

**RESOLUTION #1
TO DENY THE PROJECT**

(Pages IX-A-23 - IX-A-26 of City of Benicia Staff Report for Oct. 21, 2008)

RESOLUTION NO. 08-__

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
DENYING THE VESTING TENTATIVE MAP, MASTER PLAN OVERLAY,
AND REZONING FOR THE BENICIA BUSINESS PARK PROJECT**

WHEREAS, On October 6, 2004, Discovery Builders submitted an application for Vesting Tentative Map, Master Plan Overlay and Rezoning for the Benicia Business Park project; and

WHEREAS, the proposed project is located in northeastern Benicia and consists of 527.8 acres of undeveloped land bounded on the south and east by East 2nd Street. The western boundary is an irregular property line that generally parallels the alignments of West Channel Road and Industrial Way. The northern property line is also irregular and is bounded in part by the City of Benicia Water Treatment Plant and Lake Herman Road; and

WHEREAS, the City Council certified the Environmental Impact Report (EIR) for the project on February 19, 2008; however, Council also determined that the project as proposed could not be approved due to inconsistency with the City's General Plan; and

WHEREAS, the applicant submitted a revised Vesting Tentative Map, Master Plan Overlay and Rezoning application March 20, 2008, and a proposed EIR Addendum and letter regarding traffic impacts on March 26, 2008; and

WHEREAS, the revised project includes:

- Rezoning of the site to apply the Master Plan Overlay designation and adjust the General Commercial and Limited Industrial zoning district boundaries;
- Subdivision of the site into 80 lots ranging from 1.5 to 5.4 acres;
- Development of approximately 150 acres of limited industrial and 35 acres of commercial land uses, with approximately 2.35 million square feet of industrial building space and 857,000 square feet of commercial uses - projected to result in the direct creation of 4,535 jobs;
- Open space totaling 312 acres, including buffers to preserve drainages, topographic features and the rural character of Lake Herman Road;
- Utilities and infrastructure, including 30 acres of roads; and
- Two 1,000,000-gallon tanks to supply water for the project; and

WHEREAS, the Planning Commission at a regular meeting held on April 10, 2008, conducted a public hearing, and considered testimony and documents regarding the revised project, and recommended denial of the project based on insufficient information to eliminate inconsistencies with the General Plan regarding impacts on geologic resources, urban decay downtown, overall community health, and bicycle and pedestrian circulation; and

WHEREAS, a majority of Planning Commissioners expressed a desire for more time to review the project, in part because environmental documentation for the revised project was not yet available; and

WHEREAS, the Draft EIR Addendum, published April 29, 2008, concludes that the revisions to the project have resolved the prior General Plan inconsistencies that created a significant impact per CEQA; and

WHEREAS, at the June 3, 2008 City Council meeting the City Council directed that a comprehensive traffic study be conducted between the August 25 and the October 7, 2008 Council meeting to consider review traffic on East 2nd Street including south of I780 and Robert Semple School; and

WHEREAS, at its regular meetings of May 6, 2008, May 20, 2008, June 3, 2008, and October 7, 2008 the City Council conducted a public hearing, and considered testimony and documents regarding the revised project.

NOW, THEREFORE, BE. IT RESOLVED that the City Council of the City of Benicia hereby finds, based upon the evidence presented to it both orally and in writing, at the hearings that:

1. Public comments and the traffic study raised issues that should have been further evaluated in the proposed addendum.
2. The proposed addendum does not adequately analyze the proposed project because the proposed project is substantially changed from the project and alternatives evaluated in the EIR. The proposed project was not evaluated in the EIR either as the project or as one of the alternatives. Combining several of the alternatives and reducing the industrial portion of the project has resulted in a project whose impacts were not evaluated in sufficient detail including traffic impacts and the economic and urban decay issues that may result from the reduced industrial portion of the project. .
3. Substantial changes have been made to the proposed project from the original project which involve new significant environmental effects as noted in these findings or a substantial increase in the severity of the previously identified effects such as impacts to animals and their habitat corridors.
4. The City Council has not been presented with a draft revenue sharing agreement and so cannot determine if the proposed condition #207 adequately addresses the fiscal impacts of the project or if it implements the mitigation measures regarding the provision of police and fire facilities and services. The fiscal impacts of the project have not been studied and it is unclear whether the reduced development on the project site will still allow the project to be "cost neutral."
5. The proposed addendum improperly relied on studies not yet been completed such as the updated traffic analysis and urban decay analysis. The City

Council cannot evaluate the impacts of the proposed project, which are different than the project analyzed in the EIR, without these two studies. Although the supplemental traffic study has been completed, it has shown there are impacts that must be mitigated from the CEQA standpoint that were not addressed in the certified EIR or the addendum. Failure to provide the updated traffic analysis could result in building oversized traffic mitigations that would have a negative impact on the environment or could result in inadequate measures for new and increased traffic impacts at some intersections. Similarly and especially since the economic analysis of the project was completed in 2006, the urban decay analysis could result in mitigation measures that should be included in the mitigation monitoring program and conditions of approval for the proposed project.

6. An analysis of the reduction of industrial uses needs to be done to see if the reduction results in changes to the economic impact of the project and the sizing of public facilities, such as water and sewer, needed to serve the project.

7. The modification of the industrial areas from the original project may result in more intrusion of humans and domesticated animals into the wildlife areas in the new habitat corridors.

8. The project remains inconsistent with the General Plan in grading and traffic impacts. Delaying the revision of the grading plan until the first phase of the project does not allow potential impacts from grading such as reduced building sites or increased proximity to, or intrusion into, habitat corridors to be evaluated. General Plan Policy 2.20.1 states "Maintain at least Level of Service D on all city roads, street segments, and intersections." The supplemental traffic study indicates a Level of Service F at some times.

9. The proposed project because of its size and location near a school would create a significant, unmitigable air quality impact that cannot be outweighed by any benefit to the City and its citizens from development of the proposed project.

10. Proposed Vesting Tentative Map

The proposed map is not consistent with the applicable provisions of Benicia Municipal Code Title 16 (Subdivisions) and City of Benicia General Plan goals, policies and programs; and

a. The site is not physically suitable for the type of development, as the majority of the site terrain will be severely graded, and the site terrain constrains development of the proposed project; and

b. The site is not physically suitable for the proposed density of development, as the proposed development does not conform to the existing topography of the site; and

c. The design of the subdivision and proposed improvements will cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat, as the revised project plans would create a substantial or potentially substantial adverse change in any of the physical conditions within the area of the project and there are insufficient mitigation measures prescribed in the project EIR and addendum that when implemented will reduce such impacts to less-than-significant levels.

11. Rezoning/Master Plan Overlay

The proposed Master Plan Overlay does not conform to the General Plan, as the revised development plan remains inconsistent with multiple applicable General Plan goals, policies and programs, as enumerated in the EIR, the record and this resolution, especially as it pertains to protection of hillsides and wildlife habitat, and as the project can not be adequately, reasonably and conveniently served by public services, utilities and public facilities.

BE IT FURTHER RESOLVED that because of the findings made above, the City Council takes no action on the addendum to the Benicia Business Park Final EIR, proposed findings related to the project, the statement of overriding considerations and the mitigation monitoring and reporting program.

BE IT FURTHER RESOLVED that because of the findings made above, the City Council denies the vesting tentative map, master plan overlay and rezoning for the project.

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 21st day of October, 2008 and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk