

Note: Red text indicate new language suggested by Mayor Patterson, 12-14-08

November 24th, 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the November 18, 2008 vote to deny the Project approval and if said vote to deny the Project approval is subsequently rescinded, we will commit to the following in exchange for said rescission: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, **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. 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.

### 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. AB32 and SB375

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

### 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~~ **a vision for a green tech R&D campus style business park, and compliant with paragraphs II, III, and IV above,** as part of the Project approval process. **The Specific Plan shall follow the requirements**

of 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.

#### 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.

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. Seenó III