

CITY OF SANTA CRUZ
809 Center Street
Santa Cruz, California 95060



JOINT CITY COUNCIL - REDEVELOPMENT AGENCY AGENDA

Regular Meeting

May 25, 2010

- 1:30 P.M. CLOSED LITIGATION SESSION, COURTYARD CONFERENCE ROOM
- 3:00 P.M. CONSENT, GENERAL BUSINESS AND PUBLIC HEARINGS, ORAL COMMUNICATIONS, COUNCIL CHAMBERS

Note: There will be no 7:00 p.m. session

Written correspondence and telephone calls received after 5:00 p.m. on Monday preceding a Council meeting may not have time to reach Councilmembers, nor be read by them prior to consideration of an item. Please make any communication to Councilmembers regarding Council meeting items prior to 5:00 p.m. Monday.

Council meetings are cablecast on Comcast Channel 25.

Written material for every item listed in the open sessions is available for review at the Central Branch Library Reference Desk.

Time limits set by Council Policy are guidelines. Unless otherwise specified, procedures for all items, except those approved in one motion on the Consent Agenda, are:

- Oral staff report
- Public comment - 2 minutes each; maximum total time may be established by the Presiding Officer at the beginning of the item
- Council/Agency deliberation and action

Closed Litigation Session

1:30 PM

At 1:30 p.m., the Presiding Officer will open the City Council and Redevelopment Agency Closed Litigation sessions in a public meeting in the Courtyard Conference Room, for the purpose of announcing the agenda; thereafter the meeting will be closed to the public.

A. Labor Negotiations (Government Code §54956.6).

Lisa Sullivan—Negotiator

- Employee Organizations—
1. Police Management
 2. Police Officers' Association
 3. SEIU—All Units
 4. Operating Engineers-Supervisors
 5. Operating Engineers-Managers

B. Real Property (Government Code §54956.8).

190 Walnut Avenue Property Disposition Negotiation
Bonnie Lipscomb-City Negotiator

C. Conference With Legal Counsel—Existing Litigation (Government Code §54956.9).

1. Smith v. City of Santa Cruz, Santa Cruz Superior Court Case No. CV166699.
2. Save the Plastic Bag Coalition v. City of Manhattan Beach, California Supreme Court Case No. S180720, (Request for Amicus Curiae Assistance).

An oral report will be presented in the 3:00 p.m. Session (item 12).

Joint City Council/Redevelopment Agency

3:00 PM

- * Call to Order
- * Roll Call
- * Pledge of Allegiance
- * Introduction of New Employees
- * Presentation - Recognition of the County Emergency Medical Services Lifesaving Awards Presented to Captain Dan Walters and Fire Engineer and Rescue Swimmer Lono Barnes
- * Presentation - Project Homeless Connect
- * Presentation - Green Building Awards
- * Presentation - 2009 Tourism Research Results
- * Presentation - Mayor's Proclamation Recognizing May 17 - 23, 2010 as National Public Works Week
- * Presiding Officer's Announcements
- * Statements of Disqualification
- * Additions and Deletions
- * Joint City Council/Redevelopment Agency Oral Communications - 30 Minutes

Consent Agenda

1. Minutes of the May 4, 2010 Special and May 11, 2010 Regular City Council Meetings. (CC)
Motion to approve as submitted.
2. Minutes of the May 11, 2010 Regular Redevelopment Agency Meeting. (CC)
Motion to approve as submitted.

Consent Agenda (continued)

3. Nickelodeon Theatres, Inc. Loan for Del Mar Theatre Equipment Upgrades.
(ED)

Redevelopment Agency Resolution amending the FY 2010 budget to appropriate an amount up to \$150,000 for a loan to Nickelodeon Theatres, Inc.

Redevelopment Agency Resolution authorizing and directing the Executive Director to enter into a loan agreement in a form approved by the Agency Attorney with Nickelodeon Theatres, Inc. in an amount up to \$150,000 to fund theatre equipment upgrades and to execute such documents as may be necessary to carry out the loan.

4. Water Street Sewer Project (c400914) – Authorization to Advertise. (PW)

Motion to approve the plans and specifications for the Water Street Sewer Project and authorize staff to advertise for bids. The City Manager is hereby authorized and directed to execute the contract as authorized by Resolution No. NS-27,563.

5. San Lorenzo River Flood Control and Environmental Restoration Project (p520002) – Vegetation Variance Request and Agreement. (PW)

Motion to authorize the City Manager to sign a Corps of Engineers Vegetation Variance Request and Agreement for the San Lorenzo River Flood Control and Environmental Restoration Project.

6. Encroachment Permit for 207 Church Street Building Corner Encroachment into City Right-of-Way. (PW)

Resolution granting an encroachment permit for 207 Church Street building corner encroachment into City right-of-way at Church St. and Cedar St.

7. Safe Routes to School - Alternate Adjacent Routes to Mission Street/SR1 (c400921) – Contract Change Order and Notice of Completion. (PW)

Motion to ratify Contract Change Order No. 1 and accept the work completed by BDS Construction Inc., Chowchilla, CA, as completed per the plans and specifications and authorize the filing of the Notice of Completion for the Safe Routes to School - Alternate Adjacent Routes to Mission Street/SR1 (c400921).

Consent Agenda (continued)

8. Courtyard Commons (605 Pacific Avenue) – Tract No. 1554 – Approve Final Map. (PW)

Resolution approving the Final Map for Courtyard Commons (605 Pacific Avenue) – Tract No. 1554, and authorizing and directing the City Manager to execute the Subdivision Agreement with Easy Access Builders, Santa Cruz CA.

End Consent Agenda

General Business

9. Revisions to Santa Cruz Municipal Code Chapter 16.16, Water Efficient Landscaping. (WT)

Introduction of an ordinance for publication repealing Chapter 16.16 and adding a new Chapter 16.16 to the Santa Cruz Municipal Code pertaining to water efficient landscaping.

10. Water Shortage Regulations and Restrictions. (WT)

Introduction of an ordinance for publication repealing Ordinance No. 2009-14 and adding a new Chapter 16.01 to the Santa Cruz Municipal Code.

11. Council Meeting Calendar

That the City Council review the meeting calendar attached to the agenda and revise as necessary.

12. City Attorney Oral Report on Closed Session. (See Page 2.)

13. Council Memberships in City Groups and Outside Agencies.

The Presiding Officer will provide Councilmembers with the opportunity to update Council and the public regarding City Groups and Outside Agencies.

Adjournment — The Redevelopment Agency will adjourn from the regularly scheduled meeting of May 25, 2010 to the next regularly scheduled meeting on June 8, 2010, for a closed litigation session at 1:30 p.m., in the Courtyard Conference Room, followed by open sessions at the approximate hours of 3:00 p.m. and 7:00 p.m. in Council Chambers.

Adjournment — The City Council will adjourn from the regularly scheduled meeting of May 25, 2010, to a Special Closed Personnel Session on Wednesday, June 2, 2010 at 2:00 p.m., in the City Manager’s Conference Room. Council will adjourn from the June 2, 2010 Special Meeting to an additional Special Meeting of June 7, 2010 in the City Council Chambers at a time to be determined for consideration of the FY 10/11 Budget. The next regularly scheduled meeting will be on June 8, 2010, for a closed litigation session at 1:30 p.m., in the Courtyard Conference Room, followed by open sessions at the approximate hours of 3:00 p.m. and 7:00 p.m. in Council Chambers.

Note: The Council Chambers will be closed ten minutes after the meeting is adjourned.

Advisory Body Appointments

The following positions are vacant. Council will make appointments at a future meeting.

Sister Cities Committee	One (1) opening
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Public Hearing: If, in the future, you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues which you (or someone else) raised orally at the public hearing or in written correspondence received by the City at or before the hearing.

Any person seeking to challenge a City Council decision made as a result of a proceeding in which, by law, a hearing is required to be given, evidence is required to be taken, and the discretion in the determination of facts is vested in the City Council, shall be required to commence that action either 60 days or 90 days following the date on which the decision becomes final as provided in Code of Civil Procedure Section 1094.6 Please refer to code of Civil Procedure 1094.6 to determine how to calculate when a decision becomes “final.” The 60-day rule applies to all public hearings conducted pursuant to the City’s Zoning Ordinance, Title 24, Santa Cruz Municipal Code. The 90-day rule applies to all other public hearings.

City Council Agenda Legislative History Addendum

No information was submitted.

City staff is responsible for providing the City Clerk with such documentation and information for the Legislative History Addendum. The information will be on file in the City Clerk’s Department.

The Addendum is a listing of information specific to City Council business, but which does not appear on a Council meeting agenda. Such entities would include, but not be limited to:

- Court decisions
- Coastal Commission Appeals of City Council actions
- Closed Session Agreements/Settlements, which are public record
- Association of Monterey Bay Area Governments
- Local Agency Formation Commission

ADDENDUM TO CITY COUNCIL AGENDA – May 25, 2010
INFORMATION ITEMS PREVIOUSLY DISTRIBUTED TO CITY COUNCILMEMBERS
(Copies available in the Central Branch Library at the Reference Desk)

City Clerk	Resignation of Marshall Miller from the Santa Cruz City Transportation Commission - 5/5/10 (CC FYI 113)
City Manager	Monthly Camping Incident and Homeless Shelter Attendance Reports - 5/6/10 (CM FYI 142)
Finance Department	Implementation of Janitorial Service Agreement Dated May 1, 2010 - 5/10/10 (FN FYI 140) April 2010 Portfolio Management Report – Pooled Cash and Investments - 5/11/10 (FN FYI 141) Monthly Financial Reports for March 2010 - 5/12/10 (FN FYI 142)

ADDENDUM TO CITY COUNCIL AGENDA – May 25, 2010

MAYOR'S PROCLAMATIONS

1. Proclaiming May 6, 2010 as a “Day of Reason” and encouraging all citizens, residents, and visitors to join in observing this day and focusing upon the employment of reason, critical thought, the scientific method, and free inquiry to the resolution of human problems and for the welfare of humankind.
2. Proclaiming Friday, May 7, 2010 as “Darrell Darling Day” and joining with his friends and family throughout the world in wishing this magnificent Renaissance man a very Happy 70th Birthday and our very best wishes for all of his future endeavors.
3. Proclaiming the week of May 9–15, 2010 as “Police Appreciation Week” and encouraging all citizens and patriotic, civic, and educational organizations to observe the week with appropriate ceremonies and observances in which everyone joins in commemorating law enforcement officers, past and present, who, by their faithful and loyal devotion to their responsibilities, have rendered a dedicated service to their communities and, in so doing, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens, and proclaiming May 15, 2010 as “Peace Officers’ Memorial Day” in honor of those law enforcement officers who, through their courageous deeds, have made the ultimate sacrifice in service to their community or have become disabled in the performance of duty, and let us recognize and pay respect to the survivors of our fallen heroes.

ADDENDUM TO CITY COUNCIL AGENDA – May 25, 2010

MAYOR'S PROCLAMATIONS (continued)

4. Proclaiming May 19, 2010 as “Heroes Day” and urging all citizens to honor and celebrate our local heroes, to continue to give blood, to volunteer our time, to give generously to the American Red Cross and to its Santa Cruz County Chapter, and to keep in mind that when you help the American Red Cross, you help Santa Cruz.
5. Proclaiming May 19, 2010 as “Arbor Day and Earth Day Tree Planting Celebration Day” and encouraging all citizens to join in recognizing the important work and contributions of JohnsonDiversey and the City of Santa Cruz and to plant trees to offset climate change, enhancing our natural world for present as well as future generations.
6. Proclaiming May 21, 2010 as “Christopher Richard McGriff Day” and urging all citizens to join in celebrating his thirty-seven years of dedicated service to the California public school system.

CITY OF SANTA CRUZ
809 Center Street
Santa Cruz, California 95060

MINUTES OF A SPECIAL CITY COUNCIL MEETING

MAY 4, 2010

6:00 P.M. SESSION

Vice Mayor Coonerty called the meeting to order at 6:12 p.m. in the Council Chambers.

Roll Call

Present: Councilmembers Lane, Mathews, Beiers, Robinson; Vice Mayor Coonerty; Mayor Rotkin (arrived at 6:20 p.m.).

Absent: Councilmember Madrigal.

Staff: Director of Economic Development and Redevelopment
B. Lipscomb, Director of Planning and Community Development
J. Rebagliati, Principal Planner C. Berg, Principal Planner
K. Thomas, City Clerk L. Brewer.

Note: There were no Oral Communications during this meeting. Members of the public had a right to address Council on the items listed on this agenda.

1. River/Front & Lower Pacific Design Guidelines and Development Incentives Phase 3 Report. (PL/ED)

Principal Planner C. Berg and Steve Hammond, Consultant with Wallace, Roberts & Todd, presented oral reports and responded to Council's questions.

At 6:32 p.m., the Council recessed for a walking tour, and reconvened at 8:13 p.m.

SPEAKING FROM THE FLOOR EXPRESSING SUPPORT AND/OR CONCERNS:

Joe Quigg
Ron Pomerantz
Chuck Huddleston
Joe Schultz

Mark Jaffee
David Carlson
Peter Petoe

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SPECIAL CITY COUNCIL MEETING
MAY 4, 2010
6:00 P.M. SESSION

1. River/Front & Lower Pacific Design Guidelines and Development Incentives Phase 3 Report. (Continued)

Note: Councilmember Beiers left the meeting at 8:50 p.m.

Action

Councilmember Lane moved, seconded by Councilmember Robinson, to accept the staff and consultant presentations. The motion carried unanimously (Councilmembers Beiers and Madrigal absent.)

Adjournment — At 9:08 p.m., the City Council recessed the Special City Council meeting of May 4, 2010, to the next regularly scheduled City Council meeting on May 11, 2010, for a closed litigation session at 1:30 p.m. in the Courtyard Conference Room, followed by 3:00 and 7:00 p.m. open sessions in Council Chambers.

Approved

Lorrie Brewer
City Clerk

Approved

Michael Rotkin
Mayor

MINUTES ARE UNOFFICIAL UNTIL APPROVED BY COUNCIL

CITY OF SANTA CRUZ
809 Center Street
Santa Cruz, California 95060

**MINUTES OF A REGULAR JOINT CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING**

May 11, 2010

1:30 PM SESSION

Mayor Rotkin opened the Closed Litigation Session at 1:35 p.m. in a public session in the Courtyard Conference Room, for the purpose of announcing the agenda and for considering public testimony. One member of the public was present.

Referral to Closed Session

1. Referral to Closed Session – 55-A Municipal Wharf, APN 005-671-01. (ED)

Action

Councilmember Lane moved, seconded by Councilmember Robinson, to refer to closed session the assignment of a Municipal Wharf Lease. The motion carried unanimously (Councilmember Madrigal and Vice Mayor Coonerty absent.)

Council closed the session to the public at 1:38 p.m. (Councilmember Madrigal and Vice Mayor Coonerty were absent.) (See pages 1168 through 1169 for a report on closed session.)

3:00 PM SESSION

Mayor/Chair Rotkin called the meeting to order at 3:17 p.m. in the Council Chambers.

Roll Call

Present: Councilmembers/Members Lane, Mathews, Beiers, Madrigal, Robinson; Vice Mayor/Vice Chair Coonerty; Mayor/Chair Rotkin.

Absent: None.

Staff: Assistant City Manager M. Bernal, City Attorney J. Barisone, Director of Economic Development and Redevelopment B. Lipscomb, Director of Finance J. Dilles, Chief of Fire R. Oliver, Director of Human Resources L. Sullivan, Director of Information Technology S. Caiocca, Director of Parks and Recreation D. Shoemaker, Director of Public Works M. Dettle, Principal Management Analyst T. Shull, Police Lieutenant L. Richard, City Clerk L. Brewer, Deputy City Clerk T. Graves.

Pledge of Allegiance

Presentation - Mayor's Proclamation in Recognition of May 9-15th as Police Appreciation Week and May 15th as Peace Officer Memorial Day – Chief of Police H. Skerry and Police Lieutenant L. Richard.

Presentation – Amgen Tour of California – Principal Management Analyst T. Shull.

Presiding Officer's Announcements

Statements of Disqualification – None.

Additions and Deletions – None.

JOINT CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING
MAY 11, 2010
3:00 P.M. SESSION

Joint City Council/Redevelopment Agency Oral Communications

Nereida Robles, Alan Pagano and Fe Silva-Robles invited Councilmembers and the public to the Viva Oaxaca event on May 23, 2010.

Rachel Carson expressed concerns about the proposed expansion of UCSC.

Devon Carmody expressed concerns about the proposed expansion of UCSC.

Jennifer Larocq asked Councilmembers to honor the Comprehensive Settlement Agreement with UCSC, and to schedule public hearings.

Thomas Contreras, General Manager of Bewley's, presented an update to Councilmembers on the implementation of cleaning services by his firm at City facilities.

Consent Agenda

Item 4 was removed from the Consent Agenda.

Action

Councilmember/Member Beiers moved, seconded by Councilmember/Member Robinson, to approve the remaining items on the Consent Agenda. The motion carried unanimously (Councilmember/Member Madrigal absent).

Councilmember Madrigal briefly left the meeting.

2. Minutes of the April 20, 2010 Special and April 27, 2010 Regular City Council Meetings. (CC)

Motion carried to approve as submitted.

3. Minutes of the April 27, 2010 Regular Redevelopment Agency Meeting. (CC)

Motion carried to approve as submitted.

Consent Agenda (continued)

4. Zero Motorcycles Grant Match. (ED)

Director of Economic Development and Redevelopment B. Lipscomb and Gene Banman, Zero Motorcycles CEO, presented oral reports and responded to Council's questions.

Action

Member Lane moved, seconded by Chair Rotkin, to adopt Redevelopment Agency Resolution No. 1482 indicating support for providing assistance to Zero Motorcycles in an amount up to \$200,000 from the Redevelopment Agency to provide matching grant funds for a California Energy Commission grant application to develop an electric powertrain and manufacturing facility in Santa Cruz and directing staff to return with a formal agreement setting forth the terms and conditions of such assistance. The motion carried unanimously.

5. Tannery Arts Center Tripartite Agreement. (ED)

Redevelopment Agency motion carried: 1) acknowledging the role of the Tannery Arts Center, Inc., a non-profit organization, in promoting the Salz Tannery Arts Project and its efforts to develop a performing arts center on Parcel 3 of the Tannery site pursuant to the terms of the non-housing ground lease between the Agency and Artspace Projects, Inc.; and (2) directing the Executive Director to develop a tripartite agreement between the Tannery Arts Center, Inc., Artspace Projects, Inc., and the Agency that codifies the roles and responsibilities of each of the parties in the development of the Tannery Arts Center campus.

6. Assignment of Municipal Wharf Lease for 55-A Municipal Wharf APN: 005-671-01. (ED)

Motion carried to approve the assignment of a Municipal Wharf lease from Marini's Inc., dba Marini's Munchies to Marini's Candies, Inc. and authorize and direct the City Manager to execute the assignment in a form approved by the City Attorney.

JOINT CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING
MAY 11, 2010
3:00 P.M. SESSION

Consent Agenda (continued)

7. Agreement with Volunteer Centers of Santa Cruz County - TDA Claimant. (FN)

Motion carried to authorize and direct the City Manager to execute an agreement with Volunteer Centers of Santa Cruz County, allowing the City to act as claimant for funds obtained from the Santa Cruz County Regional Transportation Commission (SCCRTC) for FY 2011.

