

"Robin Beckers" <Robbeck2@sbcglobal.net> 12/1/2008 1:23 PM >>>

Dear Council Members,

I am astonished at the hubris of Albert Seeno. After years of fruitless efforts to get him to concede to the reasonable requests for the development of the business park, and two decisive votes against the plan as it stood, he NOW wants to meet all those requests that council so courageously held out for in the first place. It seems he might have to pay a lot more in developers fees if a new plan is required. Whose fault is that? Had he dealt in good faith from the beginning there would be no monetary penalty.

Far more important however, is his method of trying to revive the rejected plan. It is offensive to say the least, and borderline unethical as well. He, who wouldn't agree to any of the stipulations in open sessions now calls upon a council member unexpectedly in his place of business to discuss rescinding the his vote. The political cynicism implied in that divide-and-conquer approach is breathtaking.

No doubt there will be a temptation to accept this new offer; it certainly appears to have all the stipulations that were called for. The greater question is, when is it ok to set aside the rules in order to get to consensus. Does the end ever justify the means? There is more at stake here than this development alone. This is about transparency and playing by the rules. It has everything to do with the public's trust.

Finally, please know that this is not a criticism of any one of you. I have only admiration and respect for the job that you do. I know you spend hours, and sometimes anguish mightily over your decisions. Bless you for it. This is only a request that you consider thoughtfully whether you want to change your vote on the Seeno project.

Robin Beckers  
551 Lori Dr.  
Benicia

Allan Shore <allanshore@msn.com>

12/2/2008 11:18 AM

First Street merchant ideas for Seeno business tenants

Hello Ms. Wolfe:

I sent this outline to Councilmembers in advance of tonight's meeting. I'm not sure if they actually look at such materials, but since I expect to introduce it at tonight's meeting I thought I would provide you a file copy as well.

I'm not sure how to do this to get it part of the "official record," so I'm trying this way. The last time I sent something on the issue to the Councilmembers that at least acted like they didn't see any materials in advance.

Thanks.

*Allan Shore*  
916-730-2801

Venture Charities -- Business Enterprise Consulting  
Nonprofits and Socially Responsible For-Profits  
[www.VentureCharities.biz](http://www.VentureCharities.biz)

## **Green Gateway Retail Partnership Possibilities: Benicia First Street Merchants step up to the future**

As local Benicia merchants we are extremely excited about the possible benefits of partnering with the Green Gateway or other visions for land development within our community given the Seeno reconsiderations. We believe such collaboration will directly contribute to including us “Mom & Pop” local commercial stakeholders into the very intimate decisions about how the project will benefit the community as a whole. Small town stores are the heart and soul of American commercialism. Benicia’s residents continue to assert this fact. Putting this desire into practice requires that many of us stop our silo thinking in favor of perspective that are more collectively good for the economic, social and environmental values that undergird a sustainable future.

Doing this would also help put Benicia on the map as a model Gateway community. To ensure that this happens, several of us have drafted these thoughts and suggestions about the role of retail in whatever development project evolves. This includes an initial comment on the tone of the Green Gateway initiative, which we believe could set the tone for an across-the-board enhancement of our regional business environment—one founded on openness, inclusivity, cooperation and collaboration. Secondly, we have outlined some thoughts on the Green Gateway’s specifics components and offer some suggestions for whatever retail elements are added.

These ideas are still in the drafting process. Learning to think and utilize Clean Tech, Green Tech ideas is new to most of us, and requires time to digest. There are good and bad implications on many levels, all of which are impacted by the economic meltdown, the need for us to thrive during these tough times, and other obligations (such as the growing interest in increasing tourism) that already demand much of our time and money. With some practice and patience, however, I believe most existing Benicia merchants will become convinced of the hope and potential this type of new partnership suggests for all our bottom lines.

### **COMMUNITY ENTERPRISE INNOVATION**

We love the fact that the Green Gateway Group’s vision incorporates a desire to include the local business community into its design, development and even wishful-thinking processes. The notes provided by Roger and Norma Fox show this without a doubt. This alone is a giant leap forward. And we appreciate it very much.

