano County District 4

## GENERAL MANAGER:

*David Okita, PE*  
Solano County Water Agency

## BOARD OF DIRECTORS MEETING

**DATE:** Thursday, April 9, 2015

**TIME:** 6:30 p.m.

**PLACE:** Berryessa Room  
Solano County Water Agency Office  
810 Vaca Valley Parkway, Suite 203  
Vacaville

1. **CALL TO ORDER**

2. **PLEDGE OF ALLEGIANCE**

3. **APPROVAL OF AGENDA**

4. **6:30-7:30 PM: CLOSED SESSION**

Section 54957(b) - Public Employee Appointment: General Manager

5. **PUBLIC COMMENT (Note: this item will start at the conclusion of the Closed Session, but not before 7:30 PM)**

Limited to 5 minutes for any one item not scheduled on the Agenda.

6. **CONSENT ITEMS**

(A) Minutes: Approval of the Minutes of the Board of Directors meeting of March 12, 2015 is recommended.

(B) Expenditure Approvals: Approval of the March checking account register is recommended.

(C) Putah South Canal Headworks Improvement Project:

1. Adopt plans and specifications for the PSC Headworks Improvement Project with an estimated cost of \$2,030,000.
2. Authorize staff to solicit construction bids for the PSC Headworks Improvement Project.

810 Vaca Valley Parkway, Suite 203  
Vacaville, California 95688  
Phone (707) 451-6090 • FAX (707) 451-6099  
www.scwa2.com



**VIII.D.9.5**

(D) CalPERS Pay Schedule: Approve pay schedule for SCWA employees to meet CalPERS statutory and regulatory requirements.

(E) Amendment No. 1 to Agreement with GHD Inc. for Grant Administration of the Proposition 84 Bay Area IRWMP Grant: Authorize General Manager to Execute Amendment No. 1 to the Agreement with GHD, Inc. for grant administration services for Round 1 and Round 2 of the Bay Area Proposition 84 IRWMP Grant. The contract amount will increase by \$60,000 which will be reimbursed by the IRWMP grant.

7. **BOARD MEMBER REPORTS**

RECOMMENDATION: For information only.

8. **GENERAL MANAGER'S REPORT**

RECOMMENDATION: For information only.

9. **GENERAL MANAGER CONTINUITY**

RECOMMENDATIONS:

1. Approve Resolution Number 2015-2 “Authorizing the Hiring of David Okita as a Retired Annuitant to Serve as General Manager”.
2. Approve the appointment of Thomas Pate, Principle Water Resources Engineer as Interim General Manager under the following conditions:
  - a. Interim General Manager status will be restricted to the time period (if any) when David Okita ceases to be General Manager and when a permanent General Manager commences employment.
  - b. During the time served as Interim General Manager, Thomas Pate’s salary shall be increased by 10 percent.

10. **SCWA AUDIT**

RECOMMENDATION: Accept fiscal year 2013-2014 audit.

11. **DELTA ISSUES**

RECOMMENDATION: Hear report from Supervisor Thomson on activities of the Delta Counties Coalition and Delta Protection Commission.

12. **TIME AND PLACE OF NEXT MEETING**

Thursday, May 14, 2015 at 6:30 p.m. at the SCWA offices.

*The Full Board of Directors packet with background materials for each agenda item can be viewed on the Agency's website at [www.scwa2.com](http://www.scwa2.com).*

Any materials related to items on this agenda distributed to the Board of Directors of Solano County Water Agency less than 72 hours before the public meeting are available for public inspection at the Agency's offices located at the following address: 810 Vaca Valley Parkway, Suite 203, Vacaville, CA 95688. Upon request, these materials may be made available in an alternative format to persons with disabilities.

Apr.2015.bod.agd



**AGENDA ITEM**  
**CITY COUNCIL MEETING: APRIL 21, 2015**  
**COUNCIL MEMBER COMMITTEE REPORTS**

**DATE** : April 7, 2015

**TO** : Vice Mayor Hughes  
Council Member Strawbridge

**FROM** : Public Works Director

**SUBJECT** : **TRAFFIC, PEDESTRIAN AND BICYCLE SAFETY (TPBS) COMMITTEE**

The following is provided as your committee report for the April 21, 2015 City Council meeting.