8. Agreement with Community Bridges of Santa Cruz County - TDA Claimant. (FN)

Motion carried to authorize and direct the City Manager to execute an agreement with Community Bridges/Consolidated Transportation Services Agency, allowing the City to act as claimant for funds obtained from the Santa Cruz County Regional Transportation Commission (SCCRTC) for FY 2011.

9. Parking and Business Improvement Area Assessments for FY 2011. (FN)

Motion carried to approve, or to modify and approve, the plan prepared by the Downtown Association for FY 2011.

Resolution of Intention No. NS-28,203 was adopted to levy a business improvement assessment for FY 2011, and scheduling a Public Hearing for June 8, 2010, after the hour of 3:00 p.m., on the levy of the assessments for FY 2011.

10. Sister Cities Committee Bylaws Revisions. (PK)

Motion carried to adopt the amended bylaws setting forth said amendments of the time and location of the Sister Cities Committee meetings.

11. Wastewater Treatment Facility 54" Effluent Pump Pipeline Repair Project (m409659). (PW)

Motion carried to approve the plans and specifications for the Wastewater Treatment Facility 54" Effluent Pump Pipeline Repair Project and authorize staff to advertise for bids. The City Manager is hereby authorized and directed to execute the contract as authorized by Resolution No. NS-27,563.

Consent Agenda (continued)

12. Award 12.5% Sodium Hypochlorite Contract. (PW)

Motion carried to accept the bid of Sierra Chemical Co., Sparks, NV, complying with specifications for 12.5% Sodium Hypochlorite in the amount of \$0.7045/gallon, and rejecting all other bids; and authorize the City Manager to execute the agreement.

13. Proposition 16 – Establishing a Two-Thirds Majority Vote for Local Public Electricity Service Changes – Resolution of Opposition. (CN)

Resolution No. NS-28,204 was adopted opposing Proposition 16, which will impose a new two-thirds voter approval requirement for changes to local public electricity provision, and supporting a local community's right to determine how and when to take action to support locally renewable energy generation projects.

End Consent Agenda

JOINT CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING
MAY 11, 2010
3:00 P.M. SESSION

Public Hearing

14. FY 2011 Cooperative Retail Management Business Real Property Improvement District Assessments. (ED)

Mayor Rotkin opened the public hearing at 3:58 p.m.

SPEAKING FROM THE FLOOR EXPRESSING OPPOSITION AND/OR CONCERNS:

Mike Tomasi

SPEAKING FROM THE FLOOR EXPRESSING SUPPORT AND/OR CONCERNS:

John Huffman, Downtown Management Corporation

For the record, Mayor Rotkin stated that no written or oral protests were received.

Mayor Rotkin closed the public hearing at 4:03 p.m.

Action

Councilmember Mathews moved, seconded by Councilmember Coonerty, to adopt Resolution No. NS-28,205 confirming the FY 2011 Cooperative Retail Management Business Real Property Improvement District Annual Plan; and levying business improvement assessments for FY 2011. The motion carried unanimously.

General Business

15. Proposed Issuance of 2010 Refuse Enterprise Revenue Refunding Bonds. (FN)

Director of Finance J. Dilles presented an oral report and responded to Council's questions.

Action

Councilmember Mathews moved, seconded by Councilmember Robinson, to adopt Resolution No. NS-28,206 authorizing the issuance and sale of Refuse Revenue Bonds in the maximum amount of \$4,500,000 to refinance outstanding 2001 Certificates of Participation, finance property related to the Refuse Enterprise, and approving related agreements and actions. The motion carried unanimously.

General Business (continued)

16. Council Meeting Calendar

The City Council reviewed the meeting calendar attached to the agenda and revised as necessary.

17. City Attorney Oral Report on Closed Session.

A. Labor Negotiations (Government Code §54956.6)

Lisa Sullivan—Negotiator

- Employee Organizations—
1. Police Management
 2. Police Officers' Association
 3. SEIU—All Units
 4. Operating Engineers-Supervisors
 5. Operating Engineers-Managers
 6. FIRE IAFF
 7. Fire Management

Council received status reports, instructed the negotiator, and took no reportable action.

B. Real Property (Government Code §54956.8).

1. 55-A Wharf Lease Assignment
APN: 005-671-01
City Negotiator - Bonnie Lipscomb
2. Delaveaga Golf Course Lease Negotiations
401 Upper Park Road
APN: 009-471-01; 009-471-02
City Negotiator – Dannettee Shoemaker

Council received status reports, instructed the negotiator on item 2, and took no reportable action.

JOINT CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING
MAY 11, 2010
3:00 P.M. SESSION

General Business (continued)

17. City Attorney Oral Report on Closed Session (continued)

C. Conference with Legal Counsel – Existing Litigation (Government Code §54956.9(a))

1. City v. Patel, Santa Cruz County Superior Court Case No. CV 161056.

Council received status reports, instructed the City Attorney, and took no reportable action.

2. City v. Gadani, et al. (El View Lodge and Seabreeze Inn), Santa Cruz County Superior Court Case No. CV 166931.

Council received status reports, instructed Attorney Seligmann, and took no reportable action.

3. Community Water Coalition v. Santa Cruz County LAFCO, et al. Santa Cruz County Superior Court Case No. CV 167407.

Council received status reports, instructed the City Attorney, and took no reportable action.

18. Council Memberships in City Groups and Outside Agencies.

Councilmember Lane spoke about the next step for the Rail Trail, which is that the California Transportation Commission (CTC) has to approve the funding for the purpose.

Councilmember Robinson reported that the Convention and Visitors Council (CVC) wrote a letter of support to the CTC in support of the Rail Trail purchase. The CVC also endorsed the California Parks Initiative. In addition, Councilmember Robinson reported that AMBAG is hosting a workshop this Saturday on housing within the Tri-County Area at the Police Community Room. She also urged citizens to support their local Farmer's Markets.

Councilmember Mathews gave a tour of the City Hall complex this morning to 2nd Graders.

At 4:15 p.m. the City Council and Redevelopment Agency recessed to the 7:00 p.m. Session

CITY OF SANTA CRUZ
809 Center Street
Santa Cruz, California 95060

**MINUTES OF A JOINT CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING**

May 11, 2010

7:00 P.M. SESSION

Mayor/Chair Rotkin called the meeting to order at 7:04 p.m. in Council Chambers.

Roll Call

Present: Councilmembers/Members Lane, Mathews, Beiers, Madrigal, Vice Mayor/Vice Chair Coonerty; Mayor/Chair Rotkin.

Absent: Councilmember/Member Robinson.

Staff: Assistant City Manager M. Bernal, City Attorney J. Barisone, Director of Planning and Community Development J. Rebagliati, Senior Planner D. Lauritson, City Clerk L. Brewer, Deputy City Clerk T. Graves.

Joint City Council and Redevelopment Agency Oral Communications

Anina Van Alstine expressed concerns about the downtown area, and said she feels unsafe after dark.

Sylvia Mullen expressed concerns about the downtown area, and said the Council should take more responsibility for public safety.

Michael Bethke, Santa Cruz County Fair Executive Director, passed out Entry Guides to the 115th Annual County Fair.

Tom Mullen expressed concerns about Santa Cruz and the “demonization of corporations.”

Mekahel Francois, representing SEIU, asked the Council to rescind the janitorial contract with Bewley’s, and passed out written information.

Josephina expressed concerns about no longer working for UBS Janitorial Service, and said she hasn’t yet been called by Bewley’s to work.

JOINT CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING
MAY 11, 2010
7:00 P.M. SESSION

**Joint City Council and Redevelopment Agency Oral Communications
(continued)**

Librado Chavez said he worked at the Police Department as a janitor for UBS, but has not been called by Bewley's.

Mike Tomasi expressed concerns about the POW/MIA flag, which was stolen from the Veterans' Building. Mr. Tomasi continued to speak after his time had run out, and was warned a second time and then escorted from the Chambers.

Jan Velsey expressed concerns about recent acts of violence.

Diana Pettel expressed concerns about recent acts of violence.

An unidentified woman expressed concerns about recent acts of violence.

Rebecca Robles thanked the Council for helping to improve the Beach Flats area, and expressed concerns about the Police Department working with Immigration and Customs Enforcement (ICE).

Caroline Silvey expressed concerns about the Police Department working with Immigration and Customs Enforcement (ICE).

Keri Waters expressed concerns about an editorial by Mayor Rotkin in the Sentinel, and asked Council to lay out a specific plan for dealing with recent acts of violence.

An unidentified man expressed agreement with previous speakers.

Councilmember Madrigal moved, seconded by Councilmember Beiers, to extend Oral Communications another twenty minutes, with two minutes allotted to each person. The motion FAILED by the following vote:

AYES:	Councilmembers Lane, Madrigal, Beiers.
NOES:	Councilmember Mathews; Vice Mayor Coonerty; Mayor Rotkin.
ABSENT:	Councilmember Robinson.
DISQUALIFIED:	None.

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JOINT CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING
MAY 11, 2010
7:00 P.M. SESSION

**Joint City Council and Redevelopment Agency Oral Communications
(continued)**

Councilmember Madrigal moved, seconded by Councilmember Beiers, to extend Oral Communications another ten minutes. The motion FAILED by the following vote:

AYES: Councilmembers Madrigal, Beiers.
NOES: Councilmembers Lane, Mathews; Vice Mayor Coonerty;
Mayor Rotkin.
ABSENT: Councilmember Robinson.
DISQUALIFIED: None.

Public Hearings

19. Ordinance No. 2010-10 - Medical Marijuana Ordinance Amending Title 6 of the Santa Cruz Municipal Code modifying standards for Personal Medical Marijuana Use. (PL)

Mayor Rotkin opened the public hearing at 7:44 p.m.

Director of Planning and Community Development J. Rebagliati presented an oral report and responded to Council's questions.

SPEAKING FROM THE FLOOR EXPRESSING OPPOSITION AND/OR CONCERNS:

Elizabeth Sanoff

Mayor Rotkin closed the public hearing at 7:48 p.m.

Action

Councilmember Mathews moved, seconded by Councilmember Lane, to pass Ordinance No. 2010-10 for final adoption. The motion carried unanimously (Councilmember Robinson absent).

JOINT CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING
MAY 11, 2010
7:00 P.M. SESSION

Public Hearings (continued)

20. 170 Frederick Street - Major Modification. (PL)

Mayor Rotkin opened the public hearing at 7:48 p.m.

Director of Planning and Community Development J. Rebagliati and Senior Planner D. Lauritson presented oral reports and responded to Council's questions.

SPEAKING FROM THE FLOOR EXPRESSING SUPPORT AND/OR CONCERNS:

Peter Spellman, Project Architect
Christie Brandt, Applicant
Melanie Shaffer, Executive Director, Habitat for Humanity
Des Rayburg, Habitat house owner
Son Rayburg
Andy Benske, Applicant

SPEAKING FROM THE FLOOR EXPRESSING OPPOSITION AND/OR CONCERNS:

Anina van Alstine
Ching Brodsky
Robert Vega
Wes Musitelli
Ed Davidson
David Hill
Elizabeth Sanoff
Sally Di Girolamo
Carole DePalma
Julie Shattuck

Mayor Rotkin closed the public hearing at 8:46 p.m.

Public Hearings (continued)

20. 170 Frederick Street - Major Modification. (continued)

Action

Vice Mayor Coonerty moved, seconded by Councilmember Lane, to adopt Resolution No. NS-28,207 acknowledging the Environmental Determination and approving the Major Modification to Zoning Permit No. 06-078 for affordable housing provisions, exterior and interior modifications to house designs, and parking improvements in a nine-lot subdivision in the R-1-5/CZ zone district, based on the Findings and Conditions of Approval included in the Resolution, including: approving the changes to Lot #1, the Habitat for Humanity House, and allowing work on that house on Saturdays from 9:00 a.m. to 3:00 p.m.; approving the retaining wall on the eastern parking area (with direction to staff to work with the Owners on design elements), but not approving the changes to Lots #2 or #3, or Lots #5 to #8, and not the changes to storage or laundry rooms. The motion carried unanimously (Councilmember Robinson absent).

Adjournment — At 8:56 p.m., the Redevelopment Agency adjourned from the regularly scheduled meeting of May 11, 2010 to the next regularly scheduled meeting on May 25, 2010, for a closed litigation session at 1:30 p.m., in the Courtyard Conference Room, followed by open sessions at the approximate hours of 3:00 p.m. and 7:00 p.m. in Council Chambers.

Adjournment — At 8:56 p.m., the City Council adjourned from the regularly scheduled meeting of May 11, 2010, to a Special Closed Personnel Session on Wednesday, May 12, 2010 at 1:30 p.m., in the City Manager's Conference Room. The next regularly scheduled meeting will be on May 25, 2010, for a closed litigation session at 1:30 p.m., in the Courtyard Conference Room, followed by open sessions at the approximate hours of 3:00 p.m. and 7:00 p.m. in Council Chambers.

Respectfully submitted

Tom Graves
Deputy City Clerk

Approved

Lorrie Brewer
City Clerk

Approved

Michael Rotkin
Mayor

MINUTES ARE UNOFFICIAL UNTIL APPROVED BY COUNCIL

CITY OF SANTA CRUZ
809 Center Street
Santa Cruz, California 95060

MINUTES OF A REGULAR REDEVELOPMENT AGENCY MEETING

May 11, 2010

3:00 PM SESSION

Mayor/Chair Rotkin called the meeting to order at 3:17 p.m. in the Council Chambers.

Roll Call

Present: Councilmembers/Members Lane, Mathews, Beiers, Madrigal, Robinson; Vice Mayor/Vice Chair Coonerty; Mayor/Chair Rotkin.

Absent: None.

Staff: Assistant City Manager M. Bernal, City Attorney J. Barisone, Director of Economic Development and Redevelopment B. Lipscomb, Director of Finance J. Dilles, Chief of Fire R. Oliver, Director of Human Resources L. Sullivan, Director of Information Technology S. Caiocca, Director of Parks and Recreation D. Shoemaker, Director of Public Works M. Dettle, Principal Management Analyst T. Shull, Police Lieutenant L. Richard, City Clerk L. Brewer, Deputy City Clerk T. Graves.

Pledge of Allegiance

Presentation - Mayor's Proclamation in Recognition of May 9-15th as Police Appreciation Week and May 15th as Peace Officer Memorial Day – Chief of Police H. Skerry and Police Lieutenant L. Richard.

Presentation – Amgen Tour of California – Principal Management Analyst T. Shull.

Presiding Officer's Announcements

Statements of Disqualification – None.

Additions and Deletions – None.

REDEVELOPMENT AGENCY MEETING
MAY 11, 2010
3:00 P.M. SESSION

Joint City Council/Redevelopment Agency Oral Communications

Nereida Robles, Alan Pagano and Fe Silva-Robles invited Councilmembers and the public to the Viva Oaxaca event on May 23, 2010.

Rachel Carson expressed concerns about the proposed expansion of UCSC.

Devon Carmody expressed concerns about the proposed expansion of UCSC.

Jennifer Larocq asked Councilmembers to honor the Comprehensive Settlement Agreement with UCSC, and to schedule public hearings.

Thomas Contreras, General Manager of Bewley's, presented an update to Councilmembers on the implementation of cleaning services by his firm at City facilities.

Consent Agenda

Item 4 was removed from the Consent Agenda.

Action

Councilmember/Member Beiers moved, seconded by Councilmember/Member Robinson, to approve the remaining items on the Consent Agenda. The motion carried unanimously (Councilmember/Member Madrigal absent).

Councilmember Madrigal briefly left the meeting.

1. Minutes of the April 20, 2010 Special and April 27, 2010 Regular City Council Meetings. (CC)

Motion carried to approve as submitted.

2. Minutes of the April 27, 2010 Regular Redevelopment Agency Meeting. (CC)

Motion carried to approve as submitted.

REDEVELOPMENT AGENCY MEETING
MAY 11, 2010
3:00 P.M. SESSION

Consent Agenda (continued)

3. Zero Motorcycles Grant Match. (ED)

Director of Economic Development and Redevelopment B. Lipscomb and Gene Banman, Zero Motorcycles CEO, presented oral reports and responded to Council's questions.

Action

Member Lane moved, seconded by Chair Rotkin, to adopt Redevelopment Agency Resolution No. 1482 indicating support for providing assistance to Zero Motorcycles in an amount up to \$200,000 from the Redevelopment Agency to provide matching grant funds for a California Energy Commission grant application to develop an electric powertrain and manufacturing facility in Santa Cruz and directing staff to return with a formal agreement setting forth the terms and conditions of such assistance. The motion carried unanimously.

4. Tannery Arts Center Tripartite Agreement. (ED)

Redevelopment Agency motion carried: 1) acknowledging the role of the Tannery Arts Center, Inc., a non-profit organization, in promoting the Salz Tannery Arts Project and its efforts to develop a performing arts center on Parcel 3 of the Tannery site pursuant to the terms of the non-housing ground lease between the Agency and Artspace Projects, Inc.; and (2) directing the Executive Director to develop a tripartite agreement between the Tannery Arts Center, Inc., Artspace Projects, Inc., and the Agency that codifies the roles and responsibilities of each of the parties in the development of the Tannery Arts Center campus.

5. Assignment of Municipal Wharf Lease for 55-A Municipal Wharf APN: 005-671-01. (ED)

Motion carried to approve the assignment of a Municipal Wharf lease from Marini's Inc., dba Marini's Munchies to Marini's Candies, Inc. and authorize and direct the City Manager to execute the assignment in a form approved by the City Attorney.

REDEVELOPMENT AGENCY MEETING
MAY 11, 2010
3:00 P.M. SESSION

Consent Agenda (continued)

6. Agreement with Volunteer Centers of Santa Cruz County - TDA Claimant. (FN)

Motion carried to authorize and direct the City Manager to execute an agreement with Volunteer Centers of Santa Cruz County, allowing the City to act as claimant for funds obtained from the Santa Cruz County Regional Transportation Commission (SCCRTC) for FY 2011.

7. Agreement with Community Bridges of Santa Cruz County - TDA Claimant. (FN)

Motion carried to authorize and direct the City Manager to execute an agreement with Community Bridges/Consolidated Transportation Services Agency, allowing the City to act as claimant for funds obtained from the Santa Cruz County Regional Transportation Commission (SCCRTC) for FY 2011.

8. Parking and Business Improvement Area Assessments for FY 2011. (FN)

Motion carried to approve, or to modify and approve, the plan prepared by the Downtown Association for FY 2011.

Resolution of Intention No. NS-28,203 was adopted to levy a business improvement assessment for FY 2011, and scheduling a Public Hearing for June 8, 2010, after the hour of 3:00 p.m., on the levy of the assessments for FY 2011.

9. Sister Cities Committee Bylaws Revisions. (PK)

Motion carried to adopt the amended bylaws setting forth said amendments of the time and location of the Sister Cities Committee meetings.

10. Wastewater Treatment Facility 54" Effluent Pump Pipeline Repair Project (m409659). (PW)

Motion carried to approve the plans and specifications for the Wastewater Treatment Facility 54" Effluent Pump Pipeline Repair Project and authorize staff to advertise for bids. The City Manager is hereby authorized and directed to execute the contract as authorized by Resolution No. NS-27,563.

REDEVELOPMENT AGENCY MEETING
MAY 11, 2010
3:00 P.M. SESSION

Consent Agenda (continued)

11. Award 12.5% Sodium Hypochlorite Contract. (PW)

Motion carried to accept the bid of Sierra Chemical Co., Sparks, NV, complying with specifications for 12.5% Sodium Hypochlorite in the amount of \$0.7045/gallon, and rejecting all other bids; and authorize the City Manager to execute the agreement.

