

**AGENDA ITEM  
CITY COUNCIL SPECIAL MEETING: JANUARY 7, 2009  
PUBLIC WORKSHOP**

**DATE** : December 31, 2008  
**TO** : City Council  
**FROM** : City Manager  
Community Development Director  
**SUBJECT** : **BENICIA BUSINESS PARK PROJECT**

**RECOMMENDATION:**

Participate in a facilitated public workshop for the purpose of providing information that may help the Council determine whether to modify its recent decision to deny the Benicia Business Park project.

**EXECUTIVE SUMMARY:**

At its December 3, 2008 meeting, the Council decided to agendaize reconsideration of its November 18, 2008 denial of the Benicia Business Park project following a facilitated public workshop. The purpose of this workshop is to determine whether a collaborative approach to planning the project with the applicant and the community will be feasible.

**STRATEGIC PLAN:**

Relevant Strategic Plan Goals and Strategies:

- Goal 1.00 Protect Community and Environmental Health and Safety
- Goal 2.00 Strengthen the Economy
  - Strategy 2.30 Facilitate and encourage sustainable development
- 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
  - Strategy 4.40 Improve and maintain facilities and infrastructure
- Goal 5.00 Enhance Community Appearance
  - Strategy 5.10 Promote quality design in new construction and remodeling

A project acceptable to the community could increase the City's tax base, provide new jobs, and develop the site consistent with the General Plan vision of sustainability, including by providing campus design, Low-impact Development and LEED-ND features, LEED-certified buildings, a transit facility, and clean-fuel transit.

## **BUDGET INFORMATION:**

The \$4745 cost of the workshop and report of its outcomes is funded from the FY 08-09 Community Development Department Professional Services account.

The project would be required to contribute its fair share for City services, including funding and installation of all on-site infrastructure and necessary off-site utility connections; paying development and traffic impact fees; and providing sites and funding for fire, police, and public works facilities and operations.

## **ENVIRONMENTAL REVIEW:**

The project would be subject to a Subsequent EIR that may utilize baseline information from the prior EIR but must include new, thorough analysis of all potential significant impacts of the proposed project, including any and all revisions.

## **SUMMARY:**

Key to the workshop will be project review components suggested by the applicant in a December 2, 2008 letter (attached) as starting points for the discussion of how to address community concerns. These components include, but are not limited to: extension of the review timeline, compliance with AB 32, a development agreement, a separate agreement with the Benicia Unified School District, a subsequent EIR, a specific plan, a community advisory panel, and a business recruitment program.

Daniel Iacofano, who led community conversations on the project in 2005, will facilitate the workshop. He has supplied a program, ground rules, and a description of key process tools: development agreement, specific plan, and subsequent EIR (all attached).

## **NEXT STEPS:**

At its February 3, 2008 or a subsequent meeting, Council will reconsider its denial of the Business Park project. If that decision is nullified, Council may then establish the review process for the project, including actions necessary to develop a project description for a Subsequent EIR. It is anticipated that the December 2, 2008 letter from the applicant may need to be modified following the January 7, 2009 workshop in preparation for future Council action.

### **Attachments:**

- Workshop program
- Workshop ground rules
- Benicia Business Park Community Workshop – Potential Planning Tools  
(Development Agreement, Subsequent EIR, Specific Plan)
- December 2, 2008 letter from the applicant
- Changes to Applicant's Agreement Letter Requested by Mayor Patterson