We have a good degree of faith that this inclusivity by itself will result in critical design improvements and cutting-edge ideas. Successful endeavors from other localities around the nation and the world suggest that small and medium-size businesses can benefit well from the “double” (economic and social)

and “triple” (environmental) bottom line approaches to being profitable and thoughtful at the same time.

The following quotation from a publication that offers an **Introduction to Corporate Social Responsibility** for SME (Small and Medium Enterprises) captures well the potential of this type of progressive, forward-looking mentality. Assume that the “responsible entrepreneurship” being discussed is in fact the entire Green Gateway enterprise, and that its customers are its tenant business and the community as a whole, including other businesses who feed off of its success:

*Responsible entrepreneurship is essentially about maintaining economic success and achieving commercial advantage by building a reputation and gaining the trust of people that work with or live around your company. Your customers want a reliable supplier with a good reputation for quality products and services. Your suppliers want to sell to a customer that will return for repeat purchases and will make payments in a timely manner. The community around you wants to be confident that your business operates in a socially and environmentally responsible way. And lastly, your employees want to work for a company of which they are proud, and that they know values their contribution.* (See: [http://ec.europa.eu/enterprise/csr/campaign/documentation/download/introduction\\_en.pdf](http://ec.europa.eu/enterprise/csr/campaign/documentation/download/introduction_en.pdf))

The rationale behind why we would want to be helpful in developing such an outcome is pretty obvious: we trust that by working together the end results will be profitable and empowering for everyone. But this is really not just a pipedream. A variety of business metrics have shown that when commercial market elements work in unison instead of within isolated silos of selfish profit-taking the resultant bottom lines grow stronger and stay healthier longer. As the quote suggests, products and services are rated better, customer return more often, employees like and respect their employers more consistently, and businesses find that they are perceived as being better overall citizens of the community.

The best website I am aware of that discusses this concept in general is [www.BlendedValue.org](http://www.BlendedValue.org). But others have written about this phenomenon, too. There are ongoing discussions about its potential on the [www.SocialEdge.org](http://www.SocialEdge.org), a blog that has real business people discussing social innovations. It is the basic reason why many large corporations and venture capitalists are focusing their attention on socially responsible enterprise development, and why other, non-traditional organizations (such as nonprofit agencies) want to be part of this movement. We would love to see Benicia be a true gateway to this universe of possibilities. (For a great overview of this concept, see a recent PDF book entitled [www.JustAnotherEmperor.org](http://www.JustAnotherEmperor.org).)

## **RETAIL GUIDELINES AND SPECIFICS**

Once the tone of corporate and retail trust, reliability and responsibility is established, it becomes easier as well for all of us to get down to the brass tacks. What tangible benefits occur for us as established

retailers? And can these benefits come about while continuing to support the spirit of the Clean Tech, Green Tech vision?

First of all, we want to start by stating an issue of critical importance: We know that we cannot and should not be able to dictate exactly which new business opportunities become tenants in the Green Gateway Community of Possibilities. Nor should we be able to require excessive control over where the retail square footage is located or how it may be connected to other industrial aspects of the project.

But even given these limitations, we believe we can still play an important role in augmenting what the final results are. One way to do this is to help the developer ensure the comprehensive benefits being promised are looked at as starting points to an expanding future. And to do that we need to make sure that we retain a voice to be heard, introduce new ideas, etc.

As such, we believe the local First Street merchants are willing to:

- Take seriously the opportunities you offer to have us be directly involved in the fleshing-out and detailing of any new plans.
- Do what we can to try to secure resources to keep a healthy vision on track.
- Willingly offer new ideas and new perspectives, even as we retain the right to admit that we too have priorities and prejudices that reflect our business agendas (just as do all other stakeholders).
- Be true partners in generating the support of the public once we see the ideas come into focus.