12. Proposition 16 – Establishing a Two-Thirds Majority Vote for Local Public Electricity Service Changes – Resolution of Opposition. (CN)

Resolution No. NS-28,204 was adopted opposing Proposition 16, which will impose a new two-thirds voter approval requirement for changes to local public electricity provision, and supporting a local community's right to determine how and when to take action to support locally renewable energy generation projects.

End Consent Agenda

REDEVELOPMENT AGENCY MEETING
MAY 11, 2010
3:00 P.M. SESSION

Public Hearing

13. FY 2011 Cooperative Retail Management Business Real Property Improvement District Assessments. (ED)

Mayor Rotkin opened the public hearing at 3:58 p.m.

SPEAKING FROM THE FLOOR EXPRESSING OPPOSITION AND/OR CONCERNS:

Mike Tomasi

SPEAKING FROM THE FLOOR EXPRESSING SUPPORT AND/OR CONCERNS:

John Huffman, Downtown Management Corporation

For the record, Mayor Rotkin stated that no written or oral protests were received.

Mayor Rotkin closed the public hearing at 4:03 p.m.

Action

Councilmember Mathews moved, seconded by Councilmember Coonerty, to adopt Resolution No. NS-28,205 confirming the FY 2011 Cooperative Retail Management Business Real Property Improvement District Annual Plan; and levying business improvement assessments for FY 2011. The motion carried unanimously.

General Business

14. Proposed Issuance of 2010 Refuse Enterprise Revenue Refunding Bonds. (FN)

Director of Finance J. Dilles presented an oral report and responded to Council's questions.

Action

Councilmember Mathews moved, seconded by Councilmember Robinson, to adopt Resolution No. NS-28,206 authorizing the issuance and sale of Refuse Revenue Bonds in the maximum amount of \$4,500,000 to refinance outstanding 2001 Certificates of Participation, finance property related to the Refuse Enterprise, and approving related agreements and actions. The motion carried unanimously.

REDEVELOPMENT AGENCY MEETING
MAY 11, 2010
3:00 P.M. SESSION

General Business (continued)

15. Council Meeting Calendar

The City Council reviewed the meeting calendar attached to the agenda and revised as necessary.

16. City Attorney Oral Report on Closed Session.

A. Labor Negotiations (Government Code §54956.6)

Lisa Sullivan—Negotiator

- | | | |
|-------------------------|----|---------------------------------|
| Employee Organizations— | 1. | Police Management |
| | 2. | Police Officers' Association |
| | 3. | SEIU—All Units |
| | 4. | Operating Engineers-Supervisors |
| | 5. | Operating Engineers-Managers |
| | 6. | FIRE IAFF |
| | 7. | Fire Management |

Council received status reports, instructed the negotiator, and took no reportable action.

B. Real Property (Government Code §54956.8).

1. 55-A Wharf Lease Assignment
APN: 005-671-01
City Negotiator - Bonnie Lipscomb
2. Delaveaga Golf Course Lease Negotiations
401 Upper Park Road
APN: 009-471-01; 009-471-02
City Negotiator – Dannettee Shoemaker

Council received status reports, instructed the negotiator on item 2, and took no reportable action.

REDEVELOPMENT AGENCY MEETING
MAY 11, 2010
3:00 P.M. SESSION

General Business (continued)

17. City Attorney Oral Report on Closed Session (continued)

C. Conference with Legal Counsel – Existing Litigation (Government Code §54956.9(a))

1. City v. Patel, Santa Cruz County Superior Court Case No. CV 161056.

Council received status reports, instructed the City Attorney, and took no reportable action.

2. City v. Gadani, et al. (El View Lodge and Seabreeze Inn), Santa Cruz County Superior Court Case No. CV 166931.

Council received status reports, instructed Attorney Seligmann, and took no reportable action.

3. Community Water Coalition v. Santa Cruz County LAFCO, et al. Santa Cruz County Superior Court Case No. CV 167407.

Council received status reports, instructed the City Attorney, and took no reportable action.

17. Council Memberships in City Groups and Outside Agencies.

Councilmember Lane spoke about the next step for the Rail Trail, which is that the California Transportation Commission (CTC) has to approve the funding for the purpose.

Councilmember Robinson reported that the Convention and Visitors Council (CVC) wrote a letter of support to the CTC in support of the Rail Trail purchase. The CVC also endorsed the California Parks Initiative. In addition, Councilmember Robinson reported that AMBAG is hosting a workshop this Saturday on housing within the Tri-County Area at the Police Community Room. She also urged citizens to support their local Farmer's Markets.

Councilmember Mathews gave a tour of the City Hall complex this morning to 2nd Graders.

At 4:15 p.m. the City Council and Redevelopment Agency recessed to the 7:00 p.m. Session

CITY OF SANTA CRUZ
809 Center Street
Santa Cruz, California 95060

**MINUTES OF A JOINT CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING**

May 11, 2010

7:00 P.M. SESSION

Mayor/Chair Rotkin called the meeting to order at 7:04 p.m. in Council Chambers.

Roll Call

Present: Councilmembers/Members Lane, Mathews, Beiers, Madrigal, Vice Mayor/Vice Chair Coonerty; Mayor/Chair Rotkin.

Absent: Councilmember/Member Robinson.

Staff: Assistant City Manager M. Bernal, City Attorney J. Barisone, Director of Planning and Community Development J. Rebagliati, Senior Planner D. Lauritson, City Clerk L. Brewer, Deputy City Clerk T. Graves.

Joint City Council and Redevelopment Agency Oral Communications

Anina Van Alstine expressed concerns about the downtown area, and said she feels unsafe after dark.

Sylvia Mullen expressed concerns about the downtown area, and said the Council should take more responsibility for public safety.

Michael Bethke, Santa Cruz County Fair Executive Director, passed out Entry Guides to the 115th Annual County Fair.

Tom Mullen expressed concerns about Santa Cruz and the “demonization of corporations.”

Mekahel Francois, representing SEIU, asked the Council to rescind the janitorial contract with Bewley’s, and passed out written information.

Josephina expressed concerns about no longer working for UBS Janitorial Service, and said she hasn’t yet been called by Bewley’s to work.

REDEVELOPMENT AGENCY MEETING
MAY 11, 2010
7:00 P.M. SESSION

**Joint City Council and Redevelopment Agency Oral Communications
(continued)**

Librado Chavez said he worked at the Police Department as a janitor for UBS, but has not been called by Bewley's.

Mike Tomasi expressed concerns about the POW/MIA flag, which was stolen from the Veterans' Building. Mr. Tomasi continued to speak after his time had run out, and was warned a second time and then escorted from the Chambers.

Jan Velsey expressed concerns about recent acts of violence.

Diana Pettel expressed concerns about recent acts of violence.

An unidentified woman expressed concerns about recent acts of violence.

Rebecca Robles thanked the Council for helping to improve the Beach Flats area, and expressed concerns about the Police Department working with Immigration and Customs Enforcement (ICE).

Caroline Silvey expressed concerns about the Police Department working with Immigration and Customs Enforcement (ICE).

Keri Waters expressed concerns about an editorial by Mayor Rotkin in the Sentinel, and asked Council to lay out a specific plan for dealing with recent acts of violence.

An unidentified man expressed agreement with previous speakers.

Councilmember Madrigal moved, seconded by Councilmember Beiers, to extend Oral Communications another twenty minutes, with two minutes allotted to each person. The motion FAILED by the following vote:

AYES:	Councilmembers Lane, Madrigal, Beiers.
NOES:	Councilmember Mathews; Vice Mayor Coonerty; Mayor Rotkin.
ABSENT:	Councilmember Robinson.
DISQUALIFIED:	None.

REDEVELOPMENT AGENCY MEETING
 MAY 11, 2010
 7:00 P.M. SESSION

**Joint City Council and Redevelopment Agency Oral Communications
 (continued)**

Councilmember Madrigal moved, seconded by Councilmember Beiers, to extend Oral Communications another ten minutes. The motion FAILED by the following vote:

AYES: Councilmembers Madrigal, Beiers.
 NOES: Councilmembers Lane, Mathews; Vice Mayor Coonerty;
 Mayor Rotkin.
 ABSENT: Councilmember Robinson.
 DISQUALIFIED: None.

Public Hearings

18. Ordinance No. 2010-10 - Medical Marijuana Ordinance Amending Title 6 of the Santa Cruz Municipal Code modifying standards for Personal Medical Marijuana Use. (PL)

Mayor Rotkin opened the public hearing at 7:44 p.m.

Director of Planning and Community Development J. Rebagliati presented an oral report and responded to Council's questions.

SPEAKING FROM THE FLOOR EXPRESSING OPPOSITION AND/OR CONCERNS:

Elizabeth Sanoff

Mayor Rotkin closed the public hearing at 7:48 p.m.

Action

Councilmember Mathews moved, seconded by Councilmember Lane, to pass Ordinance No. 2010-10 for final adoption. The motion carried unanimously (Councilmember Robinson absent).

REDEVELOPMENT AGENCY MEETING
MAY 11, 2010
7:00 P.M. SESSION

Public Hearings (continued)

19. 170 Frederick Street - Major Modification. (PL)

Mayor Rotkin opened the public hearing at 7:48 p.m.

Director of Planning and Community Development J. Rebagliati and Senior Planner D. Lauritson presented oral reports and responded to Council's questions.

SPEAKING FROM THE FLOOR EXPRESSING SUPPORT AND/OR CONCERNS:

Peter Spellman, Project Architect
Christie Brandt, Applicant
Melanie Shaffer, Executive Director, Habitat for Humanity
Des Rayburg, Habitat house owner
Son Rayburg
Andy Benske, Applicant

SPEAKING FROM THE FLOOR EXPRESSING OPPOSITION AND/OR CONCERNS:

Anina van Alstine
Ching Brodsky
Robert Vega
Wes Musitelli
Ed Davidson
David Hill
Elizabeth Sanoff
Sally Di Girolamo
Carole DePalma
Julie Shattuck

Mayor Rotkin closed the public hearing at 8:46 p.m.

REDEVELOPMENT AGENCY MEETING
MAY 11, 2010
7:00 P.M. SESSION

Public Hearings (continued)

20. 170 Frederick Street - Major Modification. (continued)

Action

Vice Mayor Coonerty moved, seconded by Councilmember Lane, to adopt Resolution No. NS-28,207 acknowledging the Environmental Determination and approving the Major Modification to Zoning Permit No. 06-078 for affordable housing provisions, exterior and interior modifications to house designs, and parking improvements in a nine-lot subdivision in the R-1-5/CZ zone district, based on the Findings and Conditions of Approval included in the Resolution, including: approving the changes to Lot #1, the Habitat for Humanity House, and allowing work on that house on Saturdays from 9:00 a.m. to 3:00 p.m.; approving the retaining wall on the eastern parking area (with direction to staff to work with the Owners on design elements), but not approving the changes to Lots #2 or #3, or Lots #5 to #8, and not the changes to storage or laundry rooms. The motion carried unanimously (Councilmember Robinson absent).

Adjournment — At 8:56 p.m., the Redevelopment Agency adjourned from the regularly scheduled meeting of May 11, 2010 to the next regularly scheduled meeting on May 25, 2010, for a closed litigation session at 1:30 p.m., in the Courtyard Conference Room, followed by open sessions at the approximate hours of 3:00 p.m. and 7:00 p.m. in Council Chambers.

Approved

Mike Rotkin
Chair

Attest

Bonnie Lipscomb
Executive Director



REDEVELOPMENT AGENCY AGENDA REPORT

DATE: 5/18/2010

AGENDA OF: 5/25/2010

DEPARTMENT: Economic Development

SUBJECT: Nickelodeon Theatres, Inc. Loan for Del Mar Theatre Equipment
Upgrades. (ED)

RECOMMENDATION: Redevelopment Agency Resolution amending the FY 2010 budget to appropriate an amount up to \$150,000 for a loan to Nickelodeon Theatres, Inc.

Redevelopment Agency Resolution authorizing and directing the Executive Director to enter into a loan agreement in a form approved by the Agency Attorney with Nickelodeon Theatres, Inc. in an amount up to \$150,000 to fund theatre equipment upgrades and to execute such documents as may be necessary to carry out the loan.

BACKGROUND: The Redevelopment Agency (Agency) purchased the Del Mar Theatre Building in June 2001 which includes 17,850 square feet of theater space and 1,350 square feet of ground floor retail space divided into three units on Pacific Avenue. Nickelodeon Theatres, Inc. has been operating the theatre space successfully since 2002. The Agency receives both base rent and a percentage rent based on annual ticket and concession sales for the theatre. Revenue received from all the Del Mar Theatre leases is used by the Agency for major theatre building renovations and repairs which are needed periodically for the historic building. Recent renovations have included bathroom upgrades and historic paint detailing in the mezzanine. The exterior of the theatre building is scheduled and budgeted to be repainted in the coming fiscal year.

DISCUSSION: Agency staff has recently been in discussion with the operator of the Del Mar Theatre concerning the continued success of the theatre and the necessity of the theatre keeping pace with evolving trends and opportunities. Digital projection combined with 3-D technology is becoming more and more important for successful operation of theatres, and many new movies may not be shown in the downtown due to a lack of available screens. The equipment necessary for the digital and 3-D upgrades to the Del Mar Theatre includes a digital projector, equipment add-ons for the Dolby 3-D projection system, and a receiver for transmission of the alternative content programming. The proposed upgrades would additionally allow the Del Mar Theatre to show digital live concerts, operas and other shows that are only available with digital projectors and equipment. The estimated cost of the equipment is approximately \$150,000. The operator of the Del Mar Theatre has approached the Agency requesting a low-interest loan for purchase of this equipment in order to purchase and install the equipment in time to take advantage of upcoming 3-D summer releases which have been committed to the theatre from major distributors contingent upon financing.

The Agency has available funds in the Del Mar Theatre Fund balance to finance a low-interest loan up to \$150,000 at the current city portfolio rate and still maintain a sufficient balance for unanticipated repairs to the theatre building. Staff believes that investing in upgrades to the theatre projection equipment will help ensure the Del Mar's continued success and revitalization and contribute to the breadth and expansion of entertainment opportunities in the downtown. As the operator of the Del Mar Theatre has no other viable means of financing the equipment upgrades in a timely manner, the Agency would be assisting a local business, one of the Agency's Redevelopment Plan goals, as well as meeting several of the Agency's broader objectives including strengthening the local economic base and improving the economic and recreational conditions in the project area.

FISCAL IMPACT: While a loan up to \$150,000 from the Agency Del Mar Theatre Fund would reduce the available fund balance, sufficient funds are available to fund the loan as well as scheduled improvements budgeted for the theatre building during the next fiscal year while still maintaining a fund balance for unanticipated repairs. The proposed loan would be made at the city's portfolio rate averaged over the last year, using the most recent rate information available, and would have a term of 5 years with a quarterly payment schedule. There is no impact to the General Fund by approving this loan.

Submitted by:	Approved by:
Bonnie Lipscomb	Richard C. Wilson
Agency Executive Director	City Manager

ATTACHMENTS:
Resolution
Budget Adjustment

RESOLUTION NO.

RESOLUTION AUTHORIZING AND DIRECTING THE EXECUTIVE DIRECTOR TO ENTER INTO A LOAN AGREEMENT, IN A FORM APPROVED BY THE AGENCY ATTORNEY, WITH NICKELODEON THEATRES, INC. IN AN AMOUNT UP TO \$150,000 TO FUND THEATRE EQUIPMENT UPGRADES AND TO EXECUTE SUCH DOCUMENTS AS MAY BE NECESSARY TO CARRY OUT THE LOAN

WHEREAS, by Ordinance Nos. 90-40 and 90-41, adopted on November 13, 1990, the City Council of the City of Santa Cruz (the "Council") approved and adopted the Redevelopment Plan (the "Merged Redevelopment Plan") for the Merged Earthquake Recovery and Reconstruction Project (the "Merged Project"); and

WHEREAS, on December 8, 2009, the Santa Cruz Redevelopment Agency adopted a Five-Year Implementation Plan, pursuant to Section 33490 of the California Redevelopment Law wherein specific projects and programs were set forth, including actions and expenditures to be made within the term of the Implementation Plan and further described how these projects and programs would alleviate blight; and

WHEREAS, the Five-Year Implementation Plan contains specific goals and objectives to promote revitalization of the Downtown Central Business District; and

WHEREAS, in June 2001 the Santa Cruz Redevelopment Agency purchased the Del Mar Theatre Building downtown and entered into a Master Lease with Swenson/OW Del Mar Joint Venture to manage and sublease the theatre and other retail spaces; and

WHEREAS, In October 2007 the Santa Cruz Redevelopment Agency terminated the Master Lease with Swenson/OW Del Mar Joint Venture and assumed the subleases; and

WHEREAS, Nickelodeon Theatres, Inc., a current tenant of the Del Mar Theatre Building has been the operator of the Del Mar Theatre since 2002; and

WHEREAS, The Agency and Nickelodeon Theatres, Inc. wish to enter into a loan agreement whereby the Agency loans Nickelodeon Theatres, Inc. up to \$150,000 to purchase theatre equipment upgrades to the theatre which will allow for the showing of both digital programming and 3-D releases; and

WHEREAS, The loan meets Redevelopment Plan and Five-Year Implementation Plan objectives of assisting local businesses, strengthening the local economic base and increasing the recreational opportunities in the project area; and

WHEREAS, funds are available in the Del Mar Theatre Fund balance for such a purpose;

NOW, THEREFORE, BE IT RESOLVED by the Redevelopment Agency of the City of Santa Cruz that the Agency authorize and direct the Executive Director to enter into a loan

agreement, in a form approved by the City Attorney, with Nickelodeon Theatres, Inc. in an amount up to \$150,000 to fund theatre equipment and to execute such documents as may be necessary to carry out the loan.

PASSED AND ADOPTED this 25th day of May, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: _____
Chair

ATTEST: _____
Executive Director

**City of Santa Cruz
BUDGET ADJUSTMENT REQUEST**

<input type="radio"/> Council Approval	Resolution No. _____
<input checked="" type="radio"/> RDA Approval	Resolution No. _____
<input type="radio"/> Administrative Approval	

<input checked="" type="radio"/> Current Fiscal Year
<input type="radio"/> Prior Fiscal Year

Date: 05/25/2010

ACCOUNT	REVENUE EDEN ACCOUNT TITLE	
TOTAL REVENUE		\$0.00

ACCOUNT	EXPENDITURE EDEN ACCOUNT TITLE	
383-52-80-5530-56960	Del Mar Theater Fund: Loans and Grants	\$150,000.00
TOTAL EXPENDITURE		\$150,000.00

NET: \$ (150,000.00)

Purpose: To amend the FY 2010 budget in order to provide a loan up to \$150,000 to the Nickelodeon Theatres, Inc, operator of the Agency owned Del Mar Theatre Building, to fund theater equipment upgrades.