The TPBS Committee last met on January 15, 2015. The next regular meeting is scheduled for April 16, 2015. That meeting agenda is in process and will be distributed and published on the City's website on April 10.



**AGENDA ITEM**  
**CITY COUNCIL MEETING: APRIL 21, 2015**  
**COUNCIL MEMBER COMMITTEE REPORTS**

**DATE** : April 9, 2015

**TO** : Vice Mayor Hughes  
Council Member Schwartzman

**FROM** : City Manager

**SUBJECT** : **TRI-CITY AND COUNTY COOPERATIVE PLANNING GROUP**  
**"SOLANO OPEN SPACE"**

The following information is provided for your committee report at the April 21, 2015 Council meeting. The regularly scheduled meeting on March 9, 2015 was canceled due to a lack of quorum of the Governing Board. The next regular meeting is scheduled for Monday, June 8, 2015, at 7:15 P.M. (location to be determined).



**AGENDA ITEM  
CITY COUNCIL MEETING: APRIL 21, 2015  
COUNCIL MEMBER COMMITTEE REPORTS**

**DATE** : April 14, 2015

**TO** : Council Member Campbell  
Council Member Schwartzman

**FROM** : City Manager

**SUBJECT** : **VALERO COMMUNITY ADVISORY PANEL (CAP)**

The following information is provided for your committee report at the April 21, 2015 Council meeting.

The CAP meets quarterly at 6:30 p.m. at the refinery at 610 Industrial Way. The last meeting was held on April 20, 2015 and minutes are not yet available.



**AGENDA ITEM**  
**CITY COUNCIL MEETING: APRIL 21, 2015**  
**COUNCIL MEMBER COMMITTEE REPORT**

**DATE** : April 15, 2015

**TO** : Mayor Elizabeth Patterson  
Vice Mayor Hughes  
Council Member Christina Strawbridge

**FROM** : Youth Action Coalition

**SUBJECT** : **YOUTH ACTION COALITION**

The following information is provided for your committee report at the April 21, 2015 City Council meeting.

The Benicia Youth Action Coalition met on March 25, 2015. Agenda and minutes are not yet available for that meeting.

The next meeting is scheduled for April 22, 2015 in the Commission Room.



**AGENDA ITEM  
CITY COUNCIL MEETING: APRIL 21, 2015  
COUNCIL MEMBER COMMITTEE REPORTS**

**DATE** : April 14, 2015  
**TO** : City Council  
**FROM** : Mayor Patterson  
**SUBJECT** : **ABAG/CAL FED TASK FORCE/BAY AREA WATER FORUM**

The following information is provided for your committee report at the April 21, 2015 City Council meeting.

The Bay Area Water Forum's last meeting was held on March 26, 2012.

This was the last meeting of the Bay Area Water Forum for 2012, due to a lack of funding.



**AGENDA ITEM  
CITY COUNCIL MEETING: APRIL 21, 2015  
COUNCIL MEMBER COMMITTEE REPORTS**

**DATE** : April 6, 2015

**TO** : Mayor Patterson  
Vice Mayor Hughes  
Council Member Campbell

**FROM** : Assistant City Manager

**SUBJECT** : **SOLANO COUNTY TRANSIT (SolTrans) BOARD MEETING**

The following information is provided for your committee report at the April 21, 2015 Council meeting.

The Solano County Transit (SolTrans) Joint Powers Authority held a regular meeting on March 19, 2015. The Executive Report for that meeting is attached.

The next regular meeting of the SolTrans Board will be held on April 16, 2015 at 6:00 p.m. and will be held in the City of Vallejo GVRD Board Room. The Agenda and Executive Report for this meeting were not available as of the date of this report.