An exceptional way to start is to acknowledge what is already in place to see how these ideas can be fertilized. We are very pleased to see, for example, that the initial project vision includes what Norma Fox calls the “mutually supportive” elements of a comprehensive commitment to green innovation. Thus, we would like to start by having a meeting to help flesh out just what types of benefits can accrue to us local merchants and to the community as a whole in regards to these five core components:

- Education and Research Commons--A conference center and educational campus... interdisciplinary gathering place for academic, business, technical and policy makers... offering specialized education and training programs, from green-collar job training to post grad.
- Green Innovation Test Bed--Shared facilities, equipment, and simulation environments for development and testing of new technologies and products.
- Green Business Launching Pad--Venture capital-backed early-stage enterprises... on-site assistance and support services, collaboration, idea exchange, etc.
- Anchor Innovator Businesses--Large established businesses that are generation new technologies and products.

- Green Exposition Center--An Exposition Center offering demonstrations of new models, products and processes. (Could be a possible tourist destination.)

Some potential benefits seem obvious—such as the convention and conference mechanisms, which will bring new visitors to the area—while others would need to be discussed in greater detail. As noted in our previous letter to the City Council, we do believe that it could well be possible for these new businesses to want to utilize our stores as “testing grounds” for some of the product or service enhancements, thereby making us part of a neighborhood laboratory of opportunities.

But what other prospects exist, and how can these prospects be used to see the idea in a positive way?

We believe a discussion around these points would be a great first step.

## **RETAIL TENANT GUIDELINES**

Another area of importance is the role we as merchants can play in offering advice or establishing mutually supportive ideas for selecting the tenants who will occupy the development. It seems fair that a set of guidelines be developed collectively to give the developer a direction to take in determining what kinds of tenants would fit well within the Benicia environment.

We have come up with the following parameters. These guidelines will require some refinement. And, of course, they are merely offered as a place to start to ensure that Benicia’s family of businesses remains at the table. Once these ideas have evolved, it would seem fair that viable candidates for the Green Gateway would be those that

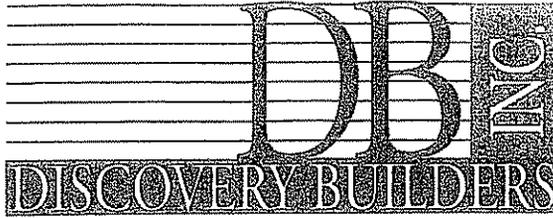
- **Emphasize the value of having customers stay in and continue to explore the local economic market; pass-thru “convenience” stores or fast food outlets do little to achieve this, especially when they are located near the freeway.** The healthiest customers are those who have a different consideration of “convenience” than the quick and dirty conceptualizations of the past. Technology is helping to redefine this term.
- **Sell products or services that could not easily be made available on First Street by small-town retail locations.** This could include industrial support products or technology services, or it could include new low-impact living ideas that may inspire a mixed use development and sales environment. For some ideas, see [www.lowimpactliving.com](http://www.lowimpactliving.com).
- **Use healthier inventory, storage and production concepts.** Drop-ship or on-demand businesses or business exchange models do not require the maintenance of static inventories that cost resources to make and may never be used. As local merchants, we may well be able to utilize these services too as we expand our reach with online merchandising.