PREPARED BY	DEPARTMENT HEAD APPROVAL	ACCOUNTING APPROVAL	FINANCE DIRECTOR APPROVAL	CITY MANAGER APPROVAL
Kathryn Mintz <small>Digitally signed by Kathryn Mintz DN: cn=Kathryn Mintz, o=City of Santa Cruz, ou=Finance, email=kymintz@cityofscruz.ca.us, c=US Date: 2010.05.12 13:26:51 -0700</small> 5/12/10	Bonnie Lipscomb <small>Digitally signed by Bonnie Lipscomb DN: cn=Bonnie Lipscomb, o=City of Santa Cruz, CA, ou=ACD, email=blipscomb@cityofscruz.ca.us, c=US Date: 2010.05.12 13:36:58 -0700</small>	Patty Haymond <small>Digitally signed by Patty Haymond DN: cn=Patty Haymond, o=City of Santa Cruz, CA, ou=ACD, email=phaymond@cityofscruz.ca.us, c=US Date: 2010.05.14 12:21:47 -0700</small> 5/14/10	Jack Dilles <small>Digitally signed by Jack Dilles DN: cn=Jack Dilles, ou=Finance, ou=FMAD, email=jdilles@cityofscruz.ca.us, c=US Date: 2010.05.19 08:42:10 -0700</small>	

Revised December 2009



CITY COUNCIL AGENDA REPORT

DATE: 5/17/2010

AGENDA OF: 5/25/2010

DEPARTMENT: Public Works

SUBJECT: Water Street Sewer Project (c400914) – Authorization to Advertise. (PW)

RECOMMENDATION: Motion to approve the plans and specifications for the Water Street Sewer Project and authorize staff to advertise for bids. The City Manager is hereby authorized and directed to execute the contract as authorized by Resolution No. NS 27,563.

BACKGROUND: The locations of the sanitary sewer pipelines that will be replaced and rehabilitated are shown on the attached Project Location Map. The pipelines to be replaced on Water and May Streets are too small to properly handle the existing peak sewer flow conditions.

DISCUSSION: The existing 10-inch pipeline will be replaced with a 14-inch pipeline that will be installed by “bursting” through the old pipeline. This method limits the amount of excavation for the mainline. Deep excavations (approximately 10 feet) will be required for the sewer laterals and at some of the manholes. This is considered specialty construction and the local hire ordinance will not be in effect.

As part of the project, the traffic island between Market and May will be damaged by the sewer lateral excavations, therefore a significant portion will be replaced. The replacement will be done to increase the vehicle storage capacity of the left-turn lane and improve sight distance from Water to Market. The landscaping will be modified to include Chanticleer Pear (*Pyrus calleryana* ‘Chanticleer’) and stamped concrete, as recommended by the Parks and Recreation Department. The Transportation and Public Works Commission recommended the approval of this project at its May 17, 2010 meeting.

The project will begin after Labor Day in order to avoid impacting summer traffic. Night work will be required for part of the project to reduce traffic impacts at the Water and Ocean Street intersections.

FISCAL IMPACT: The engineer’s cost estimate to complete the project, including engineering and inspection, is \$990,000. The project is funded in the Wastewater Fund FY2010 Capital Improvement Program as Project c400914 and Project m409682 for \$600,000 and \$480,000 respectively. There is no impact to the General Fund.

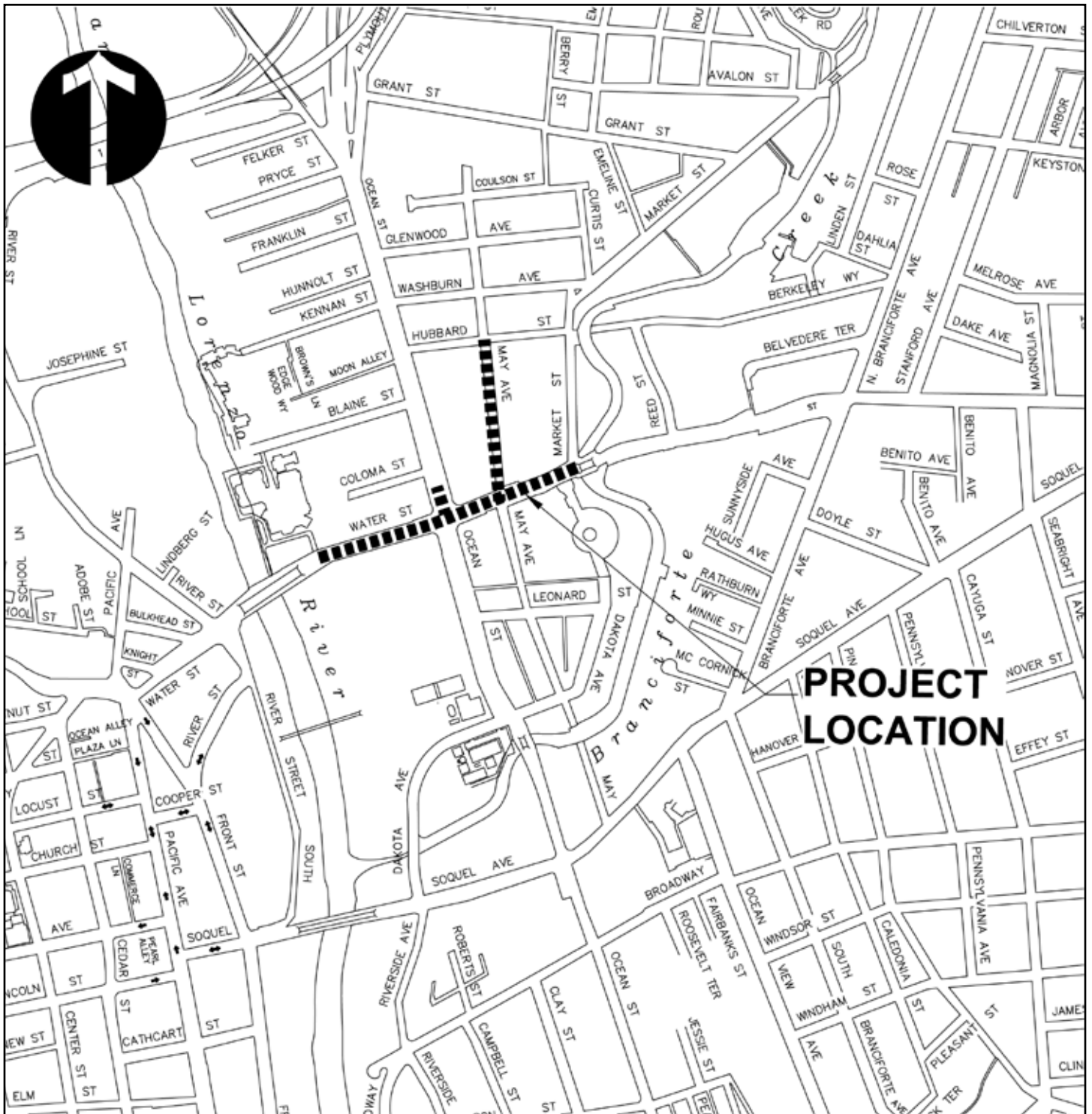
Prepared by:
Steve Wolfman
Associate Civil Engineer

Submitted by:
Mark R. Dettle
Director of Public Works

Approved by:
Richard C. Wilson
City Manager

Available for public review at Public Works: Plans and Specifications

ATTACHMENTS: Project Location Map



WATER STREET SEWER PROJECT LOCATION

MAY 12, 2010, TPWC COMMISSION



CITY COUNCIL AGENDA REPORT

DATE: 5/17/2010

AGENDA OF: 5/25/2010

DEPARTMENT: Public Works

SUBJECT: San Lorenzo River Flood Control and Environmental Restoration Project
(p520002) – Vegetation Variance Request and Agreement. (PW)

RECOMMENDATION: Motion to authorize the City Manager to sign a Corps of Engineers Vegetation Variance Request and Agreement for the San Lorenzo River Flood Control and Environmental Restoration Project.

BACKGROUND: In 1996 when Congress enacted the Water Resources Development Act (WRDA), it included Section 202(g) which required the Corps of Engineers to develop a policy to recognize that “there may be some instances where vegetation may preserve, protect or enhance natural resources and/or protect the rights of Native Americans.” The Corps has spent the intervening fourteen years trying to develop a policy in this area. In this attempt, the Corps has prepared several papers, studies and other assorted documents. Based on this nearly decade-and-a-half long process the Corp has now posted a Notice in the Federal Register entitled “Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls,” which is attached.

The 1996 WRDA, Section 101(a) (5) also authorized the Corps of Engineers to construct improvements to the San Lorenzo River Flood Control Project which incorporated both flood control and habitat improvements. These improvements were constructed in two phases in 2000 and 2001. What was unique about the San Lorenzo River Flood Control improvements is that they were specifically designed to meet both habitat restoration and flood control objectives. To this end the levees were “oversized” to accommodate both trees and shrubs.

DISCUSSION: The Corps’ proposed new Vegetation Standards currently do not provide any recognition of projects such as the San Lorenzo River Flood Control Project which were designed to incorporate vegetation. Since the proposed Corps “Vegetation Standards” do not recognize situations such as those of the San Lorenzo River Flood Control Project, the City will need to apply for a variance from the Corps to maintain the existing vegetation along the levee system.

During the comment period on the proposed Corps Vegetation Standards, City staff and the Mayor commented on the specific circumstances of the San Lorenzo River Project (see attached letters). However, at this time it is unknown the affect of these and other nationwide comments on the Corps Vegetation Standards. Therefore, to ensure the preservation of the vegetation on the San Lorenzo River Project, staff has been working with the staff of the Corps’s Sacramento

District to prepare a Corps Variance Request to the proposed Vegetation Standards for the San Lorenzo River Flood Control Project.

The proposed Variance Request needs to be submitted to the Corps Headquarters by September 30, 2010. In order to meet this deadline, the Sacramento District has prepared the attached agreement between the Corps and City to prepare a Variance Request for the San Lorenzo River Flood Control Project. The cost of preparing this request is estimated at \$70,000 of which the City will be required to fund \$17,500 of the work. Funds in the Capital Improvement Budget for the San Lorenzo River Flood Control are sufficient to cover this cost.

The City Attorney has reviewed the proposed Corps Variance Request Agreement and has approved it. However, the City Attorney did note an inconsistency between the Agreement and the Proposed Vegetation Standards Policy and staff has requested the Corps to correct this inconsistency.

FISCAL IMPACT: Funding for the City's share of preparation of the Variance Request will be from the Stormwater Fund, Flood Control Overlay sub-fund, for a net reduction in the Stormwater Fund, Flood Control Overlay sub-fund fund balance of \$17,500.

Prepared by:
Joe Hall
Project Manager

Submitted by:
Mark R. Dettle
Director of Public Works

Approved by:
Richard C. Wilson
City Manager

ATTACHMENTS:

Variance Agreement with Corps of Engineers

Federal Register Vegetation Standards Notice

Letter from Mayor to Corps of Engineers Regarding Vegetation Standards, dated March 2, 2010

Letter from Project Manager to Corps of Engineers Regarding Vegetation Standards, dated March 2, 2010

VEGETATION VARIANCE REQUEST
AND
AGREEMENT

Addressing the Vegetation Standards for *(enter the levee system name and location, as defined in the National Levee Database)*.

I. *Purpose*. The purpose of this Agreement is to allow for specific and limited variance from U.S. Army Corps of Engineers vegetation standards, for the levee system named above, provided such variance does not diminish system reliability, and is necessary to preserve, protect, and enhance natural resources, and protect the rights of Native Americans pursuant to treaty and statute.

II. *Authority*. This Agreement is made pursuant to the authority of Public Law 99, 84th Congress (Pub. L. 84–99), (33 U.S.C. 701n) (69 Stat. 186), as regulated by Title 33, Code of Federal Regulations, Sections 203 and 208.10, and as implemented by policy guidance letter, Subject: Policy Guidance Letter—Requesting a Variance From Vegetation Standards for Levees and Floodwalls, dated _____.

III. *Applicability*. This Agreement is applicable to the portion(s) of the *(insert name of levee system)* described in attachment *(insert number)*.

IV. *References*. *(Insert any references that are applicable, including the existing project cooperation agreement. This could include state law, county ordinances, Federal or state court documents, technical manuals, etc. References may be incorporated into this Agreement.)*

V. *Scope*. A detailed description of the conditions proposed under this agreement is provided in attachment(s) *(insert number(s))*.

VI. Actions During and After Emergencies.

A. Definition of Emergency. For the purposes of application of this Agreement, the term “emergency” is defined as any situation in which a levee is threatened with either failure or overtopping.

B. Definition of Flood Fight. For the purposes of application of this Agreement, the term “flood fight” is defined as actions taken immediately before or during a flood to protect human life and reduce flood damages, such as evacuation, emergency sandbagging and diking, and providing assistance to flood victims.

C. Conduct of Flood-Fight Activities. During an emergency, any responsible party engaged in flood-fight activities, to specifically include the U.S. Army Corps of Engineers, the *(list states, cities, or counties as necessary)*, and the project sponsor(s) may take whatever actions are necessary to preserve the structural integrity of the levee system addressed by this Agreement. Actions necessary to preserve the structural integrity of the system may include removal of any
and all vegetation on or near the levee or floodwall.

D. Rehabilitation. Any levee repairs, modifications, or improvements made as a result of the emergency event shall be in accordance with current USACE vegetation management standards or approved vegetation variance for the levee system.

VII. Obligations of the Signatories of the Agreement.

A. The sponsor shall hold and save the Government free from all damages arising from the construction, operation, maintenance repair, replacement, and rehabilitation of the (*insert name of levee system*), the Hurricane/Shore Protection Project, and any related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

B. The sponsors agree to maintain the levee system in accordance this variance agreement and assume the responsibility for implementing and bearing the costs of any measures that are required for compliance with the Endangered Species Act or any mitigation requirements that result from environmental compliance processes such as the National Environmental Policy Act or required permits.

VIII. Notices.

A. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage prepaid), registered, or certified mail, to the address provided.

B. A party may change the address to which such communications are to be directed by giving written notice to the other parties in the manner provided in paragraph C (below).

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is personally delivered, or, seven calendar days after it is mailed.

IX. Expiration of this Agreement.

(Approval of this agreement may be contingent upon agreement to an expiration mechanism.

Use one of the three conditions below to complete this paragraph.)

(This Vegetation Variance is intended to be permanent.)

(This Vegetation Variance shall expire on[insert date].)

(This Vegetation Variance shall expire upon [explain event].)

However, the Corps reserves the right to revoke this agreement if it becomes apparent that it results in conditions that threaten system reliability and public safety.

X. Signatures.

In witness hereof, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the HQUSACE Levee Safety Officer.

Submitted by:
The City of Santa Cruz

_____ (signature)

(full name, typed)
(title, typed in full)

(date)
(additional sponsor signature blocks may be
added if needed—afterward, delete this note)

Reviewed by:
US Army Corps of Engineers, San Francisco District

_____(signature)
(full name, typed)
Levee Safety Officer

(date)

Accepted by:
US Army Corps of Engineers, San Francisco District

_____(signature)
(full name, typed)
Commander

(date)

Reviewed by:
US Army Corps of Engineers, South Pacific Division

_____(signature)
Ken Harrington
Levee Safety Officer

(date)

Accepted by:
US Army Corps of Engineers, South Pacific Division

_____(signature)
(full name, typed)
Commander

(date)

Endorsed by:
US Army Corps of Engineers, Risk Management Center
__ As Proposed
__ As Amended

_____(signature)
(full name, typed)
Leader, Agency Technical Review Team

(date)

Approved by: The Department of the Army
(signature)


(full name, typed)
Levee Safety Officer, HQUSACE

(date)

XI. Certificate of Authority
CERTIFICATE OF AUTHORITY

I, ___(name of City Counsel)___, do hereby certify that I am the principal legal officer of the City of Santa Cruz, that the City of Santa Cruz is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the City of Santa Cruz in connection with this Vegetation Variance Request and Agreement Addressing the Vegetation Standards for *(enter the levee system name and location, as defined in the National Levee Database)* and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the City of Santa Cruz have acted within their statutory authority.

In Witness Whereof, I have made and executed this certification this 17~~th~~ day of MAY 2010.



(Name of Counsel for signing entity)
(Full Formal title) *CITY ATTORNEY*

CITY ATTORNEY

XII. Certification Regarding Lobbying.
CERTIFICATION REGARDING LOBBYING The undersigned certifies, to the best of his or her knowledge and belief that: (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an

officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

DATED this ____ day of _____, 2010

(Signature of Agreement Signatory)

(Typed Name)

(Typed Title)

DEPARTMENT OF DEFENSE**Department of the Army, Corps of Engineers****Process for Requesting a Variance From Vegetation Standards for Levees and Floodwalls**

AGENCY: United States Army Corps of Engineers, Department of Defense.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to update its current process for requesting a variance from vegetation standards for levees and floodwalls to reflect organizational changes and incorporate current agency-wide review processes.

DATES: Written comments must be submitted on or before March 11, 2010.

ADDRESSES: You may submit comments, identified by docket number COE-2010-0007 by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

E-mail:

Douglas.J.Wade@usace.army.mil. Include the docket number, COE-2010-0007 in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CE, Douglas J. Wade, 441 G Street, NW., Washington, DC 20314-1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2010-0007. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you

include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT:

Douglas J. Wade, Headquarters, Engineering and Construction Community of Practice, Washington, DC at 202-761-4668.

SUPPLEMENTARY INFORMATION: The request process was developed to implement Section 202(g) of the Water Resources Development Act (WRDA) of 1996. Consistent with our regulations for implementing NEPA for our Civil Works programs, we have included a draft Finding of No Significant Impact (FONSI) for review in addition to the draft Environmental Assessment (EA). The draft FONSI is subject to change based on the comments received through this public notice and should not be viewed as predetermining the outcome of this process. Based on the comments received, we may determine that a FONSI is not appropriate and that a full Environmental Impact Statement is required for this action.

To comply with the requirements of the National Environmental Policy Act, a draft environmental assessment (EA) has been prepared. A copy of the draft EA is available at <http://www.regulations.gov> in docket number COE-2010-0007. If you would like to submit comments on the draft EA, you must do so before the end of the comment period specified in the **DATES** section above.

Authority: We are proposing to issue this Policy Guidance Letter under the authority of 33 U.S.C. 701n.

Dated: February 4, 2010.

James C. Dalton,

Chief, Engineering and Construction, Directorate of Civil Works.

Policy Guidance Letter—Variance From Vegetation Standards for Levees and Floodwalls

1. *Purpose.* This policy guidance letter revises the procedures for obtaining variances from U.S. Army Corps of Engineers (USACE) mandatory vegetation-management standards for levees, floodwalls, and appurtenant structures contained in Engineer Technical Letter (ETL) 1110-2-571—*Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures*. All vegetation variances, both new and existing, are required to seek approval through the process described in this policy guidance letter. Subjecting all new and existing variances to this approval process aligns with the Levee Safety Program goals that make public safety a top priority and assures application of consistent and well-documented approaches. This policy guidance letter supersedes the applicable regional variance policy and process contained in Engineer Regulation (ER) 500-1-1 and Engineer Pamphlet (EP) 500-1-1 (including Appendix E), dated 30 September 2001, and will serve as interim guidance until this process is incorporated into an USACE engineer publication.

2. *Applicability.* This policy guidance letter applies to all Headquarters USACE (HQUSACE) elements, Major Subordinate Commands (MSCs), districts, and field operating activities having responsibility for Civil Works projects. Specifically, this policy guidance letter applies to flood damage reduction projects within an USACE program or project authority.

3. *References.*

a. Engineer Regulation (ER) 500-1-1, Emergency Employment of Army and Other Resources, Civil Emergency Management Program, Chapter 5, Rehabilitation and Inspection Program, 30 September 2001.

b. Engineer Pamphlet (EP) 500-1-1, Emergency Employment of Army and Other Resources, Civil Emergency Management Program—Procedures, Chapter 5, The Rehabilitation and Inspection Program, and Appendix E, Regional Variances to Levee Vegetation Standards, 30 September 2001.

c. Engineer Technical Letter (ETL) 1110-2-571, *Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams,*

and Appurtenant Structures, 10 April 2009.