Attachment:

- March 19, 2015 Executive Report





**TO:** BOARD OF DIRECTORS  
**PRESENTER:** MONA BABAUTA, EXECUTIVE DIRECTOR  
**SUBJECT:** EXECUTIVE DIRECTOR'S REPORT  
**ACTION:** INFORMATIONAL

---

The following provides an overview of more significant issues addressed by your Staff since the February 19, 2015 Board meeting:

**FINANCE AND ADMINISTRATION:**

- State Transit Assistance Fund (STAF)-Lifeline Cycle 4 grant: SolTrans will be receiving a STAF Lifeline Cycle 4 award through the Solano Transportation Authority (STA) and the Metropolitan Transportation Commission (MTC) for funding operations on Route 1 and 85. The award will likely be in the range of \$1.5-1.7 million to fund operations during FYs 2015, 2016 and 2017.
- Job Access Reverse Commute (JARC)-Lifeline Cycle 4 grant: SolTrans will be receiving a JARC grant award through the STA and MTC for funding operations on Route 2. The expected award amount is \$560,389, and it will be used to fund operations during FYs 2015, 2016, and 2017.
- Proposition 1B PTMISEA-Lifeline Cycle 4 grant: SolTrans will also be receiving a grant award of \$890,796 through STA and MTC to replace three aging, local fixed route buses that have exceeded their useful lives.
  - SolTrans Curtola Park and Ride Hub: A more detailed report is provided under Agenda Item 10. Weekly construction updates may be found here: <http://www.soltransride.com/planning/soltrans-curtola-park-ride-hub/weekly-construction-updates/> More info on the overall project may be found here: <http://www.soltransride.com/planning/curtola/>

Additionally, a comprehensive public outreach plan is being implemented due to the upcoming, full closure of the main parking lot on April 6<sup>th</sup>, as well as the need to begin informing the public of future parking fees at this facility. More detailed information on the proposed outreach plan may be found under Agenda Item 11.

- Public Private Partnership (P3) Process: Staff executed a contract with SP+ for the operations and maintenance of the new SolTrans Curtola Park and Ride Hub in March 2015. Now, a kick-off meeting to begin the transition process is scheduled for March 23<sup>rd</sup> with SP+.
- Transit Operations & Maintenance (O&M) Facility at 1850 Broadway: This project is still scheduled to be completed by July 2015 and on budget. More information on this project may be found under Agenda Item 10.

- Compressed Natural Gas (CNG) Project: The Board is being asked to authorize a contract award to Raymundo for design and engineering services related to the implementation of CNG infrastructure at SolTrans' O&M Facility. More information may be found under Agenda Item 9.
- Human Resources Update: We are interviewing candidates for the Planning and Operations Manager position on Monday, March 16, 2015.
- FY 2015-16 Budget Process: Staff is in the process of developing the draft FY 2015-16 Budget for the Board's initial review in April 2015, along with a draft set of performance goals and measures to accompany it. Per the Board-adopted Budget policy, the final budget will be adopted by May 2015, and prior to doing so, staff will be vetting the budget with SolTrans' Executive and Technical Advisory Committees.

#### OPERATIONS:

- Fixed Route Service Changes on 3/9/15: Service changes were implemented on Monday, March 9<sup>th</sup> to strengthen on-time performance on Routes 4 and 78. Additionally, on March 23<sup>rd</sup>, staff will implement changes to the Route 20 (Benicia-Gateway Plaza route) in order to serve Target, per public demand. Staff will provide a staff briefing on the recent changes during the Board meeting.
- Regional Paratransit Policy: SolTrans is revisiting how it provides regional paratransit connections beyond the cities of Vallejo and Benicia, in order to provide quality paratransit service within its local service area as required by the Americans with Disabilities Act (ADA). More detailed information may be found under Agenda Item 8.