- **Showcase recycle, reuse or reclamation perspectives.** A recognized nonprofit agency in the Richmond area (see [www.RubiconPrograms.org](http://www.RubiconPrograms.org)) is currently seeking to start-up a national mattress disassembly project, where the component parts are sold or used to make other products. These types of businesses often have companion vocational elements that might help local residents or even offer some affordable employee pools.
- **Willing share access to their connections with other members of their fair trade or global networks.** If the selected tenant businesses are multi-national, for example, they might be able to assist those of us on First Street gain access to indigenous resources from other countries. Large corporations often have charitable policies that seek to help Mom & Pop enterprises in the emerging nations that host their companies. Main Street American enterprises could easily connect with these small enterprises to allow for a cross-cultural bridge to creative products.
- **Strive to comply with the newly emerging LEED in Retail standards.** (See US Green Building Council pilot page, <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=1734>.) Perhaps we can be a living model for this innovative idea as it comes online?
- **Generate technologies and access geared toward small and medium size businesses.** These anchor businesses could well produce new electronic communication, display, etc., products that could well be showcased, beta-tested and ultimately sold by our local businesses.
- **From the beginning strive to partner with other businesses in town to demonstrate that the Green Gateway management values this kind of thinking.**
- **Sign operational agreements establishing expectations about how every new business will value the transportation, artistic, historical and accessibility elements of the Green Gateway concept.** A key element of any new industrial/retail infrastructure should be that it can be successful while helping to reinforce the character of the community. Buses and signage that directs people to First Street, historical, artistic, etc. areas of Benicia need to be affirmatively agreed up by tenants, not simply seen as an add-on expectation that may or may not actually occur.

There are undoubtedly other suggestions as well. We believe this is a great place to start and would love to see how it can unfold from here.

Please feel free to contact me if you would like any clarification or to advance on these suggestions.

Allan Shore  
 916-730-2801  
 Allan@AllanShore.com



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(925) 682-6419  
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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.

- 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

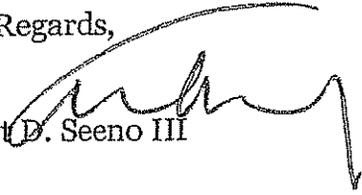


simply represent our position on all matters we currently are aware of. In any case, we are committed to working with the City, the school district, and the community in exchange for the opportunity to move our current project forward as outlined above.

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', with a long, sweeping horizontal stroke above it and a vertical line extending downwards from the end.

**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.

"Larry Schoenke" <lschoenke@MBDLAW.COM>

12/2/2008 3:09 PM

Benicia Business Park

Dear Mayor Patterson:

Please consider this letter at the matter on the City Council Agenda for this evening.

Members of the Board and the Superintendent will be present tonight.

Thank you.

Lawrence M. Schoenke

Attorney at Law

Miller Brown & Dannis

71 Stevenson Street, 19<sup>th</sup> Floor

San Francisco, CA 94105

Tel: (415) 543-4111

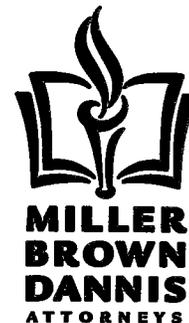
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LAWRENCE M. SCHOENKE  
ATTORNEY AT LAW  
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SAN FRANCISCO



December 2, 2008

**E-MAIL AND MAIL**

Elizabeth Patterson, Mayor  
Members of the City Council  
City of Benicia  
250 L Street  
Benicia, CA 94510

Re: Benicia Business Park  
Council meeting of December 2, 2008  
Our file: 1375.10308

Dear Mayor and City Council Members:

We send this letter on behalf of the Board of Trustees ("Board") of the Benicia Unified School District ("District") to state its view on the request for reconsideration of the denial of the Benicia Business Park ("BBP") Project by the City Council on November 18, 2008 to be heard this evening December 2, 2008.

The District has previously provided communication on the impact of the BBP on the District on three separate occasions and in particular on the students and staff at Robert Semple Elementary School, located at 2015 East Third Street ("Semple School").

We have in our possession a letter from Albert Seeno III to Mike Ioakimedes concerning a number of apparent commitments from Mr. Seeno concerning the BBP. The one matter that, of course, interests the District is section II. B. In that "commitment" Mr. Seeno states that the proposed Development Agreement with the City of Benicia would include a requirement to negotiate an agreement with the District to address the impacts on Semple School and its students.

The limited language of the provision noted above troubles the Board and us as legal counsel to the District. The agreement language is insufficient in the eyes of the District as written.