**C I T Y O F B E N I C I A**  
**BENICIA BUSINESS PARK PROJECT**  
**COMMUNITY WORKSHOP**

January 7, 2009  
Mary Farmer Elementary School

---

**P R O G R A M**

---

- |          |   |
|----------|---|
| 6:00 pm  | <b>Welcome</b><br><i>Mayor Elizabeth Patterson, City of Benicia</i>   |
| 6:05     | <b>I. Introduction</b><br><i>Daniel Iacofano, MIG Inc.</i> <ul style="list-style-type: none"><li>• Meeting Purpose and Desired Outcomes</li><li>• Agenda Overview</li><li>• Ground Rules for Guiding Discussion</li></ul>   |
| 6:15     | <b>II. Project Background and Status</b><br><i>Daniel Iacofano, MIG Inc.</i> <ul style="list-style-type: none"><li>• Recent History and Planning Process</li><li>• Potential Planning Tools</li></ul>   |
| 6:25     | <b>III. Toward A Collaborative Planning Process</b><br><i>Community Participants</i> <ul style="list-style-type: none"><li>• Guiding Principles (for Project and Process)</li><li>• Key Process Components<br/>(Starting Point: Applicant's Dec. 2, 2008 Letter)</li><li>• Information Needs</li><li>• Planning Participants</li><li>• Process Timeline</li></ul> |
| 9:30     | <b>IV. Summary and Next Steps</b> <ul style="list-style-type: none"><li>• Report to Council</li><li>• Council Consideration (Feb. 3, 2009 or later)</li></ul>   |
| 10:00 pm | <b>Close</b>  |

# Benicia Business Park Community Workshop

## Discussion Ground Rules

Suggested ground rules for Council approval to guide the workshop discussion include the following:

- Citizens interested in speaking will submit a speaker card, and the facilitator will call on speakers in the order the cards are received. (Participants are not required to submit a card or identify themselves.)
- Only the person with the microphone may speak - interruption by others is not allowed.
- Speakers should be prepared to speak once for three minutes, as the facilitator will seek involvement by all those interested in speaking. If time permits, the facilitator may offer the opportunity for additional comments from those who have already spoken once all cards have been acknowledged.
- Only one commenter may speak on behalf of a group; others from the group may speak on their own behalf.
- No personal comments of any kind or inappropriate language are allowed.
- The applicant and Council Members will have microphones and may speak when recognized by the facilitator.
- City staff will be available to answer questions or provide information as needed.

# Benicia Business Park Community Workshop

## Potential Planning Tools

### Development Agreement (Government Code 65865)

A development agreement is a binding contract between the City and developer, the breach of which creates potential for damages and other relief awarded by a court. The principal purpose of a development agreement is to establish the regulations that will apply to a project and the conditions to which it will be subject, including fees and design standards. Development agreements allow the City to negotiate public benefits, while the developer obtains protection from future changes in land use regulations. A development agreement must specify its duration, permitted uses of the property, density or intensity of use, maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. Development agreements are flexible and can accomplish through contract what can't be accomplished through regulation alone. A development agreement may include, among other provisions, requirements for the developer to provide infrastructure, public capital facilities, employment opportunity, community facilities and environmental protection.

### Subsequent EIR (CEQA Guidelines 15162)

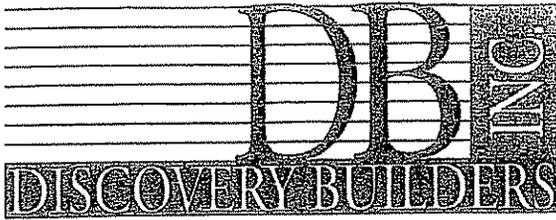
A subsequent EIR is prepared for projects that change substantially due to new information, revised project description, or different circumstances affecting the site. A subsequent EIR is different from a new EIR in that it may utilize baseline information from the prior EIR. Nevertheless, a subsequent EIR must include new, thorough analysis of all potential significant impacts of the proposed revised project. A subsequent EIR is subject to the same circulation and review as the previous EIR.

### Specific Plan (Government Code 65451)

Specific plans are intended to facilitate implementation of the General Plan for a particular area of the city. A specific plan must include text and maps showing:

- (1) The distribution, location, and extent of the uses of land, including open space;
- (2) The proposed distribution, location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, and other essential facilities needed to support the land uses described in the plan;
- (3) Standards and criteria by which development will proceed, and standards for the conservation, development, and utilization of natural resources; and
- (4) Implementation measures including regulations, programs, public works projects, and financing measures necessary to achieve (1), (2), and (3).

A specific plan must demonstrate consistency with the general plan and address any subjects the City Council determines are necessary or desirable for implementation of the general plan. A specific plan may be adopted by resolution or by ordinance and may be amended as often as deemed necessary by the City Council.