4. *Background.* The purpose stated in Section 202(g) of the Water Resources Development Act (WRDA) of 1996 is “to provide a coherent and coordinated policy for vegetation management for levees,” so as to “address regional variations in levee management and resource needs.” In general, the resulting policy set forth in ER 500–1–1, paragraph 5–22, allowed the project sponsor of a levee, in active status, to seek a variance from USACE standards to allow additional vegetation on or near levees when such vegetation would preserve, protect, and/or enhance natural resources and/or protect rights of Native Americans. However, the safety, structural integrity, and functionality of the levee, in addition to accessibility for inspection and flood-fighting purposes, must be retained. This guidance provides a clearly defined process to implement Section 202(g) of WRDA 1996.

5. *Definition of a Levee System.* A levee system consists of one or more segments and associated features which collectively provide flood, storm, or hurricane damage reduction to a defined area. Failure of one feature or segment within a levee system may result in failure of the entire system. Levee systems may consist of embankment sections, floodwall sections, closure structures, pumping stations, interior drainage works, and flood damage reduction channels.

6. *Process.* The process for the request and approval of a vegetation variance consists of the following steps.

a. The project sponsor or district (when appropriate as outlined in paragraph 9.g. of this document) shall submit a Vegetation Variance Request, as described in paragraph 7, to the Commander of the appropriate USACE district. The request shall fully explain the nature of the variance being requested and demonstrate compliance with the following two basic criteria.

(1) The variance must be shown to be necessary, and the only feasible means, to

- preserve, protect, and enhance natural resources, and/or
- protect the rights of Native Americans, pursuant to treaty, statute, or Executive Order.

(2) With regard to levee systems, the variance must assure that

- safety, structural integrity, and functionality are retained, and
- accessibility for maintenance, inspection, monitoring, and flood-fighting are retained. Note that, as used here, the term “retained” refers to the level of functionality and reliability

expected under conditions that are fully consistent with the requirements set forth in ETL 1110–2–571 and any other applicable criteria.

b. The district Levee Safety Officer (LSO) shall review the request for completeness and compliance, and recommend to the District Commander acceptance or non-acceptance. All review costs incurred by the district shall be funded by the appropriate account, based on authorization (O&M General, Inspection of Completed Works, or Flood Control and Coastal Emergencies).

c. The District Commander shall accept or reject the request. If accepted, the District Commander shall submit the request package through the MSC LSO to the MSC Commander. The MSC Commander shall either accept or reject the recommended request. If accepted, the MSC Commander shall submit the request to HQUSACE, via the Regional Integration Team (RIT) process, for an Agency Technical Review (ATR).

d. The ATR leader shall concur or non-concur with the variance request and shall include an executive summary, clearly expressing the pertinent rationale. The ATR team may recommend amendments to the request as an alternative to a non-endorsement.

e. The HQUSACE LSO, or the HQUSACE LSO designee, will be the final approving official for the request.

f. The district shall notify the appropriate regional offices of the federal resource agencies when a vegetation variance request has been received.

g. The district shall serve as the main point of contact for coordination with the sponsor during the entire variance request process. If the request is denied at any level (district, MSC, or HQUSACE), the district shall notify the sponsor in writing and include reasons for the denial.

h. All final documentation for the Vegetation Variance Request shall be uploaded by the district to the National Levee Database (NLD).

i. During inspections, levees will be rated for vegetation in accordance with approved variances. The associated vegetation management plan and approved variance shall be added to the levee’s operation and maintenance manual as an addendum.

7. *Vegetation Variance Request.* The following shall be submitted under the cover of the checklist in Enclosure 1 in Adobe PDF format for ATR review.

a. The Vegetation Variance Request and Agreement form (see enclosure) with attachments, completed and signed by the sponsor(s) or district (for situations as specified in 9.g.). District

counsel should be involved in the drafting. Substantive deviations are not permitted without a specific separate request and approval from HQUSACE.

b. General description of the levee system including system name, project authority, location, and potential human and environmental consequences (brief description of the population at risk, estimated potential economic losses, and identification of any critical public facilities or special environmental considerations).

c. Detailed and annotated plans and section drawings, at an appropriate scale, clearly conveying the following information.

(1) The boundaries of the specific area(s) to which the variance is to apply. The variance should not include areas for which there are reasonable alternatives. For example, a variance will not be granted for an entire alignment when only a portion of the alignment meets the first of the criteria described in paragraph 6.a.(1).

(2) Overall plan view clearly delineating normal and ordinary-high-water marks, project right-of-way, levees, floodwalls, appurtenant structures, vegetation-management zones, and required vegetation-free zones.

(3) Description of proposed deviations from vegetation standards, including planting locations and species. Depict each species at its expected size at maturity.

(4) Details of any structural measures (such as armoring or overbuilt sections) intended to preserve system reliability and resiliency by preventing or mitigating vegetation impacts.

(5) For each typical condition, provide a section drawing, at an appropriate scale, clearly showing both the normal and ordinary-high-water marks, the project right-of-way, levee, floodwall, appurtenant structures, any associated structural modifications, vegetation-management zones, required vegetation-free zones, and all proposed vegetation (by species, shown at mature size)—including the typical extent of the root system at species maturity. Clearly indicate that the proposed plantings do not include noxious or invasive species or involve any improper use of herbicides.

d. Explanation of reasons the proposed changes are necessary to preserve, protect, and enhance natural resources and/or protect the rights of Native Americans pursuant to treaty and statute. Explain what alternatives to a vegetation variance were considered and why the proposed changes were the only feasible means to provide the

benefits to natural resources and/or to protect the rights of Native Americans.

e. An engineering analysis showing that the changes proposed will result in conditions consistent with the criteria in 6.a.(2). Include graphics, text, and information, such as construction materials and standards as needed to clearly support conclusions.

f. The most recent Routine Inspection Report and Periodic Inspection Report completed by the USACE district.

g. Summary of system performance history for any and all significant flood events. Indicate the system's design flood or design water surface elevation, as applicable and, for each event, the year of occurrence, event probability (e.g. 1% flood), flood duration, and description of any flood-fighting challenges, failures, and outcomes.

h. Vegetation maintenance plan.

i. Any National Environmental Policy Act (NEPA), Endangered Species Act (ESA), and any other environmental compliance documentation that the district determines are required in order to conduct the review.

j. Other information, as needed.

k. Primary point of contact (POC) for this request.

8. *Agency Technical Review.* In coordination with the RIT leader and the HQUSACE Levee Safety Program Manager (LSPM), the USACE Risk Management Center shall lead and manage the ATR for each variance request. HQUSACE will fund the ATR. The timeline for the ATR will depend on the complexity of the request, but will not exceed 90 days unless special circumstances warrant additional time.

9. *Special Considerations.* The following points will be considered prior to initiating a variance request.

a. Variances will be considered only for individual levee systems or portions thereof.

b. The vegetation variance request process does not apply to embankment dams and their appurtenant structures, channels, or shore-line or river-bank protection systems such as revetments, sand dunes, and barrier islands.

c. Waterside planting berms are allowed only by approved variance.

d. The burden shall be on the sponsor to provide adequate documentation to facilitate review. Sufficient and appropriate documentation will ensure a timely review. Insufficient packages will be returned for completion.

e. Due to the significant threat to system reliability, ability to flood fight, and observe system response under high water conditions, no vegetation variance involving woody vegetation, as defined in ETL 1110-2-571 shall be granted for the following portions of a levee: The

upper third of the river-side (or flood-side) slope, the crown, the land-side (or protected-side) slope, or within 15 feet of the land-side (or protected-side) toe (subject to preexisting right-of-way).

f. The vegetation variance process is not a mechanism to validate conditions that have developed as a result of inadequate operation and maintenance.

g. A district may submit a variance for levee systems currently in the preconstruction, engineering, and design phase (including major rehabilitation projects) on the date when this policy guidance letter is signed. Districts may also apply for variance for USACE operated and maintained levee systems. Funding needed by the district to compile the variance request shall come from the project appropriations. For areas in which ESA considerations exist, the district can apply for a variance in conjunction with planning and design of future rehabilitation under PL 84-99 and associated measures needed to comply with ESA.

h. If implementation of a vegetation variance will modify or alter a federally authorized levee system in the PL 84-99 program, a Section 208.10/408 review will be necessary and the requirements for that review should be coordinated with the vegetation variance request requirements.

10. *Existing Variances or Other Deviations.* Deviation from the national standards, as defined in ETL 1110-2-571, is permitted only through a vegetation variance, approved by the HQUSACE LSO, via the process described herein. All existing vegetation variances, agreements, or other deviations, that are not submitted for an ATR via the process described herein, by 30 September 2010, may no longer be considered valid. On or around this date, each levee system sponsor that had an existing variance, but did not submit that variance for approval will be informed via letter from the district LSO (copy furnished to the MSC and HQUSACE LSO) of the vegetation management standards to be applied to that system.

11. *Environmental Compliance.* The sponsor is responsible for providing all National Environmental Policy Act (NEPA), Endangered Species Act (ESA) Section 7 consultation, and any other environmental compliance documentation required by the district to analyze the request (except for those levees listed in section 9.g. of this document). The documentation must analyze, as alternatives, the effects of the implementation of the proposed variance and the implementation of the national standards. The sponsor must commit to implementation of any

measures (such as monitoring, reasonable and prudent alternatives, etc.) needed to comply with ESA before the sponsor may participate, or continue participation, in the Public Law 84-99 program. Further, the sponsor must commit to bearing the cost for implementation of any measures required to comply with ESA. However, USACE ultimately remains responsible for ensuring that ESA and other environmental compliance obligations are met.

12. After vegetation variance request packages are reviewed through this process, results will be posted by the HQUSACE LSPM to the Levee Safety Community of Practice page, on the Technical Excellence Network (TEN) at <https://ten.usace.army.mil>.

13. The point of contact for this guidance is _____.

2 Encls

1. Checklist.
2. Request Package.

James C. Dalton, P.E.
Chief, Engineering and Construction
Directorate of Civil Works.

Enclosure 1—Vegetation Variance Request: Submittal Checklist

VEGETATION VARIANCE REQUEST: SUBMITTAL CHECKLIST

The items checked below are submitted herewith, consistent with the requirements outlined in paragraph 7 (Vegetation Variance Request) of *Policy Guidance Letter—Requesting a Variance From Vegetation Standards for Levees and Floodwalls*, dated _____.

- (a) *Vegetation Variance Request and Agreement*, completed and signed.
- (b) General Description of the levee system. (attachment 1)
- (c) Drawings. (attachment 2)
- (d) Explanation of why the proposed changes are necessary to preserve, protect, and enhance natural resources and/or protect the rights of Native Americans pursuant to treaty and statute. (attachment 3)
- (e) An engineering analysis showing that the proposed changes will result in conditions consistent with the criteria in 6.a.(2) of the PGL. (attachment 4)
- (f) The most recent Routine Inspection Report and Periodic Inspection Report completed by the USACE district. (attachment 5)
- (g) Summary of system performance history for all significant flood events. (attachment 6)
- (h) Vegetation Maintenance Plan. (attachment 7)
- (i) Any National Environmental Policy Act (NEPA), Endangered Species Act (ESA), or other environmental compliance documentation that the district determines necessary to the review. (attachment 8)
- (j) Other information, as needed. (attachment 9)

(k) Primary point of contact (POC) for this request, as follows.

Name: _____
 Organization: _____
 Telephone: _____
 E-Mail: _____
 Address: _____

Enclosure 2—Vegetation Variance Request and Agreement

VEGETATION VARIANCE REQUEST AND AGREEMENT

Addressing the Vegetation Standards for (*enter the levee system name and location, as defined in the National Levee Database*).

I. *Purpose.* The purpose of this Agreement is to allow for specific and limited variance from U.S. Army Corps of Engineers vegetation standards, for the levee system named above, provided such variance does not diminish system reliability, and is necessary to preserve, protect, and enhance natural resources, and protect the rights of Native Americans pursuant to treaty and statute.

II. *Authority.* This Agreement is made pursuant to the authority of Public Law 99, 84th Congress (Pub. L. 84–99), (33 U.S.C. 701n) (69 Stat. 186), as regulated by Title 33, Code of Federal Regulations, Sections 203 and 208.10, and as implemented by policy guidance letter, Subject: Policy Guidance Letter—Requesting a Variance From Vegetation Standards for Levees and Floodwalls, dated _____.

III. *Applicability.* This Agreement is applicable to the portion(s) of the (*insert name of levee system*) described in attachment (*insert number*).

IV. *References.* (*Insert any references that are applicable, including the existing project cooperation agreement. This could include state law, county ordinances, Federal or state court documents, technical manuals, etc. References may be incorporated into this Agreement.*)

V. *Scope.* A detailed description of the conditions proposed under this agreement is provided in attachment(s) (*insert number(s)*).

VI. *Actions During and After Emergencies.*

A. *Definition of Emergency.* For the purposes of application of this Agreement, the term “emergency” is defined as any situation in which a levee is threatened with either failure or overtopping.

B. *Definition of Flood Fight.* For the purposes of application of this Agreement, the term “flood fight” is defined as actions taken immediately before or during a flood to protect human life and reduce flood damages, such as evacuation, emergency sandbagging and diking, and providing assistance to flood victims.

C. *Conduct of Flood-Fight Activities.* During an emergency, any responsible party engaged in flood-fight activities, to specifically include the U.S. Army Corps of Engineers, the (*list states, cities, or counties as necessary*), and the project sponsor(s) may take whatever actions are necessary to preserve the structural integrity of the levee system addressed by this Agreement. Actions necessary to preserve the structural integrity of the system may include removal of any

and all vegetation on or near the levee or floodwall.

D. *Rehabilitation.* Any levee repairs, modifications, or improvements made as a result of the emergency event shall be in accordance with current USACE vegetation management standards or approved vegetation variance for the levee system.

VII. *Obligations of the Signatories of the Agreement.*

A. The sponsor shall hold and save the Government free from all damages arising from the construction, operation, maintenance repair, replacement, and rehabilitation of the (*insert name of levee system*), the Hurricane/Shore Protection Project, and any related betterments, except for damages due to the fault or negligence of the Government or the Government’s contractors.

B. The sponsors agree to maintain the levee system in accordance this variance agreement and assume the responsibility for implementing and bearing the costs of any measures that are required for compliance with the Endangered Species Act or any mitigation requirements that result from environmental compliance processes such as the National Environmental Policy Act or required permits.

VIII. *Notices.*

A. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage prepaid), registered, or certified mail, to the address provided.

B. A party may change the address to which such communications are to be directed by giving written notice to the other parties in the manner provided in paragraph C (below).

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is personally delivered, or, seven calendar days after it is mailed.

IX. *Expiration of this Agreement.*

(*Approval of this agreement may be contingent upon agreement to an expiration mechanism. Use one of the three conditions below to complete this paragraph.*)

(*This Vegetation Variance is intended to be permanent.*)

(*This Vegetation Variance shall expire on [insert date].*)

(*This Vegetation Variance shall expire upon [explain event].*)

However, the Corps reserves the right to revoke this agreement if it becomes apparent that it results in conditions that threaten system reliability and public safety.

X. *Signatures.*

In witness hereof, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the HQUSACE Levee Safety Officer.

Submitted by:

 The (name of entity)
 (signature)

 (full name, typed)

 (title, in full)

 (date)

(additional sponsor signature blocks may be added if needed—afterward, delete this note)

Reviewed by:

US Army Corps of Engineers, (insert name)
 District
 (signature)

 (full name, typed)

Levee Safety Officer

 (date)

Accepted by:

US Army Corps of Engineers, (insert name)
 District
 (signature)

 (full name, typed)

Commander

 (date)

Reviewed by:

US Army Corps of Engineers, (insert name)
 Division
 (signature)

 (full name, typed)

Levee Safety Officer

 (date)

Accepted by:

US Army Corps of Engineers, (insert name)
 Division
 (signature)

 (full name, typed)

Commander

 (date)

Endorsed by:

US Army Corps of Engineers, Risk
 Management Center

As Proposed

As Amended

(signature)

 (full name, typed)

Leader, Agency Technical Review Team

 (date)

Approved by: The Department of the Army
 (signature)

 (full name, typed)

Levee Safety Officer, HQUSACE

 (date)

XI. Certificate of Authority

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the (*Name of Public Sponsor*), that (*Name of*

Public Sponsor) is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the (*Name of Public Sponsor*) in connection with this Vegetation Variance Request and Agreement Addressing the Vegetation Standards for (*enter the levee system name and location, as defined in the National Levee Database*) and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of (*Name of Public Sponsor*) have acted within their statutory authority.

In Witness Whereof, I have made and executed this certification this ____ day of _____ 20 ____.

(*Name of Counsel for signing entity*)
(*Full Formal title*)

XII. Certification Regarding Lobbying.

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

DATED this ____ day of _____, 20 ____

(*Signature of Agreement Signatory*)

(*Typed Name*)

(*Typed Title*)

[FR Doc. 2010-2807 Filed 2-8-10; 8:45 am]

BILLING CODE 3720-58-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 11, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395-5806 or e-mailed to oir_submission@omb.eop.gov with a cc: to ICDocketMgr@ed.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of

the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 4, 2010.

Sheila Carey,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: Trends in International Mathematics and Science Study (TIMSS: 11) and Progress in International Reading Literacy Study (PIRLS: 11).

Frequency: Annually.

Affected Public: Individuals or households; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 8,529.

Burden Hours: 10,706.

Abstract: NCES seeks OMB approval to recruit schools for the full-scale administration of the Trends in International Mathematics and Science Study (TIMSS) 2011 and the Progress in International Reading Literacy Study (PIRLS) 2011, both coordinated by the International Association for the Evaluation of Educational Achievement (IEA). TIMSS is administered every four years in more than 60 countries and provides data for internationally benchmarking U.S. performance in mathematics and science at the fourth- and eighth-grade levels against other countries around the world. PIRLS is administered every five years in more than 50 countries and provides assessment data for internationally benchmarking U.S. performance in fourth-grade reading. NCES has received OMB approval for the international field test for the two studies, March 1-April 15, 2010. The full-scale data collection will be in April-May 2011. NCES will seek approval for the full-scale instruments in the fall of 2010.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 4181. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to the Internet address



MAYOR AND CITY COUNCIL

809 Center Street, Room 10, Santa Cruz, CA 95060 • (831) 420-5020 • Fax: (831) 420-5011 • citycouncil@cityofsantacruz.com

March 2, 2010

Mr. Douglas J. Wade
U.S. Army Corps of Engineers
ATTN: CECW-CE
441 G Street, N.W.
Washington, DC 20314-1000

RE: COE-2010-0007

Dear Mr. Wade:

I am writing in response to the February 9, 2010 Notice in the Federal Register (COE-2010-0007) regarding a proposed "Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls." The City of Santa Cruz has a very specific comment with respect to the Policy Guidance Letter contained in the February 9, 2010 Notice. The City of Santa Cruz is requesting an exemption provision be added in Section 9 of the Special Considerations of the Policy Guidance Letter. Specifically, the City is requesting the following exemption provision from the variance procedures.

- i. If a Federally authorized levee system in the PL 84-99 program was authorized to contain vegetation and said vegetation was designed as part of the project, such projects shall not require a variance under the procedures contained herein to maintain the vegetation designed and installed as part of the project.

The City is requesting this exemption since the PL 84-99 project within the City of Santa Cruz, the San Lorenzo River Flood Control Project, was specifically authorized in the Water Resources Development Act of 1996 to contain a vegetation component. When the San Lorenzo River Flood Control Project was constructed the vegetation component was designed and installed to meet the hydraulic standards necessary for the project to provide the planned level of flood protection for our community.