We request the following language in place of section II. B.:

**SAN FRANCISCO**

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Nineteenth Floor  
San Francisco, CA 94105  
Tel 415.543.4111  
Fax 415.543.4384

**LONG BEACH**

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Long Beach, CA 90802  
Tel 562.366.8500  
Fax 562.366.8505

**SAN DIEGO**

750 B Street  
Suite 2310  
San Diego, CA 92101  
Tel 619.595.0202  
Fax 619.702.6202  
[www.mbdlaw.com](http://www.mbdlaw.com)

Elizabeth Patterson, Mayor  
Members of the City Council  
City of Benicia  
December 2, 2008  
Page 2

II. B. The Development Agreement shall include a requirement that Discovery Builders enter into a separate written agreement with the Benicia Unified School District (the BUSD Agreement) to address the Project's impacts on the District that includes at a minimum the necessary mitigation measures as determined by the BUSD Governing Board, which will include, but are not limited to:

1. Creation of an escrow fund of \$2 million, at a minimum, to fund the implementation of mitigation measures ultimately stated in the mitigation agreement.
2. Creation of an escrow fund to maintain the mitigation measures under the mitigation agreement.
3. Maintain an insurance policy with the District as additional insured insuring against liability due to the Project mitigation measures and impacts from the Project.
4. Reimbursement of attorney's fees paid by BUSD and the cost of BUSD staff resources to date.
5. Creation of an escrow fund to pay for attorney's fees and BUSD staff resources for future negotiations and supervision of the mitigation agreement.

The District Board members and staff are informed that there may be a committee or an ad hoc task force formed to give input on the future planning process for this Project. The District Board asks to have school district representation on any committee or task force the Council may create.

We believe that if the commitments above are made, the District would not object to the request for reconsideration and rescission of the denial of the Project.

Very truly yours,

MILLER BROWN & DANNIS



Lawrence M. Schoenke for  
Mark W. Kelley

cc: Board of Trustees, Benicia Unified School District  
James Erickson, City Manager, City of Benicia

Allan H Deal <anjdeal@juno.com>

12/2/2008 4:54:31 PM

Seeno Project Reversal

Mayor Patterson, Vice Mayor Campbell, Councilman Ioakimedes, Councilman Hughes, Councilman Schwartzman, and City Manager Erickson.

We will be extremely disappointed if the Denial of the Seeno Plan on November 18 is reversed. Even with the many conditions which have been added to the Project we do not believe that it will be a good project. The current project is a flat land project which is superimposed on our last large hilly site in Benicia. The amount of grading required for the most recent version of the Project is horrendous and must not be allowed. A much smaller campuslike development would be more acceptable. We have been monitoring from the sidelines the work of the Green Gateway Group and appreciate their contribution to help outline a project which would be more suitable for Benicia. We support the Mayor's courage and leadership and vision. What we believe is lacking in most government today is vision and we hope that all representatives of the people will have the vision to work toward a development by Mr. Seeno or a successor developer which will be of benefit to all of Benicia.

As a Registered Nurse and an Architect six years ago we chose Benicia for our retirement because of its unique community spirit and have built our home on West J Street. Because Benicia is blessed with so many advantages, it behooves its elected representatives to take great care and responsibility to keep it that way.

Sincerely, Allan H. Deal and Jennifer A. Deal  
680 West J Street, Benicia

## Jayne York - Fwd: Sharing information about the Seeno agreement

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From: Anne Cardwell  
 To: Jayne York  
 Date: 12/31/2008 4:24 PM  
 Subject: Fwd: Sharing information about the Seeno agreement

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Hi,

For the 7th.... we'll need lots of copies, probably around 70.

Thanks!

>>> <rogrmail@gmail.com> 12/31/2008 1:04 PM >>>

Dear Mayor Patterson, Councilmembers and City Manager Erickson:

Please review the attached memo from Green Gateway Group's consultant, Mark Wolfe. Mark is a land use and environmental attorney and urban planner, who offers significant support for and insights concerning the evolving memo of agreement between Councilmember Ioakimedes and Albert Seeno III.