4061 Port Chicago Highway, Suite H  
Concord, California 94520  
(925) 682-6419  
Fax (925) 689-7741

December 2nd, 2008

Dear Mike:

I appreciate you taking the time to meet with me the other day when I dropped in unannounced at your restaurant. As we discussed, the Benicia Business Park Project is very important to my family and our organization. As I stated we are obviously disappointed with the outcome of the recent hearing on the project, and we want to find a way to resolve the Council, School District, and community concerns so that we can move forward with our work.

After my conversation with you and further discussions within our organization, we offer the following in the hope that you will request reconsideration of the Council's recent decision to deny the project approval. To that end please accept the following offer:

If, at the next City Council meeting, you will request reconsideration of the November 18, 2008 vote to deny the Project approval and if said vote to deny the Project approval is subsequently rescinded, we will commit to the following in exchange for said rescission:

I. WAIVER AND EXTENSION OF TIME LIMITS

Discovery Builders shall waive any present or past statutory or regulatory timelines for the project and its application. We further agree to extend any time limits that may have accrued or will accrue as a result of the continued procession of our project for 12 months from the date of the Council's consideration of your Request for Reconsideration. Timeliness of the process is essential to our agreement, however if the process takes longer, we are committed to continuing to work with the City and will negotiate any necessary extensions in good faith.

II. DEVELOPMENT AGREEMENT

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

- A. All conditions of approval already introduced for the Project shall be terms of the Development Agreement unless the City Council determines one or more terms unnecessary;
- B. The agreement shall include a requirement that Discovery Builders negotiate a separate written agreement with the Benicia Unified School District (the BUSD Agreement) to address the Project's impacts on the District.

~~VI-A-6~~  
*[Handwritten signature]*

- C. The Agreement shall include a requirement that Discovery Builders enter into a separate written agreement (the PLA) with certain unions, including those commonly known as Building Trades, for work to be done on the project.
- D. The terms of the BUSD agreement and the PLA are separate from the Development Agreement and will not necessarily be incorporated in the Development Agreement unless determined by the City Council to be necessary to the Development Agreement.

### III. SUBSEQUENT EIR

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

- A. The processing of the SubEIR shall include two scoping sessions.
- B. The Health Risk Assessment prepared by LSA, dated November 2008, shall not be used or relied upon in any way during the environmental review and/or further processing of Project approvals;
- C. The SubEIR shall be prepared by an independent consultant of the City's choosing, *but in no case shall LSA be contracted for further work on the project environmental review or project approvals;*
- D. All studies necessary for determination of mitigations or conditions of approval shall be done prior to issuance of entitlements.

### IV. AB32

The Project shall comply with the requirements of AB32.

### V. SPECIFIC PLAN

If the City Council so directs, in conjunction with the Development Agreement and SubEIR Discovery Builders shall work with the City to process a Specific Plan for the Project area consistent with the existing General Plan as part of the Project approval process.

### VI. ADDITIONAL TERMS AT COUNCIL'S DISCRETION

In addition to the above commitments, if the Council so desires, we agree to fund the following to be coordinated by City staff:

- A. A Community Advisory Panel or Commission for the Project
- B. A Business Recruitment Program for the Project.

Finally, I note your sensitivity to the desires of other Council members, so these commitments are not exclusive; other Councilmember's may wish to consider other matters and we are happy to work out details on other items. The above commitments

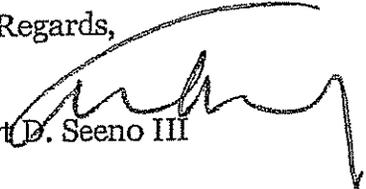
VLA-7  


simply represent our position on all matters we currently are aware of. In any case, we are committed to working with the City, the school district, and the community in exchange for the opportunity to move our current project forward as outlined above.

Thank you for your time and consideration.

Best Regards,

Albert D. Seeno III

A handwritten signature in black ink, appearing to read 'Albert D. Seeno III', written over the printed name.