Mr. Douglas J. Wade

March 2, 2010

Page 2

For your reference, I have attached to this letter a number of Corps of Engineers' (Corps) communications which specifically direct that vegetation be included in the San Lorenzo Flood Control Project. These documents are listed below and demonstrate that vegetation in the San Lorenzo Flood Control Project did not occur as an unplanned feature of the project. If more information is required to document the circumstances of the San Lorenzo River Flood Control Project we will gladly provide it to you. I am sure that there are other Corps PL 84-99 projects in similar circumstances which could benefit from the recommended exemption provision.

If the Corps were now to require a variance to maintain the vegetation designed as part of the San Lorenzo River Flood Control Project it would require our City and the Corps to undertake an expensive and unnecessary process. I believe that the Policy Guidance Letter needs to recognize those circumstances where vegetation was designed as part of a PL 84-99 project. The City of Santa Cruz does not wish to expend funds in a time of dire local financial constraints justifying vegetation features in the San Lorenzo River Flood Control Project which were designed as part of the project. It seems a duplication of effort and an unwise use of both Federal and local taxpayers' funds.

Sincerely,



Mike Rotkin
Mayor

cc: Congressman Sam Farr
Senator Dianne Feinstein
Senator Barbara Boxer

Attachments: WRDA Section 101 (5) (1996 Public Law 104-303—Oct. 12, 1996 110 Stat. 3663)
Memo from HQ. U.S. Army Corps of Engineers by Robert W. Burkhardt, Colonel
U.S. Army, Executive Director of Civil Works, April 14, 1997
HQ. U.S. Army Corps of Engineers, July 21, 1999 Press Release on Contract Award

Public Law 104-303
104th Congress

An Act

Oct. 12, 1996
[S. 640]

Water Resources
Development Act
of 1996.

33 USC 2201
note.

To provide for the conservation and development of water and related resources, to authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Water Resources Development Act of 1996”.

(b) **TABLE OF CONTENTS.**—

Sec. 1. Short title; table of contents.

TITLE I—WATER RESOURCES PROJECTS

- Sec. 101. Project authorizations.
- Sec. 102. Small flood control projects.
- Sec. 103. Small bank stabilization projects.
- Sec. 104. Small navigation projects.
- Sec. 105. Small shoreline protection projects.
- Sec. 106. Small snagging and sediment removal project, Mississippi River, Little Falls, Minnesota.
- Sec. 107. Small projects for improvement of the environment.

TITLE II—GENERAL PROVISIONS

- Sec. 201. Cost sharing for dredged material disposal areas.
- Sec. 202. Flood control policy.
- Sec. 203. Cost sharing for feasibility studies.
- Sec. 204. Restoration of environmental quality.
- Sec. 205. Environmental dredging.
- Sec. 206. Aquatic ecosystem restoration.
- Sec. 207. Beneficial uses of dredged material.
- Sec. 208. Recreation policy and user fees.
- Sec. 209. Recovery of costs.
- Sec. 210. Cost sharing for environmental projects.
- Sec. 211. Construction of flood control projects by non-Federal interests.
- Sec. 212. Engineering and environmental innovations of national significance.
- Sec. 213. Lease authority.
- Sec. 214. Collaborative research and development.
- Sec. 215. National dam safety program.
- Sec. 216. Hydroelectric power project upgrading.
- Sec. 217. Dredged material disposal facility partnerships.
- Sec. 218. Obstruction removal requirement.
- Sec. 219. Small project authorizations.
- Sec. 220. Uneconomical cost-sharing requirements.
- Sec. 221. Planning assistance to States.
- Sec. 222. Corps of Engineers expenses.
- Sec. 223. State and Federal agency review period.
- Sec. 224. Section 215 reimbursement limitation per project.
- Sec. 225. Melaleuca.
- Sec. 226. Sediments decontamination technology.
- Sec. 227. Shore protection.
- Sec. 228. Conditions for project deauthorizations.

(i) all operation, maintenance, repair, replacement, and rehabilitation costs associated with the improvements carried out under this paragraph; and

(ii) 25 percent of the costs incurred for the variable flood control operation of the Folsom Dam and Reservoir during the 4-year period beginning on the date of the enactment of this Act and 100 percent of such costs thereafter.

(2) HUMBOLDT HARBOR AND BAY, CALIFORNIA.—The project for navigation, Humboldt Harbor and Bay, California: Report of the Chief of Engineers, dated October 30, 1995, at a total cost of \$15,180,000, with an estimated Federal cost of \$10,000,000 and an estimated non-Federal cost of \$5,180,000.

(3) MARIN COUNTY SHORELINE, SAN RAFAEL, CALIFORNIA.—The project for hurricane and storm damage reduction, Marin County shoreline, San Rafael, California: Report of the Chief of Engineers, dated January 28, 1994, at a total cost of \$28,300,000, with an estimated Federal cost of \$18,400,000 and an estimated non-Federal cost of \$9,900,000.

(4) PORT OF LONG BEACH (DEEPENING), CALIFORNIA.—The project for navigation, Port of Long Beach (Deepening), California: Report of the Chief of Engineers, dated July 26, 1996, at a total cost of \$37,288,000, with an estimated Federal cost of \$14,318,000 and an estimated non-Federal cost of \$22,970,000.

(5) SAN LORENZO RIVER, CALIFORNIA.—The project for flood control, San Lorenzo River, California: Report of the Chief of Engineers, dated June 30, 1994, at a total cost of \$21,800,000, with an estimated Federal cost of \$10,900,000 and an estimated non-Federal cost of \$10,900,000 and habitat restoration, at a total cost of \$4,050,000, with an estimated Federal cost of \$3,040,000 and an estimated non-Federal cost of \$1,010,000.

(6) SANTA BARBARA HARBOR, CALIFORNIA.—The project for navigation, Santa Barbara Harbor, California: Report of the Chief of Engineers, dated April 26, 1994, at a total cost of \$5,840,000, with an estimated Federal cost of \$4,670,000 and an estimated non-Federal cost of \$1,170,000.

(7) SANTA MONICA BREAKWATER, CALIFORNIA.—The project for hurricane and storm damage reduction, Santa Monica Breakwater, Santa Monica, California: Report of the Chief of Engineers, dated June 7, 1996, at a total cost of \$6,440,000, with an estimated Federal cost of \$4,220,000 and an estimated non-Federal cost of \$2,220,000.

(8) ANACOSTIA RIVER AND TRIBUTARIES, DISTRICT OF COLUMBIA AND MARYLAND.—The project for environmental restoration, Anacostia River and Tributaries, District of Columbia and Maryland: Report of the Chief of Engineers, dated November 15, 1994, at a total cost of \$17,144,000, with an estimated Federal cost of \$12,858,000 and an estimated non-Federal cost of \$4,286,000.

(9) ATLANTIC INTRACOASTAL WATERWAY, ST. JOHNS COUNTY, FLORIDA.—The project for navigation, Atlantic Intracoastal Waterway, St. Johns County, Florida: Report of the Chief of Engineers, dated June 24, 1994, at a total Federal cost of \$15,881,000. Operation, maintenance, repair, replacement, and rehabilitation shall be a non-Federal responsibility, and the non-Federal interest shall assume ownership of the bridge.

CECW-PE (CESPK-BD-D/28 Jan 97) (1105) 2nd End
Fountain/202-761-1979
SUBJECT: Letter Report for Incorporating Habitat Restoration
into the San Lorenzo River, California, Project

HQ, US Army Corps of Engineers, Washington, DC 20314-1000 14 APR 1997
FOR Commander, South Pacific Division, ATTN: CESPD-ET-P

The subject report as been reviewed at the Washington level for compliance with agency policy and current guidance for flood control and habitat restoration projects. Approval is granted for combining the San Lorenzo River, California, flood control project feature, and the San Lorenzo River, California, Habitat Restoration feature as outlined in the subject report. The following comments must be addressed prior to processing of the PCA package.

- An updated letter of intent and financing plan explaining in detail the capability of the sponsor to provide its share of the project funding should be submitted as a part of the PCA package for the San Lorenzo River project.

- The Water Resources Development Act of 1996 (WRDA 1996) cites a cost for the San Lorenzo River, flood control project feature of \$21,800,000, and a cost of \$4,050,000 for the San Lorenzo River, habitat restoration feature. The combined cost of the authorized San Lorenzo River improvements reflects a total estimated project cost of \$25,850,000.

- The letter report combining the two project features for the San Lorenzo River improvement reflects an estimated project cost of \$20,607,000, based on October 1995 price levels. The submittal package for the PCA should contain an explanation documenting the differences in the estimated project cost of \$25,850,000 contained in WRDA 1996 and the estimated project cost of \$20,607,000 contained in the letter report.

FOR THE COMMANDER:

Encl

ROBERT W. BURKHARDT
Colonel, U.S. Army
Executive Director of Civil Works

CONTRACT ANNOUNCEMENT

FROM

OFFICE OF THE SECRETARY OF THE ARMY
OFFICE OF LEGISLATIVE LIAISON
SPECIAL ACTIONS BRANCH
PENTAGON

RELEASE DATE: July 21, 1999

A copy of this announcement is being provided to:

Representative Tom Campbell
Representative Anna Eshoo
Representative Sam Farr
Representative Zoe Lofgren
Senator Dianne Feinstein
Senator Barbara Boxer

- ◊ Today, the Army awarded a contract to Zerimar Corporation, 1355 Vander Way, San Jose, California 95112.
- ◊ The amount of today's action is \$2,800,000. However, the estimated cumulative total value of the contract is \$6,952,930.
- ◊ The contract is for the raising of levees from the Riverside Avenue Bridge to Highway One Bridge, approximately 1 mile that range in height from 2 to 5 feet. The level of protection is the 70-year event, taking into consideration hydraulic uncertainty and future hydrologic conditions. Work also includes overbuilding the landside of the levee and planting trees, shrubs, and grass, along with installation of an irrigation system. A 2-year maintenance period of the plantings is required.
- ◊ The work will be performed in Santa Cruz, California
- ◊ The estimated contract completion date is July 19, 2001.

Your points of contact with the Army Legislative Liaison are Major Michael G. Santens, (703) 697-8133 or Ms. Juanita Cheeks, (703) 693-5689.



ECONOMIC DEVELOPMENT AND REDEVELOPMENT

337 Locust Street, Santa Cruz CA 95060 • 831 420-5150 • Fax: 831 420-5151 • www.ci.santa-cruz.ca.us • cityra@ci.santa-cruz.ca.us

March 8, 2010

Douglas J. Wade
U.S. Army Corps of Engineers
Attn: CECW-CE
441 G Street, N.W.
Washington, DC 20314-1000

Re: COE-2010-0007

Dear Mr. Wade,

I am writing in response to the February 9, 2010 Notice in the Federal Register (COE-2010-0007) regarding a proposed Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls. In response the City of Santa Cruz has the following technical comments.

Page 6365 Policy Guidance Letter – Section 6 Process - The variance process contains no provision for an appeal of a Corps decision. For instance, a local agency is subject to a wide variety of state and federal environmental regulatory agencies which often have different requirements and legal authorities. While the Corps can take action on a variance request pursuant to the Policy Guidance Letter an environmental regulatory agency can legally stop a local agency in whatever action is determined in the variance process. Recognizing the potential for many competing interests in terms of levee vegetation management and the variance process, the Policy Guidance should include an inter-agency review process and a conflict resolution procedure which is binding on all Federal regulatory agencies. Without this additional coordination this policy will simply create further conflict at the local level.

Page 6365 Policy Guidance Letter – Section 9.b. & c. Special Conditions – The following addition should be made to the following section:

“b. The vegetation variance request process does not apply to embankment dams and their appurtenant structures, channels, or shore-line or river-bank protection systems such as revetments or overbuilt engineered levee sections and dunes, and barrier islands.”

“c. Waterside planting berms are allowed only by approved variance, unless designed, installed and/or constructed as part of an authorized PL 84-99 project.”

“e. Due to the significant threat to system reliability, ability to flood fight, and observe system response under high water conditions, no vegetation variance involving woody vegetation, as defined in ETL 1110-2-571 shall be granted for the following portions of a levee: The upper third of the river-side (or floodside) slope, the crown, the land-side (or protected-side) slope, or within 15 feet of the land-side (or protected-side) toe (subject to preexisting right-of-way), unless designed, installed and/or constructed as part of an authorized PL 84-99 project.

A general comment, who is responsible for funding the necessary studies to secure a variance for vegetation that was designed and planted by the Corps as part of a PL 84-99 project? The Policy seems to indicate that the sponsor bears all responsibility for the variance costs even though a project was built in conformance with an existing Congressional Authorization and Sponsor/Corps Project Cooperation Agreement.

If you require any further information in regards to these comments please contact me at jhall@cityofsantacruz.com or by phone at (831) 420-5153.

Sincerely,



Joe H. Hall
Project Manager

Cc: Director of Public Work
Operations Manager
Administrative Analysis
Chaney and Associates



CITY COUNCIL AGENDA REPORT

DATE: 5/17/2010

AGENDA OF: 5/25/2010

DEPARTMENT: Public Works

SUBJECT: Encroachment Permit for 207 Church Street Building Corner
Encroachment into City Right-of-Way. (PW)

RECOMMENDATION: Resolution granting an encroachment permit for 207 Church Street building corner encroachment into City right-of-way at Church St. and Cedar St.

BACKGROUND: The former Santa Cruz Sentinel building was purchased by 207 Church Street, LLC. During the application process for the Tentative Subdivision Map it was discovered that .85 sq. ft. of building corner encroached into the City right-of-way (see attached Exhibit A) at the corner of Church and Cedar Streets.

DISCUSSION: An application was filed with the Planning department for a Boundary Adjustment/Lot Consolidation and Minor Subdivision to combine three (3) existing lots and create four (4) commercial condominium units within an existing commercial building and a common parking area in the CBD (Central Business District) Zoning District. On May 5, 2010, it was approved with conditions at the Zoning administrator meeting.

As part of the Boundary Adjustment/Lot Consolidation process, the City will grant an Encroachment Permit to allow the existing building corner to encroach into the City right-of-way. The proposed encroachments are consistent with the public interest and will not interfere with the City's right-of-way.

FISCAL IMPACT: There is no fiscal impact to the General Fund.

Prepared by:

Submitted by:

Approved by:

Aaron Becker
Engineering Associate

Mark R. Dettle
Director of Public Works

Richard C. Wilson
City Manager

ATTACHMENTS:
Resolution
Encroachment Permit

PERMANENT ENCROACHMENT PERMIT

The City of Santa Cruz (City) grants to **207 Church Street LLC** an encroachment permit to on and along that section of the public right-of-way known as **207 Church Street** shown in **Figure A**, incorporated herein by reference. Said improvement shall serve assessor's parcel number **005-072-47**.

Permittee shall **maintain the building corner** in a manner satisfactory to the Director of Public Works of City, and shall maintain such in good repair, and in a clean, safe and sightly condition at Permittee's sole expense, all to the satisfaction of the Director of Public Works of the City.

Permittee shall defend, indemnify and hold the City harmless from any and all loss, cost, liability, or expense and from any judgments or damages to any person or property arising out of, either directly or indirectly, or in connection with, the maintenance or presence of **said building corner** installed by the Permittee or the use of **building corner and public-rights-of-way associated with the building corner** by the Permittee or any other third party.

Permittee shall further defend, indemnify, save, and hold the City harmless from and against any claim of loss, damages, or liability to Permittee or any other person arising out of or in connection with City's revocation of said permit.

Permittee shall obtain and maintain throughout the term hereof, public liability and property damage insurance in a minimum amount of \$1,000,000 combined single limit per occurrence for bodily and personal injury and property damage liability. Such insurance shall name City and its officers, agents, and employees as additional insured's, and shall not be cancelable or subject to modification without at least thirty (30) days written notice to the City.

Permittee shall present a certificate of insurance or other acceptable written evidence of such insurance and shall, on an annual basis, provide acceptable evidence of renewal of coverage.

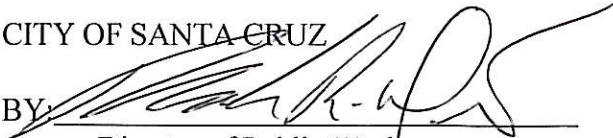
This permit shall be revocable by City at any time and without further notice. Within thirty (30) days after receiving notice from City of revocation of this permit, Permittee shall, upon demand from City, at his/her sole cost and expense, remove all improvements installed by Permittee pursuant to this permit, and shall restore the premises as nearly as practicable to its condition prior to such installation.


DATE: 5/10/10

APPROVED AS TO FORM:


City Attorney

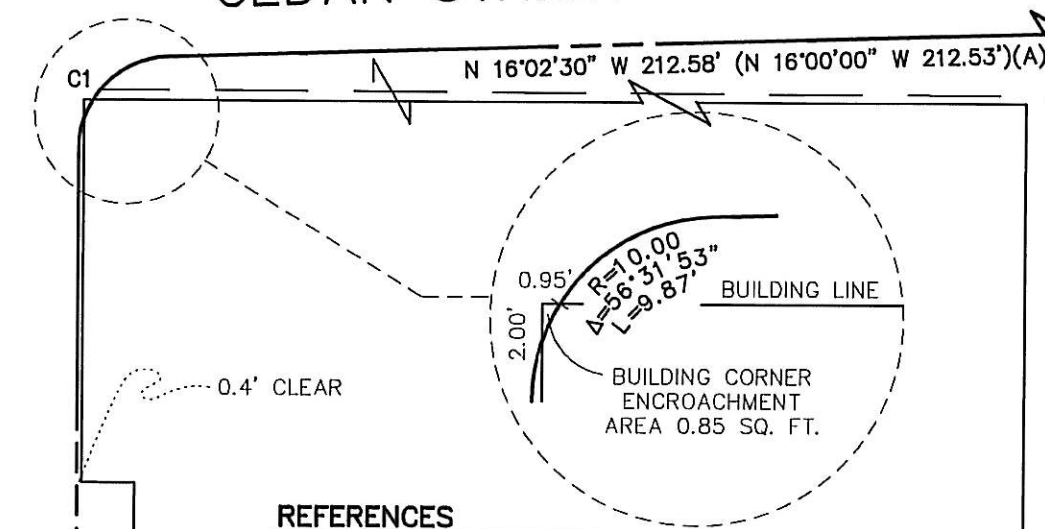
CITY OF SANTA CRUZ

BY: 
Director of Public Works


Joe Appenrodt
Permittee/Owner

CEDAR STREET STREET WIDTH 60'

CHURCH STREET STREET WIDTH 56'



REFERENCES

- | | |
|------------------|-------------|
| (A) 2009-0043698 | (E) 83-M-50 |
| (B) 28-M-77 | (F) 86-M-61 |

- (C) 49-M-28
 (D) 55-M-6

207 CHURCH STREET, LLC
 PORTION OF PARCEL ONE
 DOC# 2009-0043698

CURVE TABLE:

C1 R=10.0' L=15.41' Δ=88°16'00" R & M (A)

S75°41'30"W 218.58'
 (S76°30'00"W 218.48')(A)

FD 1/2" IP
 LS 2678

207 CHURCH STREET, LLC
 PORTION OF PARCEL ONE
 DOC# 2009-0043698

207 CHURCH STREET
 ENCROACHMENT EXHIBIT A

BOWMAN & WILLIAMS CONSULTING CIVIL ENGINEERS 1011 CEDAR STREET SANTA CRUZ CA 426-3560	SCALE 1"=20'	JOB NO. 24427
	DATE May 4, 2010	DWG NAME 24427CONDO
	DRAWN CMM	FILE NO. 24427

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
4/27/2010

PRODUCER (408) 792-5400 FAX: (408) 792-3670
 Thoits Insurance Ca Lic #0243213
 160 West Santa Clara Street
 12th Floor
 San Jose CA 95113

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
 207 Church Street, LLC
 207 & 212 Church Street
 148 Walnut Avenue
 Santa Cruz CA 95060

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	Colony Insurance Co.	#262
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Deductible \$1,000 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	GL951541	4/7/2010	4/7/2011	EACH OCCURRENCE \$ 1,000,000
		DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$				
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
		OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
 RE: Permanent Encroachment Permit
 City of Santa Cruz, its officers, agents and employees are named as Additional Insured per endorsed Form CG2935 05 09 requested from carrier. **Certificate holder will be provided with 30 days notice in the event of cancellation of coverage (10 days in the event of nonpayment of premium)**
 (Form CIR attached)

CERTIFICATE HOLDER

City of Santa Cruz
 809 Center Street, Room 201
 Santa Cruz, CA 95060

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
 AUTHORIZED REPRESENTATIVE
 Mona Ellis/MELLIS *M. Leberer-Ellis*

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – STATE OR GOVERNMENTAL
AGENCY OR SUBDIVISION OR POLITICAL
SUBDIVISION – PERMITS OR AUTHORIZATIONS**

This endorsement modifies insurance provided under the following:

OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART

SCHEDULE

<p>State Or Governmental Agency Or Subdivision Or Political Subdivision: CITY OF SANTA CRUZ, ITS OFFICERS, AGENTS AND EMPLOYEES 809 CENTER STREET, ROOM 201 SANTA CRUZ, CA 95060</p> <p>AS RESPECTS: PERMANENT ENCROACHMENT PERMIT</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

Section II – Who Is An Insured is amended to include as an insured any state or governmental agency or subdivision or political subdivision shown in the Schedule, subject to the following provisions:

1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

- 2. This insurance does not apply to:
 - a. "Bodily injury" or "property damage" arising out of operations performed for the federal government, state or municipality; or
 - b. "Bodily injury" or "property damage" included within the "products-completed operations hazard".