Mr. Seeno stated clearly in his letter to Councilmember Ioakimedes that he would be open to further commitments, so we and others have viewed the document as a work in progress and a basis for a similarly-worded agreement to be drawn up between the City and Mr. Seeno, conditioning the February 2009 "vote to reconsider" and all further planning and development. We have therefore also asked Mr. Wolfe to comment on additional suggestions that have been made public by Mayor Patterson and a few additional suggestions made by members of our group.

Suggestions that Green Gateway Group submitted to Mr. Wolfe for comment:

1. A strong recommendation that the consultant group **Dyett and Bhatia** be contracted to design and manage the Specific Plan process. (This is the group that Brisbane is using for their Specific Plan and their EIR process. They are urban planning consultants that specialize in collaborative efforts involving a diversity of stakeholders.) *Mark Wolfe comments favorably on this in his memo under "Additional Terms." Wolfe is familiar with Dyett and Bhatia, but declines to recommend a particular firm.*
2. That the "front money" for the Specific Plan process be paid into a fund by Seeno. The City would pay out from the fund, then reimburse Seeno when the money is recovered through an assessment district and traffic impact fees. *Mark Wolfe comments favorably on this in his memo, under "Additional Terms."*
3. That Seeno agree never to present a plan that will require another "Letter of Overriding Conditions" to offset health and safety issues by promises of financial gain. *Mark Wolfe does not comment on this suggestion. His off the record comment was something to the effect that a condition like this might be seen as prejudicial to the outcome of CEQA, and would therefore be viewed as unacceptable under the law.*

I hope everyone finds this input substantive and helpful as we move forward together in search of a trendsetting new green gateway business community in our City.

Please have copies of this email and the attachment available for participants at the January 7 Workshop.

Best wishes for the coming year,  
 Roger Straw

**MEMORANDUM**

December 31, 2008

To: Roger Straw, Green Gateway Group

From: Mark Wolfe, M. R. Wolfe & Associates, P.C.

Re: Terms of Proposed Rescission of City Council Denial of Seeno Benicia Business Park Project

You asked us to review the proposed agreement proffered to Councilmember Mike Ioakemedes by Albert Seeno II (“Seeno”), dated November 24, 2008, seeking rescission of the Benicia City Council’s earlier vote to deny certain land use entitlements for the Benicia Business Park Project (“Project”) in exchange for certain concessions. You also asked us to comment on Mayor Patterson’s proposed changes to that agreement. Our thoughts follow, organized according to the agreement’s structure.

**I. Waiver and Extension of Time Limits**

We do not see a problem with this provision. If the Council acts to rescind its previous ‘no’ vote on the Project, a waiver and extension of statutory time limits governing local agency approval of development project applications would become necessary in order to shield the City from potential legal claims by Seeno.

Having said that, and although Seeno appears to be committing to a 12 month extension and to negotiate in “good faith” in the event the City wishes to extend the deadlines further, the City may want to modify the agreement to state that Seeno shall grant an additional 6 month extension upon written request from the City in the event the Specific Plan/Development Agreement process is not completed within the prescribed 12 months. Further extensions beyond 18 months total could be subject to negotiations in good faith along the lines of what Seeno has proposed.

**II. Development Agreement**

Very briefly stated, a development agreement (“DA”) is a statutorily recognized, binding contract between a developer and a local government agency setting forth terms and conditions under which a proposed project is to be developed. It generally contains clear, fixed commitments from the developer regarding what will actually be built, and sets forth specific community benefits or contributions that the developer will provide – benefits often far beyond what the law would allow the agency to mandate. A DA also generally “locks in” whatever regime of land use regulation (i.e., general plan policies, zoning codes, etc) exists at the time the agreement is signed, thus shielding the project in

question from future regulatory actions that might otherwise affect build-out. DAs accordingly create a “vested right” in a developer to complete the project as described in the agreement without regulatory interference in the future. Note that DAs are subject to referendum.