**CHANGES TO APPLICANT'S AGREEMENT LETTER  
REQUESTED BY MAYOR PATTERSON**  
(strikeout indicates deletion; underline/italic indicates addition)

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

Discovery Builders shall waive any present or past statutory or regulatory timelines for the project and its application. We further agree to extend any time limits that may have accrued or will accrue as a result of the continued procession of our project for 12 months from the date of the Council's consideration of your Request for Reconsideration. Timeliness of the process is essential to our agreement, however if the process takes longer, we are committed to continuing to work with the City and will negotiate any necessary extensions in good faith.

**II. SPECIFIC PLAN** *(moved from below)*

~~If the City Council so directs,~~ In conjunction with the Development Agreement and SubEIR Discovery Builders shall work with and fund the City led preparation of a Specific Plan for the Project area consistent with the existing General Plan a vision for a green tech R&D campus style business park, and compliant with paragraphs, III, and IV, V, as part of the Project approval process. The Specific Plan shall follow the requirements of Government Code Section 65451; Recovery of costs pertaining to infrastructure, including transit, shall be through an assessment district (including, but not exclusive to Mello-Roos) and traffic impact fees.

**III. SUBSEQUENT EIR**

In conjunction with the Specific Plan and the Development Agreement, Discovery Builders shall fund a Subsequent EIR (SubEIR):

- A. The processing of the SubEIR shall include two scoping sessions.
- B. The Health Risk Assessment prepared by LSA, dated November 2008, shall not be used or relied upon in any way during the environmental review and/or further processing of Project approvals;
- C. The SubEIR shall be prepared by an independent consultant of the City's choosing, but in no case shall LSA be contracted for further work on the project environmental review or project approvals;
- D. All studies necessary for determination of mitigations or conditions of approval shall be done prior to issuance of entitlements issuance of the first grading permit or pursuant to adopted SEIR Mitigation Monitoring Plan.

**IV. DEVELOPMENT AGREEMENT**

Discovery Builders shall enter into a Development Agreement with the City of Benicia, which shall be recorded prior to recording the tentative map. We shall

negotiate the terms of the Agreement in good faith, but we acknowledge at the outset that the Agreement shall include the following components as well as others:

- A. The Specific Plan and all conditions of approval already introduced for the Project shall be terms of the Development Agreement unless the City Council determines one or more terms unnecessary to support the redesigned project as envisioned in the future Specific Plan; said conditions of approval shall have sustainability metrics and performance measures identified in the certified Mitigation and Monitoring Plan of the future SEIR.
- B. The agreement shall include a requirement that Discovery Builders negotiate a separate written agreement with the Benicia Unified School District (the BUSD Agreement) to address the Project's impacts on the District; said agreement shall be adopted by BUSD prior to the recording of the Tentative Map.
- C. The Agreement shall include a requirement that Discovery Builders enter into a separate written agreement (the PLA) with certain unions, including those commonly known as Building Trades, for work to be done on the project; said agreement shall be filed with the City of Benicia prior to issuance of the first Building Permit.
- D. The terms of the BUSD agreement and the PLA are separate from the Development Agreement and will not necessarily be incorporated in the Development Agreement unless determined by the City Council to be necessary to the Development Agreement.

#### V. AB32 and SB375

The Project shall comply with the requirements of AB32 (2006) and its 2008 adopted strategies and amendments, as well as SB375(2008).

#### VI. ~~ADDITIONAL TERMS AT COUNCIL'S DISCRETION~~

In addition to the above commitments, ~~if the Council so desires~~, we agree to fund the following to be coordinated by City staff:

- A. ~~A Community Advisory Panel or Commission~~ for the Project, consisting of the Mayor, another Councilmember, 2 Planning Commissioners, 4 at-large members of the public representing environmental, social and economic interests, and 1 non-voting ex-officio member from the BUSD.
- B. A Business Recruitment Program for the Project.

C. Exhibits: Schedule of date certain for each process; elements of the Development Agreement; requirements for Specific Plan; guiding principles; federal and state stimulus packet for green projects (training facilities, etc.) [stakeholder requests]

Finally, I note your sensitivity to the desires of other Council members, so these commitments are not exclusive; other Councilmember's may wish to consider other matters and we are happy to work out details on other items. The above commitments simply represent our position on all matters we currently are aware of. In any case, we are committed to working with the City, the school district, and the community in exchange for the opportunity to move our current project forward as outlined above.