#### EXTERNAL AFFAIRS:

- Upcoming Community Outreach Events and Promotions:
  - We will support a Medical Day in Suisun City by providing a shuttle between Benicia and Vallejo to the event site. More details may be found here: <http://www.soltransride.com/2015/02/mini-med/>
  - Students Ride Free During Spring Break 2015: Free rides will be offered to all kids ages 6-18, as well as to college students with a valid school ID. More information may be found here: <http://www.soltransride.com/2015/03/students-ride-free-during-spring-break/> A press release may also be found as Attachment B.
  - SolTrans will be supporting the Vallejo Waterfront Weekend by providing a community shuttle on Saturday, October 3<sup>rd</sup>. Planning has already started, and I attended the first meeting with group organizers on February 25, 2015.
- Local, Regional and State and National Committee Meetings:
  - MTC's Managed Lanes Implementation Plan (MLIP) Leadership Team: I was asked to participate on the MLIP Leadership Team to assist MTC define a vision for improving the Bay Area's express lanes and supporting infrastructure, services and technologies. I attended the kick-off meeting on March 2, 2015.
  - American Public Transportation Association (APTA) Legislative Conference: I attended APTA's legislative conference in Washington D.C. from March 8<sup>th</sup> through 10<sup>th</sup>. In doing so, I was able to follow current policy and regulatory issues significantly impacting our agency, potential policy and funding changes when MAP-21 is fully implemented/extended/re-authorized, as well as best practices in the industry.

- Congressman Mike Thompson's Washington Office: On March 10<sup>th</sup>, I met with staff in Washington to discuss SolTrans' priorities, significant projects, and funding needs.
- Vallejo Chamber of Commerce: As a 2015 Board member, I will be attending the next Board meeting on March 17, 2015.
- California Transit Association: I will be participating in the Association's Executive Committee meeting on March 24, 2015 in Sacramento.
- SolTrans Technical Advisory Committee (TAC) Meeting: Staff will be discussing the draft FY 2015-16 budget with the TAC on April 7<sup>th</sup> at 2:30 p.m.

Attachments:

- A. List of Acronyms
- B. Press Release on "Students Ride Free During Spring Break" promotion

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SOLTRANS ACRONYMS LIST OF TRANSPORTATION TERMS

Last Updated: June 11, 2014

<b>A</b>		MPO	Metropolitan Planning Organization
ADA	Americans with Disabilities Act	MTC	Metropolitan Transportation Commission
APC	Automatic Passenger Counter	<b>N, O, &amp; P</b>	
AVL	Automatic Vehicle Location System	NTD	National Transit Database
AVO	Average Vehicle Occupancy	OBAG	One Bay Area Grant
<b>B</b>		PAC	Public Advisory Committee
BAFO	Best and Final Offer	PCC	Paratransit Coordinating Council
BART	Bay Area Rapid Transit	PDT	Project Development Team
<b>C</b>		PDWG	Project Development Working Group
CalEMA	California Emergency Management Agency	PNR	Park & Ride
CALTRANS	California Department of Transportation	PPP (3P)	Public Private Partnership
CAM	Cost Allocation Model	PTAC	Partnership Technical Advisory Committee
CARB	California Air Resources Board	<b>R &amp; S</b>	
CBA	Collective Bargaining Agreement	RFP	Request for Proposals
CCC	Contra Costa County Connections	RM2	Regional Measure 2 Funds
CHP	California Highway Patrol	RVH	Revenue Vehicle Hours
CMAQ	Congestion Mitigation & Air Quality Program	RVM	Revenue Vehicle Miles
COV	City of Vallejo	SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
CTC	California Transportation Commission	SNCI	Solano Napa Commuter Information
CTSGP	California Transit Security Grant Program	SR2T	Safe Routes to Transit
CTAF	California Transit Assistance Fund	S RTP	Short Range Transit Plan
<b>D</b>		STA	Solano Transportation Authority
DAR	Dial-a-Ride	STAF	State Transit Assistance Fund
DBE	Disadvantaged Business Enterprise	STIP	State Transportation Improvement Program
DOT	Department of Transportation	STP	Surface Transportation Program
<b>E &amp; F</b>		<b>T</b>	
FAST	Fairfield and Suisun Transit	TAC	Technical Advisory Committee
FHWA	Federal Highway Administration	TCP	Transit Capital Priorities
FTA	Federal Transit Administration	TDA	Transportation Development Act
FY	Fiscal Year	TIF	Transportation Investment Fund
<b>G, H, I, &amp; J</b>		TIP	Transportation Improvement Program
GFI	Gen-fare Industries Farebox	TLC	Transportation for Livable Communities
GP	General Public (as in GP Dial-a-Ride)	TMA	Transportation Management Association
GPS	Global Positioning System	TMP	Transportation Management Plan
HOV	High Occupancy Vehicle	TMS	Transportation Management System
IFB	Invitation for Bid	<b>U, V, W, Y</b>	
IPR	Initial Project Report	UA	Urbanized Area
ITF	Intercity Transit Funding	VMT	Vehicle Miles Traveled
JARC	Job Access Reverse Commute	VTC	Vallejo Transit Center
JPA	Joint Powers Authority	WETA	Water Emergency Transportation Authority
<b>L &amp; M</b>		YTD	Year to Date
MAP-21	Century Moving Ahead for Progress in the 21st Century		
MCI	Motor Coach Industries		
MOU	Memorandum of Understanding		
MOV	Multiple Occupant Vehicle		