COMMENTS/REMARKS

CONTRACTUAL INSURANCE REQUIREMENTS

The attached Certificate of Insurance is provided as part of our service to our client, the Insured. If special endorsements have been provided, they also are indicated attached. You may find that these documents do not comply with all the terms and conditions of the underlying contract between the Certificate Holder and the Insured due to the insurance company's insuring conditions, limitations, exclusions and other terms. If you have any questions, please contact the undersigned.

THOITS INSURANCE SERVICE, INC.
CA LICENSE #0243213
160 WEST SANTA CLARA STREET, 12TH FLOOR
SAN JOSE, CA 95113
TELEPHONE: (408) 792-5400

BY: MONA LEBHERZ-ELLIS, ACCOUNT COORDINATOR, CISR
DIRECT LINE: (408) 792-5427 / E-MAIL: mellis@thoits-insurance.com

RESOLUTION NO. NS-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA CRUZ
GRANTING AN ENCROACHMENT PERMIT FOR THE CORNER
OF THE EXISTING BUILDING AT 207 CHURCH STREET

WHEREAS, an application has been filed with the Public Works Department of the City of Santa Cruz to maintain an existing building corner within the City right-of-way at the corner of Church and Cedar street; and

WHEREAS, the City Council has determined that approving the application is consistent with the public interest and will not interfere with the City's right of way;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Santa Cruz as follows:

1. An encroachment permit is hereby granted to 207 Church Street Partners, LLC and to its successors in interest to the property located in Santa Cruz, California to maintain an existing building corner within the City right-of-way at the corner of Church and Cedar Street .
2. This permit is subject to the terms and conditions specified in the encroachment permit as presented to Council this date.

BE IT FURTHER RESOLVED by the City Council of the City of Santa Cruz that the City Manager, be and is hereby authorized and directed to execute said encroachment permit on behalf of the City.

PASSED AND ADOPTED this 25th day of May, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: _____
Mayor

ATTEST: _____
City Clerk



CITY COUNCIL AGENDA REPORT

DATE: 5/17/2010

AGENDA OF: 5/25/2010

DEPARTMENT: Public Works

SUBJECT: Safe Routes to School - Alternate Adjacent Routes to Mission Street/SR1
(c400921) – Contract Change Order and Notice of Completion. (PW)

RECOMMENDATION: Motion to ratify Contract Change Order No. 1 and accept the work completed by BDS Construction Inc., Chowchilla, CA, as completed per the plans and specifications and authorize the filing of the Notice of Completion for the Safe Routes to School - Alternate Adjacent Routes to Mission Street/SR1 (c400921).

BACKGROUND: On July 8, 2008, the City Council adopted Resolution No. NS-27,870, authorizing and directing the City Manager to submit an application to the Federal Safe Routes to School Cycle 2 Program for Alternate Adjacent Routes to Mission Street/SR1.

An application was submitted and the Federal Safe Routes to School Cycle 2 Program approved the application and programmed \$172,330 (100% reimbursable) in Federal Funds for the Alternate Adjacent Routes to Mission Street/SR1.

On May 26, 2009, the City Council approved the plans and specifications and authorized staff to advertise for bids and award the contract. The City Manager executed the contract as authorized by Resolution No. NS-27,563.

On January 21, 2010, the project was awarded to BDS Construction Inc., Chowchilla, CA, in the amount of \$106,624.20. Construction started on March 9, 2010 and was completed on April 9, 2010, including Contract Change Order No. 1 work in the amount of \$33,294.58. Contract Change Order No. 1 was initiated to extend concrete work and increase signage and striping.

DISCUSSION: This project was inspected by the Public Works Department and found to be constructed in accordance with the plans and specifications.

FISCAL IMPACT: This project was funded in the FY2009 budget under the Mission Street Alternate Adjacent Routes SRTS09 (c400921) project. The project is 100% Federal funds reimbursable under the awarded Safe Routes to School Cycle 2 Program grant. This action has no fiscal impact to the General Fund

Prepared by:
Nathan Nguyen
Assistant Engineer

Submitted by:
Mark R. Dettle
Director of Public Works

Approved by:
Richard C. Wilson
City Manager

ATTACHMENTS:
Notice of Completion
Contract Change Order No. 1

RECORDED AT THE REQUEST OF
Nathan Nguyen, Public Works

WHEN RECORDED MAIL TO:
CITY CLERK'S DEPARTMENT
809 CENTER STREET, ROOM 9
SANTA CRUZ, CA 95060

Space Above this line for Recorder's Use Only

This Instrument is being recorded for the benefit of the City of Santa Cruz. No recording fee is required pursuant to Government Code §27383

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN, pursuant to Section 3093 of the California Civil Code, of the completion on May 25, 2010 of the Mission Street Alternate Adjacent Routes Project (c400921) as follows:

King Street, Seaside Street, Acadia Avenue and California Street

The City of Santa Cruz has the following interest in said property described above: City Right-of-Way.

Said Mission Street Alternate Adjacent Routes Project (c400921) was undertaken on said property pursuant to a contract with BDS Construction Inc., Chowchilla, CA. Said Mission Street Alternate Adjacent Routes Project (c400921) consisted of installing sidewalks, constructing ADA ramps, and installing signs and striping.

DATED _____

Mark R. Dettle
City of Santa Cruz
Director of Public Works

STATE OF CALIFORNIA)ss
COUNTY OF SANTA CRUZ)

I am the Director of the Public Works Department, City of Santa Cruz, I have read the foregoing Notice of Completion and know the contents thereof, and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on May 25, 2010 at Santa Cruz, California.

Mark R. Dettle
City of Santa Cruz
Director of Public Works

Filing of this Notice of Completion was authorized by Santa Cruz City Council Minute Order _____.



Public Works Department
 809 Center Street, Room 201 Santa Cruz, CA 95060, 831-420-5160, FAX 831-420-5161

**CONTRACT CHANGE ORDER NO. 1
 MISSION STREET ALTERNATE ADJACENT ROUTES PROJECT**

TO: BDS Construction, Inc.

4/27/2010

You are directed to make the herein described changes from the plans and specifications or do the following described work not included in the plans and specifications of this contract. All new work herein described shall be done in accordance with the applicable provisions of the plans and specifications except as specifically modified by this contract change order.

NOTE: This change order is not effective until approved by the City of Santa Cruz, or until an authorized field order is executed.

CHANGE INITIATED BY CITY

DESCRIPTION OF CHANGE: Extend concrete work to meet required slopes and replace damaged sidewalk, curb, and gutter adjacent to the pedestrian ramps. Increase sign posts, signs, and striping installation to better follow guidelines set in MUTCD. Additional work shall be paid for by increase of contract unit prices. No additional working days shall be granted.

ADJUSTMENT IN CONTRACT AMOUNT:

Item No.	Description	Units	Contract Qty	Additional CCO Qty	Contract Unit Price	Contract Item Total	Additional CCO Costs
1	Demo	SF	4300	1424	\$1.00	\$4,300.00	\$1,424.00
1	Ramps and Sidewalk	SF	2000	966	\$12.70	\$25,400.00	\$12,261.85
2	PCC curb and gutter	LF	425	100	\$41.90	\$17,807.50	\$4,169.05
3	Spandrals	SF	225	152	\$19.90	\$4,477.50	\$3,014.85
4	Asphalt Concrete	TON	30	10	\$469.00	\$14,070.00	\$4,849.46
5	Class 2 Aggregate Base	TON	115	-46	\$11.00	\$1,265.00	-\$505.23
6	Nioyostones	SF	9	2	\$76.00	\$684.00	\$152.00
7	Sign installation	EA	16	3	\$218.00	\$3,488.00	\$654.00
8	Bike Route	EA	27	9	\$261.00	\$7,047.00	\$2,349.00
9	Right Arrow	EA	4	1	\$158.00	\$632.00	\$158.00
10	Left and Right Arrows	EA	8	1	\$180.00	\$1,440.00	\$180.00
11	End	EA	3	-1	\$158.00	\$474.00	-\$158.00
12	Stop Bars	EA	18	9	\$54.40	\$979.20	\$489.60
13	Sharrows	EA	54	56	\$76.00	\$4,104.00	\$4,256.00

Amount of Change \$33,294.58

ADJUSTMENT IN CONTRACT COMPLETION: Add 0 working days

By reason of this order the time of completion will be adjusted as follows:

Original Contract	40 working days
Original Completion Date	April 30, 2008
Previous Extensions, Weather Days and R.O.W. Delays	-2 to date-
Current Completion Date	May 4, 2010
Days Work Over	-0-
New Duration	40 working days

Original Contract Amount	\$106,624.20
CCO #1	\$33,294.58
New Contract Amount	\$139,918.78

This change order constitutes full and complete compensation for all labor, equipment, materials, overhead and profit required to perform the desired change.

ACCEPTED BY: _____ DATE: _____

BDS Construction, Inc.

APPROVED BY: _____ DATE: _____

Chris Schneider,
Assistant Director of Public Works/City Engineer
City of Santa Cruz

If the Contractor does not sign acceptance of this order, his attention is directed to the requirements of the specifications as to proceeding with the ordered work and filing a written protest within the time therein specified.



CITY COUNCIL AGENDA REPORT

DATE: 5/17/2010

AGENDA OF: 5/25/2010

DEPARTMENT: Public Works

SUBJECT: Courtyard Commons (605 Pacific Avenue) – Tract No. 1554 –Approve Final Map. (PW)

RECOMMENDATION: Resolution approving the Final Map for Courtyard Commons (605 Pacific Avenue) – Tract No. 1554, and authorizing and directing the City Manager to execute the Subdivision Agreement with Easy Access Builders, Santa Cruz CA.

BACKGROUND: At its March 25, 2008 meeting, City Council approved the tentative map for Tract No. 1554, Courtyard Commons. Courtyard Commons proposed to subdivide the lot into nine (9) condominiums (including eight (8) residential and one (1) commercial unit), located at 605 Pacific Avenue. The proposed subdivision will not have any on-site parking. The developer has signed and recorded an agreement with the property owner of 131 Front Street to provide required parking spaces.

DISCUSSION: Staff has reviewed the final map and improvement plans for Tract No. 1554, Courtyard Commons, and found it in conformance with State and local regulations.

FISCAL IMPACT: There is no fiscal impact associated with this action.

Prepared by:
Tony Lau
Assistant Engineer

Submitted by:
Mark R. Dettle
Director of Public Works

Approved by:
Richard C. Wilson
City Manager

Available for public review at the Public Works Department: Final Map

ATTACHMENTS:
Resolution
Vicinity Map
Subdivision Agreement

RESOLUTION NO. NS-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA CRUZ
APPROVING THE FINAL MAP FOR TRACT NO. 1554, COURTYARD COMMONS
(605 PACIFIC AVENUE) AND AUTHORIZING AND DIRECTING THE
CITY MANAGER TO EXECUTE THE SUBDIVISION AGREEMENT WITH
EASY ACCESS DEVELOPERS, LLC, SANTA CRUZ, CA

WHEREAS, the City Council of the City of Santa Cruz has reviewed the Final Map for Tract No. 1554, Courtyard Commons, and

WHEREAS, Staff has found that the Final Map and Improvement Plans are in conformance with State and local regulations;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Santa Cruz that the Final Map for Tract No. 1554, Courtyard Commons, be and is hereby approved, as presented to the Council this date.

BE IT FURTHER RESOLVED by the City Council of the City of Santa Cruz that the City Manager, be and is hereby authorized and directed to execute the Courtyard Commons Subdivision Agreement with Easy Access Developers, LLC.

PASSED AND ADOPTED this 25th day of May, 2010, by the following vote:

AYES:

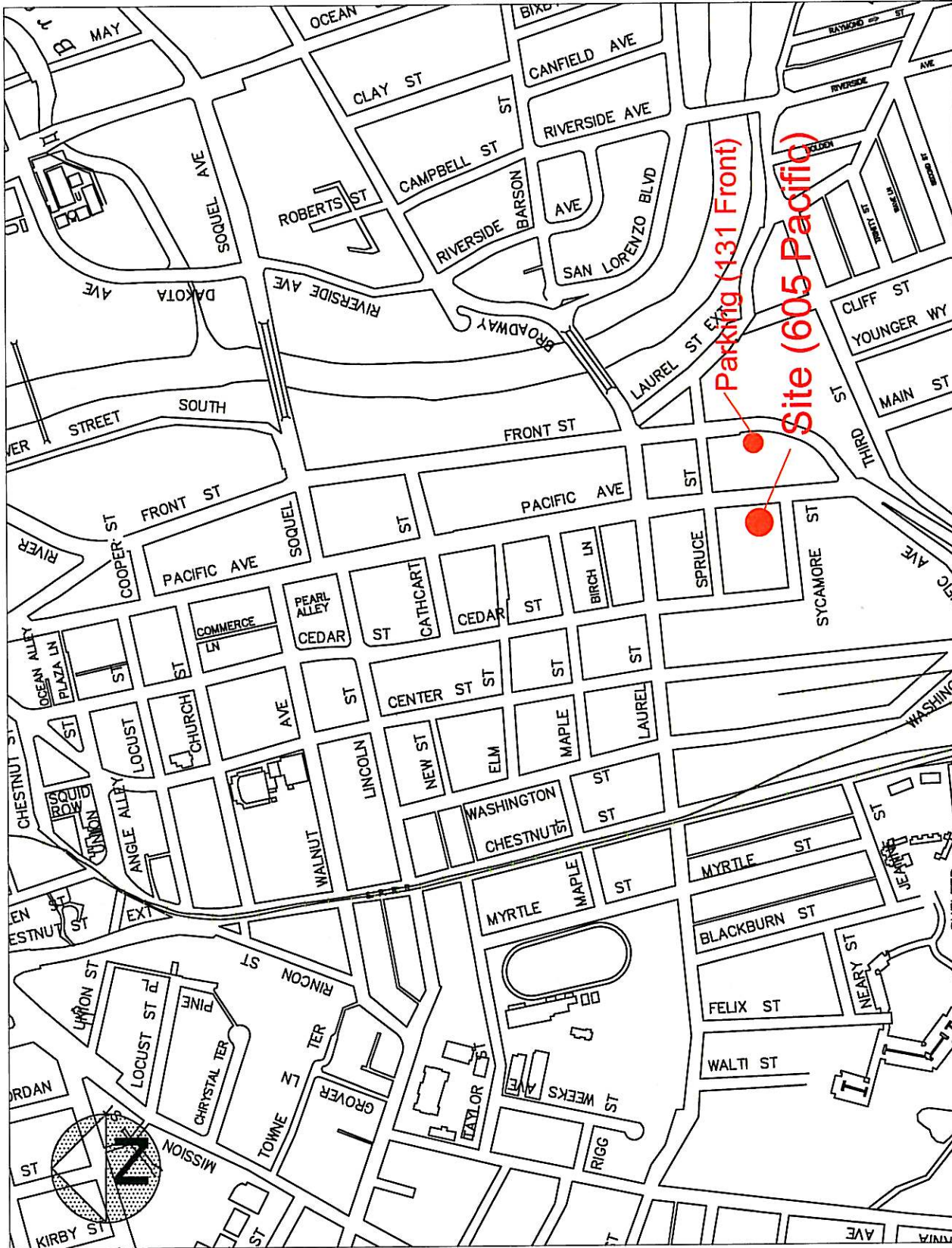
NOES:

ABSENT:

DISQUALIFIED:

APPROVED: _____
Mayor

ATTEST: _____
City Clerk



VICINITY MAP
COURTYARD COMMONS (605 PACIFIC AVENUE)
TRACT NO. 1554

SUBDIVISION AGREEMENT

TRACT NO. 1554

THIS AGREEMENT, made and entered into this _____ day of _____, 200__, by and between the CITY OF SANTA CRUZ, a municipal corporation of the State of California,, hereinafter called "City", and Easy Access Developers LLC, hereinafter called "Subdivider";

WITNESSETH:

WHEREAS, Subdivider has heretofore filed with City a final subdivision map for the subdivision of certain real property in the City of Santa Cruz, which map is designated COURTYARD COMMONS, Tract No. 1554, which reference is more particularly made, and has requested that the same be approved by the Council of the City; and

WHEREAS, Subdivider, by said map, has offered for dedication to City those certain streets and ways as delineated thereon; and

WHEREAS, the City Council of City has heretofore on _____ 200__, by Resolution No. NS-_____, approved said map and accepted the offers of dedication as shown thereon, and by said resolution has required that as a condition precedent to the acceptance of any streets, ways of easements as shown on said map, that Subdivide agrees to improve such streets and easements and make and install certain other public improvements within said subdivision; and

WHEREAS, the approval of said subdivision map is conditioned upon the execution by Subdivider of this agreement;

NOW THEREFORE, in consideration of the approval of said subdivision map and the acceptance of streets and easements therein, or some of them, Subdivider and City agree as follows:

1. Performance of Work; Plans and Specifications.

Subdivider will furnish, construct and install at Subdivider's own expense, in a good and workmanlike manner, all improvements as required by Title 24, Chapter 23.24, Section 23.24.020 of the Santa Cruz Municipal Code or as amended. Subdivider shall do all work and furnish all materials necessary to complete the required subdivision improvements in accordance with City subdivision regulations, and in strict accordance with approved subdivision improvements plans and specifications on file as required by said regulations, and with any changes required or ordered by the City which are necessary or required to complete the work. All of said work and improvements pertaining to the water system, or appurtenances, shall be done in accordance with the Water Distribution Main Extension Agreement, hereto attached and shall be under the direction of, and to the satisfaction of the Water Department Director of City, and all

other required work and improvements shall be under the direction of and to the satisfaction of the City Engineer.