Pursuing a DA for the Seeno Project could benefit Benicia, since it would provide a mechanism for securing firm commitments from Seeno to improve the Project in various ways and/or to extract additional community benefits, design changes, or environmental mitigation measures beyond what CEQA requires. Once agreed to and signed by Seeno and the City, the DA would become a legally enforceable contractual obligation that the City could enforce in court.

The downside to a DA is that, once it is finalized, the City will be “stuck” with whatever version of the Project is set forth in the agreement. Many DA’s carry 15-year terms (though they typically are reviewed annually for implementation status), and we would expect Seeno to seek a comparable lifespan. The risk is that conditions and circumstances within the City can obviously change. Unforeseen events could arise, loop holes could be found and exploited, and the City could in theory be powerless to act in response. Such risk, however, is inherent in any contract that calls for performance over a long time-period, and is generally minimized through smart planning and negotiations. As such, many local agencies are comfortable with assuming this kind risk assuming they have negotiated otherwise favorable substantive terms. DAs accordingly have become quite common throughout the state.

On balance, we believe the potential benefits to the City of Benicia from pursuing a DA with Seeno likely outweigh the risks, assuming the City takes a sufficiently hard line at the bargaining table and extracts firm, substantive, carefully defined commitments. We would concur with Mayor Patterson that the DA should be finalized and recorded prior to recording the tentative map, since the latter is also a mechanism for establishing vested rights. We have no opinion regarding the wisdom of recording a labor agreement before building permits are issued, though if your group includes building trade union members, that would probably be smart.

With regard to the substantive “terms” of the DA set forth in the current Seeno proposal, they are necessarily vague at this early stage. Although the City could exploit its “cat bird” position to get clearer concessions put down on paper *before* voting to rescind the previous denial, that may not be politically feasible. Nevertheless, the City should recognize that it occupies a position of substantial strength in any negotiation with Seeno leading up to the vote on whether to rescind its earlier denial of the Project, since if the vote is not to rescind, the Project is effectively killed for the time being. We are not in a position to recommend specific provisions that the City should insist upon prior to the rescission vote, but wish to call attention to the City’s apparently significant leverage.

We would recommend, however, that in order to minimize the risks associated with Seeno “sitting on” its entitlements for a protracted period, the City may want to

consider a provision under which the DA would automatically terminate within a set period of time, say 5 years, in the event Seeno has not pulled building permits and begun construction during that time. The City may also want to consider a provision requiring that the separate Seeno-BUSD agreement be negotiated in advance, and attached to the DA as an exhibit.

### **III. Subsequent EIR**

This is a major concession from Seeno. It effectively creates a whole new CEQA process, with a new 45-day public comment period, and a fresh round of hearings before the Planning Commission and City Council. The omission of the LSA Health Risk Assessment appears sound. We would concur with the Mayor's proposal clarifying that all mitigation-related studies be performed prior to pulling the first grading permit or per the MMRP.

### **IV. Compliance with AB32 and SB375**

This provision appears sound as well. The Project would be subject to them regardless. Since the AB32 regulations probably won't be ready until mid to late 2009, we concur with the Mayor's proposed clarification.

### **V. Specific Plan**

This is another major concession. Although many of the benefits of a Specific Plan process could in theory be realized via the DA process, it certainly does no harm to the community to have both processes proceeding side-by-side in tandem with the Subsequent EIR process. The Mayor's proposed clarifications seem fine, though obviously the devil-inhabited details regarding what constitutes a "green tech R&D style business park" will need to be hashed out during all three processes.

### **VI. Additional Terms**

These concessions too seem sound, and the Mayor's clarification regarding the composition of the Community Advisory Panel appears wise. Requiring the developer to provide funding in advance (or a binding commitment to do so) for the Specific Plan and SEIR processes is common, though the contract for providing such planning services must be between the City and the planning consultant. In terms of requiring use of a particular planning consulting firm, there may or may not be contract letting provisions in the Benicia Municipal Code that require an open RFP/RFQ process. If there are no such requirements, than we believe it is within the City's discretion to select the consultant it deems most qualified.

We hope you find these comments helpful. Please call with any questions.

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