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**Contact:**

Robert Briseño  
Partner with BB&B Business Group  
[robertabriseno@bbandb-businessgroup.com](mailto:robertabriseno@bbandb-businessgroup.com)  
207 Wallace Ave  
Vallejo, CA 94591  
707-652-3223

**NEWS RELEASE**

March 9, 2015

FOR IMMEDIATE RELEASE

**SolTrans Announces Students Ride FREE Promotion  
For the 2015 Spring Break**

Vallejo, CA –No gimmicks, no strings, no red tape – just FREE! Students of any age (elementary to college) can ride all LOCAL buses FREE from Monday March 30<sup>th</sup> until Sunday April 12<sup>th</sup>. Youth 6-18 ride for FREE, and college students must present their student ID.

You don't even have to "Like" us on Facebook to get this deal! (We wouldn't mind if you did though.)

Just board the bus, present your ID and ride for FREE. Spring Break just got that much more fun, easier and of course cheaper!

This is the third year in a row that Sol Trans has offer a Spring Break promotion and, Sol Trans Board Chairperson, Mayor Osby Davis had this to say, "There is value in getting our kids out of the house and active in the community. This is one of the reasons why SolTrans continues to offer Spring Break promotions. Taking the bus is a 'healthy' habit that involves walking and engaging with others in the community, which is what we want our kids to do more of these days."

SolTrans will often run specials and other free service and/or shuttles in support of events in Vallejo and Benicia. For more information about this or other services they provide visit them on the web at [www.SolTransRide.com](http://www.SolTransRide.com).

Solano County Transit (SolTrans) has been the public transportation provider for south Solano County since July 2011. SolTrans provides local and regional fixed routes, complementary paratransit, dial-a-ride service, and subsidized taxi programs. The agency is a Joint Powers Authority (JPA) that is governed by a six-member Board of Directors, composed of two representatives from the cities of Benicia and Vallejo, Solano County's representative on the Metropolitan Transportation Commission (MTC), and a representative from the Solano Transportation Authority.

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**AGENDA ITEM**  
**CITY COUNCIL MEETING: APRIL 21, 2015**  
**COUNCIL MEMBER COMMITTEE REPORTS**

**DATE** : April 10, 2015

**TO** : Council Member Schwartzman  
Council Member Strawbridge

**FROM** : Community Development Director

**SUBJECT** : **MARIN CLEAN ENERGY (MCE)**

The following information is provided for your committee report at the April 21, 2015 City Council meeting.

Benicia participated in its first meeting in February (meeting materials are currently unavailable). The March meeting was canceled and Council Members Schwartzman and Strawbridge were unable to attend the April 16, 2015 meeting. The materials from that meeting are attached.

Attachment:

- Agenda for April 16, 2015 Board meeting





**Marin Clean Energy  
Board of Directors Meeting  
Thursday, April 16, 2015  
7:00 P.M.**

Kathrin Sears, Chair  
County of Marin

Tom Butt, Vice Chair  
City of Richmond

Bob McCaskill  
City of Belvedere

Alan Schwartzman  
City of Benicia

Sloan C. Bailey  
Town of Corte Madera

Barbara Coler  
Town of Fairfax

Greg Lyman  
City of El Cerrito

Kevin Haroff  
City of Larkspur

Garry Lion  
City of Mill Valley

Brad Wagenknecht  
County of Napa

Denise Athas  
City of Novato

Carla Small  
Town of Ross

Ford Greene  
Town of San Anselmo

Genoveva Calloway  
City of San Pablo

Andrew McCullough  
City of San Rafael

Ray Withy  
City of Sausalito

Emmett O'Donnell  
Town of Tiburon

1 (888) 632-3674  
[mceCleanEnergy.org](http://mceCleanEnergy.org)  
781 Lincoln Ave., #320  
San Rafael, CA 94901

**San Rafael Corporate Center, Tamalpais Room  
750 Lindero Street, San Rafael, CA 94901**

**Agenda Page 1 of 2**

1. Board Announcements (Discussion)
2. Public Open Time (Discussion)
3. Report from Chief Executive Officer (Discussion)
4. Consent Calendar (Discussion/Action)
  - C.1 3.5.15 Meeting Minutes
  - C.2 Approved Contracts Update
  - C.3 MCE Staff Position Adjustment
  - C.4 Second Addendum to First Agreement with North Bay Office Furniture, LLC
5. Monthly Budget Report (Discussion)
6. Repayment of Loans with River City Bank and Related Budget Adjustment for FY 15/16 (Discussion/Action)
7. Feed-in-Tariff Program Review (Discussion/Action)



Agenda material can be inspected in the Marin County Sheriff's lobby, located at 3501 Civic Center Drive, San Rafael, CA 94903. The meeting facilities are in accessible locations. If you are a person with a disability and require this document in an alternate format (example: Braille, Large Print, Audiotape, CD-ROM), you may request it by using the contact information below. If you require accommodation (example: ASL Interpreter, reader, note taker) to participate in any MCE program, service or activity, you may request an accommodation by calling (415) 464-6032 (voice) or 711 for the California Relay Service or by e-mail at [djackson@mceCleanEnergy.org](mailto:djackson@mceCleanEnergy.org) not less than **four work days** in advance of the event.

**VIII.D.16.3**



**Marin Clean Energy  
Board of Directors Meeting  
Thursday, April 16, 2015  
7:00 P.M.**

Kathrin Sears, Chair  
County of Marin

Tom Butt, Vice Chair  
City of Richmond

Bob McCaskill  
City of Belvedere

Alan Schwartzman  
City of Benicia

Sloan C. Bailey  
Town of Corte Madera

Barbara Coler  
Town of Fairfax

Greg Lyman  
City of El Cerrito

Kevin Haroff  
City of Larkspur

Garry Lion  
City of Mill Valley

Brad Wagenknecht  
County of Napa

Denise Athas  
City of Novato

Carla Small  
Town of Ross

Ford Greene  
Town of San Anselmo

Genoveva Calloway  
City of San Pablo

Andrew McCullough  
City of San Rafael

Ray Withy  
City of Sausalito

Emmett O'Donnell  
Town of Tiburon

1 (888) 632-3674  
[mceCleanEnergy.org](http://mceCleanEnergy.org)  
781 Lincoln Ave., #320  
San Rafael, CA 94901

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8. Greenhouse Gas Emissions Analysis for Calendar Year 2013  
(Discussion/Action)
9. Second Amendment to Lease Agreement with 700 Fifth  
Avenue, LLC (Discussion/Action)
10. Communications Update (Discussion)
11. Board Member & Staff Matters (Discussion)
12. Adjourn



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