2. Time of Essence - Extension.

The work to be performed hereunder shall be completed on or before _____, 20_____. Time is of the essence of this agreement; provided that in the event good cause is shown therefor, the City Engineer may extend the time for completion of the improvements hereunder. Any such extension may be granted without notice to the Subdivider's surety, and extension so granted shall not relieve the surety's liability on the bond to secure the full performance on this agreement. The City Engineer shall be the sole and final judge as to whether or not good cause has been shown to entitle Subdivider to an extension.

3. Improvement by Units.

If it is contemplated that the improvements herein required for said subdivision are to be constructed and installed in portions of the premises covered by the subdivision map, the procedure followed shall be as set forth in the subdivision Map Act. The time of completion, and the amount of the contract security, for each unit to be constructed in the future shall be as follows:

	<u>Time of Completion</u>	<u>Security</u>
Unit No. 2:	_____	_____
Unit No. 3:	_____	_____

In the event Subdivider, or the escrow holder, fails to meet the requirements for construction and installation of said future improvements or to post the required contract security for said future improvements, City may require the escrow holder to immediately proceed to rescind the portion of the subdivision in which improvements have not been installed.

The provisions of this paragraph shall be effective only if Subdivider has obtained the prior approval of the City to proceed on the basis of unit development.

4. Repairs and Replacements.

Subdivider shall replace, or have replaced, or repair, or have repaired, as the case may be, all pipes and monuments shown on the map which have been destroyed or damaged, and Subdivider shall replace or have replaced, repair or have repaired, as the case may be, or pay to the owner, the entire cost of replacement or repairs, of any and all property damaged or destroyed by reason of any work done hereunder, whether such property be owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by the City or by any public or private corporation, or by any person whomsoever, or by any combination of such owners. Any such repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

5. Permits; Compliance with Law.

Subdivider shall, at Subdivider's expense, obtain all necessary permits and licenses for the construction of such improvements, give all necessary notices and pay all fees and taxes required by law.

6. Inspection by City.

Subdivider shall at all times maintain proper facilities and provide safe access for inspection by City, to all parts of the work, and to the shops wherein the work is in preparation. All improvements are subject to inspection by City, and provision shall be made therefor, for a period of twelve (12) months after acceptance by City.

7. Contract Security.

It is agreed that said Subdivider shall furnish, concurrently with the execution hereof, cash, bond or other security authorized by the subdivision regulations of City, in a sum equal to one hundred twenty-five percent (125%) of the City Engineer's estimated value of the costs of said improvements, including engineering contingencies and incidental expense, for the faithful performance of the terms and conditions of this agreement, and further approved security in a sum equal to one-hundred percent (100%) of the City Engineer's estimated value of the costs of said improvements made to insure to the benefit of laborers and materialmen upon such work and improvements conditioned upon the payment of such laborers and materialmen for labor and material performed or rendered, under the terms of this agreement. The surety on each of said bonds and the form thereof shall be satisfactory to the City. The contract security may be released or reduced by the City Engineer on the conditions specified in the Subdivision Map Act, and the subdivision regulations of City.

8. Performance by City.

It is understood and agreed that should the Subdivider fail to construct any or all of said improvements, as herein provided, the City may construct or cause to be constructed said improvements and the Subdivider agrees to reimburse the City for any and all such labor and materials used, and the contract security herein mentioned shall be security therefor.

9. Hold Harmless Agreement

Subdivider hereby agrees to, and shall hold City, its elective and appointive boards, commissions, officers, agents and employees, harmless from any liability or damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Subdivider's or Subdivider's contractors, subcontractors, agents or employees' operations under this agreement, whether such operations be by Subdivider or by any of Subdivider's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for, Subdivider or any of Subdivider's contractors or subcontractors. Subdivider agrees to, and shall defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations; provided as follows:

- a. That City does not, and shall not, waive any rights against Subdivider which it may have

by reason of the aforesaid hold harmless agreement, because of the acceptance by City, or the deposit with City by Subdivider, of any of the insurance policies described in paragraph 10 hereof.

- b. That the aforesaid hold harmless agreement by Subdivider shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of aforesaid operations referred to in this paragraph, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the subdivision, or regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

10. Subdivider's Insurance.

Subdivider shall not commence work under this agreement until Subdivider shall have obtained all insurance required under this paragraph and such insurance shall have been approved by city as to form, amount, and carrier, nor shall Subdivider allow any contractor or subcontractor to commence work on his contract or subcontract until all similar insurance required of the contractor or subcontractor shall have been so obtained and approved. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

- a. Compensation Insurance. Subdivider shall maintain, during the life of this agreement, Worker's Compensation Insurance for all Subdivider's employees employed at the site of improvement, and in case any work is sublet, Subdivider shall require any contractor or subcontractor's similarly to provide Worker's Compensation Insurance for all contractors or subcontractor's employees, unless such employees are covered by the protection afforded by Subdivider. In case any class of employees engaged in work under this agreement at the site of the project is not protected under any Worker's Compensation Law, Subdivider shall provide, and shall cause each contractor and subcontractor to provide, adequate insurance for the protection of employees not otherwise protected. Subdivider hereby indemnifies City for any damages resulting to it from failure of either Subdivider or any contractor or subcontractor to take out or maintain such insurance.
- b. Public Liability and Property Damage Insurance. Subdivider shall take out and maintain during the life of this agreement such Public Liability and Property Damage Insurance as shall insure City, its elective and appointive boards, commissions, officers, agents and employees, Subdivider and any contractor or subcontractor performing work covered by this agreement from claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Subdivider's or any contractor's or subcontractor's operations hereunder whether such operations by Subdivider or any contractor or subcontractor, or by anyone directly or indirectly employed by either Subdivider or any contractor or subcontractor, and the amounts of such insurance shall be \$1,000,000.00 per occurrence combined single limit bodily injury and property damage liability coverage.
- c. Contractual Liability Insurance. Subdivider shall take out and maintain during the life of

this agreement and insurance policy in the amount of at least one hundred thousand dollars (\$100,000.00) insuring City, its elective and appointive boards, commissions, officers, agents and employees, Subdivider and any contractor or subcontractor performing work covered by this agreement against damages sustained by reason of any action or actions at law or inequity, and/or any claims or demands by reason of any breach or alleged breach of any contract, or provision thereof, or by reason of any contractual liability or alleged contractual liability or alleged contractual liability on any contract, entered into by Subdivider and/or any of Subdivider's contractors, subcontractors, agents and/or employees.

In the event that any of the aforesaid insurance policies provided for in this paragraph 10 insures any entity, person, board or commission other than those mentioned in this paragraph, such policy shall contain a standard form of cross liability endorsement, insuring on such policy the City, its elective and appointive boards, commissions, officers, agents and employees, Subdivider, and any contractor or subcontractor performing work covered by this agreement.

A contractual liability endorsement shall be added to each insurance policy extending coverage to include the liability assumed in paragraph 9 above.

11. Evidence of Insurance.

Subdivider shall furnish City concurrently with the execution hereof, with satisfactory evidence of the insurance required, and evidence that each carrier is required to give City at least thirty (30) days prior notice of a cancellation or deduction in coverage of any policy during the effective period of this agreement.

12. Title to Improvements.

Title to, and ownership of, all improvements constructed hereunder by Subdivider shall vest absolutely in City, upon completion and acceptance of such improvements by City.

13. Repair of Reconstruction of Defective Work.

All work shall be guaranteed for a period of twelve (12) months from the date of acceptance by the City. The Subdivider shall promptly make all needed repairs arising out of defective materials, workmanship or equipment. The contract security referred to above is to be so drawn as to cover such guarantee on the part of the Subdivider. If, within a period of twelve (12) months after final acceptance of the work performed under this agreement, any structure or part of any structure furnished and/or installed or constructed, or caused to be installed or constructed by Subdivider, or any of the work done under this agreement fails to fulfill any of the requirements of this agreement or the specifications referred to herein, Subdivider shall without delay and without any cost to City, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. The City is hereby authorized to make such repairs if, within 10 days after the mailing of a notice in writing to the Subdivider or his agent, the Subdivider shall neglect to make or undertake with due diligence the aforesaid repairs, replacements or reconstruction; provided, however, that in case of an emergency where, in the opinion of the City, delay

would cause serious loss or damage, repairs may be made without notice being sent to the Subdivider and the Subdivider shall pay the costs thereof.

14. Subdivider Not Agent of City.

Neither Subdivider nor any of Subdivider's agents or contractors are or shall be considered to be agents of City in connection with the performance of Subdivider's obligation under this agreement.

15. Notice of Breach and Default.

If Subdivider refuses or fails to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure its completion with the time specified, or any extensions thereof, or fails to obtain completion of said work within such time, or if the Subdivider should be adjudicated as bankrupt, or Subdivider should make a general assignment for the benefit of Subdivider's creditors, or if a receiver should be appointed in the event of Subdivider's insolvency, or if Subdivider, or any of Subdivider's contractors, subcontractors, agents or employees should violate any of the provisions of this agreement, City Engineer or City Council may serve written notice upon Subdivider and Subdivider's surety of breach of this agreement or of any portion thereof, and default of Subdivider.

16. Breach of Agreement; Performance by Surety or City.

In the event of any such notice, Subdivider's surety shall have the duty to take over and complete the work in the improvement herein specified; provided, however, that if the surety, within five (5) days of the serving upon it of such notice of breach, does not give City written notice of its intention to take over the performance of the contract, and does not commence performance thereof within five (5) days after notice to City of such election, City may take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of Subdivider, and Subdividers surety shall be liable to City for any excess cost or damages occasioned City hereby; and, in such event, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to the Subdivider as may be on the site of the work necessary thereof.

17. Location of Storage and Construction Yard.

Subdivider agrees to locate any construction yard for the storage of equipment, vehicles, supplies, and materials, or the preparation or fabrication thereof, to be used in connection with the installation of improvements for said subdivision or the construction of buildings therein, in such manner so as to cause a minimum of inconvenience to persons living in the area immediately adjacent to said subdivision, and to obtain the approval of the City Engineer to the proposed location of the yard. Immediately upon completion of the final building to be constructed in the subdivision, or unit thereof, to which this agreement refers, Subdivider agrees to cease using the construction yard and to remove therefrom all supplies, materials, equipment or vehicles being stored or kept thereon, Subdivider agrees not to use construction yard in connection with the installation of improvements or construction of buildings in any other subdivision, or any other unit of the subdivision to which this agreement refers. City may extend the time which the construction yard may be used or within which supplies, materials, equipment or vehicles

may be stored or kept therein if City shall determine that the granting of such extension will not be detrimental to the public welfare. No extension will be made except on the basis of a written application made by Subdivider stating fully the grounds and facts relied upon for such extension.

18. Breach of Agreement; Legal Expenses to City.

In the event the City shall be forced to resort to action in court to enforce the terms of this agreement, or to obtain relief by way of damages arising from default in the performance thereof by the Subdivider, the Subdivider agrees to pay court costs and to pay such sum as the court may deem reasonable as compensation for such attorneys as the City may employ in the prosecution of said action.

19. Notices.

All notices herein required shall be in writing, and delivered in person or sent by registered mail, postage prepaid. Notices required to be given to City shall be addressed as follows: City of Santa Cruz, Attention: City Engineer, 809 Center Street, Room 201, Santa Cruz, CA 95060; notices required to be given to Subdivider shall be addressed as follows:

_____;

notices required to be given surety of Subdivider shall be addressed as follows:

_____;


provided that any party or the surety may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

IN WITNESS WHEREOF, the said parties have hereto executed this agreement on the day and year first hereinabove written.

“City”

CITY OF SANTA CRUZ
A Municipal Corporation

Approved as to Form:



City Attorney 7-8-09

City Manager

“Subdivider”



Easy Access Developers llc



CITY COUNCIL AGENDA REPORT

DATE: 5/19/2010

AGENDA OF: 5/25/2010

DEPARTMENT: Water

SUBJECT: Revisions to Santa Cruz Municipal Code Chapter 16.16, Water Efficient Landscaping. (WT)

RECOMMENDATION: Introduction of an ordinance for publication repealing Chapter 16.16 and adding a new Chapter 16.16 to the Santa Cruz Municipal Code pertaining to water efficient landscaping.

BACKGROUND: The Water Conservation in Landscaping Act of 2006 (Assembly Bill 1881, Laird) requires cities and counties, including charter cities, to adopt landscape water conservation ordinances this year. Under the law, cities and counties may choose to use the state's recently updated model ordinance, or one that is at least as effective in saving water as the state's.

The City of Santa Cruz first adopted an ordinance establishing landscape water conservation regulations for major development projects situated in the City's service area in 1993, when a similar law, AB 325, took effect. The last major updating of this ordinance was undertaken in 2001. Its overall purpose is to ensure that the City's limited water supply is used efficiently and effectively in new landscapes within the City's water service area and to avoid certain landscape and irrigation design aspects that have the potential to result in water waste.

DISCUSSION: The City's existing landscape water conservation ordinance already meets many of the provisions that are contained in the state's new model ordinance. In fact, some of the provisions contained in AB 1881 and in the state's new model ordinance originated from the City's ordinance. Nevertheless, there are a number of changes that are being recommended, not only to ensure that the City's ordinance continues to be "at least as effective" as the new state model, but also to incorporate improvements in irrigation technology that have taken place since the ordinance was last updated.

In the process of updating the City's ordinance, staff convened and led meetings with representatives of all the other cities in the county (Capitola, Scotts Valley, and Watsonville) as well as the County of Santa Cruz, all of which are obligated to meet this same state law, AB 1881, along with representatives of all the major local water suppliers throughout the county. The consensus that emerged from these meetings was to: 1) strive for consistency among the various jurisdictions; and 2) to use the Santa Cruz City ordinance as the framework for responding to this state law. All considered the City's ordinance to be more straight-forward, effective, and user friendly. None expressed an interest in adopting the state's model ordinance.

As part of the process of updating Chapter 16.16, staff reviewed several other agencies' landscape ordinances, including regional ordinances covering Sonoma/Marin, San Diego, and San Mateo/Santa Clara counties, and then prepared a boilerplate ordinance and provided it to the other jurisdictions in Santa Cruz County to use as a template.

The major changes that staff is recommending are summarized below. The first four recommendations are proposed to be consistent with the state ordinance; others are for clarification or to raise the standard for water efficiency in new landscapes.

1. The ordinance would be applicable to certain types of development projects that are not now covered. This includes new single-family and multifamily development projects resulting in three or more dwelling units where: 1) the landscape is installed by the developer; and 2) the total landscape area of the project is 2,500 square feet or more. In addition, single and two-unit residential development projects on properties equal to or larger than 10,000 square feet would be required to prepare full landscape plans. The current threshold where landscape plans are required for single and two-unit properties is one-half acre or more in size (about 22,000 square feet).
2. Weather-based or other sensor-based, self-adjusting irrigation controllers would be required. There is no such requirement for weather or sensor-based controllers under the existing ordinance. Much of this controller technology has been developed in the time since the current ordinance was adopted, and is now widely available commercially.
3. The combined size of turf and areas devoted to high water use plants, decorative pools, fountains, water features and swimming pools would be limited to no more than 25 percent of the total developed landscape area. This is a reduction from the existing ordinance that allowed up to 35 percent be devoted to such water intensive uses. This limit does not apply to recreation areas requiring large turf areas as its primary function.
4. The water budget has been reduced. An evapotranspiration (ET) adjustment factor of 0.7 will be used to calculate a landscape water budget. Previously, this factor was 0.8. This follows the state model. Given the proposed 10 percent reduction in area devoted to turf and other water intensive uses, along with increased irrigation efficiency, new landscapes will have little difficulty meeting the reduced budget.
5. All overhead spray nozzles must have a precipitation rate of no more than one inch per hour. While there is no such standard under the current ordinance, there is the general requirement that all irrigation systems be designed to avoid runoff, and the excessive precipitation rate (relative to the rate at which applied water infiltrates into the soil) of standard spray nozzles is a major contributor to water waste.
6. Turf would not be allowed on slopes greater than 5 percent. The limit under the existing ordinance is ten percent slope.
7. Except for projects involving a single or two-unit residence, the ordinance would require that landscape plans must be prepared by certified or licensed professionals. Most already are. Previously there was no requirement that landscape plans had to be prepared by certified or

licensed professionals. This change is to better reflect permitted practice for professionals, practitioners, and unlicensed persons in California.

In addition, we added a provision in the ordinance that allows flexibility to design a landscape using the water allowance approach contained in the state's model ordinance in lieu of the turf limit if an applicant chooses to do so. We have also added language addressing storm water management and alternative water sources. Because of the many changes that are involved, we are recommending repealing the existing ordinance and enacting a new Chapter 16.16 instead of simply amending the existing ordinance.

To clarify, this ordinance primarily affects landscapes that are being installed as part of new development projects, or where re-landscaping is required in remodels and/or additions in a development as part of a land use approval process. All landscaping and gardens at existing homes and businesses under one acre in size are unaffected by this ordinance. For existing landscapes larger than one acre, the ordinance would require that the water customer conduct a water audit when evaluation of their annual water use indicates they exceed a given water budget.

The proposed ordinance has been circulated to local landscape architects and landscape contractors for their review and feedback, and they were invited to attend the last Water Commission meeting. Staff received only one comment which was favorable.

Adopting the new landscape water conservation ordinance is an action that is not subject to CEQA under section 15061(b) 3, as there is no possibility that the action will have a significant effect on the environment.

WATER COMMISSION ACTION: The Water Commission reviewed the proposed ordinance at its May 3, 2010 meeting. The Commission voted unanimously to recommend that City Council adopt the revised ordinance.

FISCAL IMPACT: There are no direct costs to the Water Fund with adoption of the updated ordinance. However, considerable staff time was devoted to this effort, which, in effect, represents an unfunded state mandate. The fees charged to cover the cost of landscape plan review and inspections were recently updated and will be reviewed periodically in the future.

Submitted by:
Bill Kocher
Water Director

Approved by:
Richard C. Wilson
City Manager

ATTACHMENTS:
AB-1881
Ordinance

Assembly Bill No. 1881

CHAPTER 559

An act to add Section 1353.8 to the Civil Code, to repeal and add Article 10.8 (commencing with Section 65591) of Chapter 3 of Division 1 of Title 7 of the Government Code, to add Section 25401.9 to the Public Resources Code, and to add Article 4.5 (commencing with Section 535) to Chapter 8 of Division 1 of the Water Code, relating to water conservation.

[Approved by Governor September 28, 2006. Filed with
Secretary of State September 28, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1881, Laird. Water conservation.

(1) Existing law, the Davis-Sterling Common Interest Development Act, defines and regulates common interest developments, which include community apartment projects, condominium projects, planned developments, and stock cooperatives.

This bill would provide that the architectural guidelines of a common interest development shall not prohibit or include conditions that have the effect of prohibiting the use of low water-using plants as a group.

(2) The Water Conservation in Landscaping Act requires the Department of Water Resources to appoint an advisory task force to work with the department to draft a model local water efficient landscape ordinance that local agencies may adopt, requires the task force to submit the ordinance to the department on or before May 1, 1991, and requires the task force to cease to exist on the date the department adopts the model ordinance or January 1, 1992, whichever occurs first. The act requires the department, not later than January 1, 1992, to adopt a model local water efficient landscape ordinance which each local agency may adopt. The act makes the model local water efficient landscape ordinance adopted by the department applicable within the jurisdiction of a local agency if that local agency, by January 1, 1993, has not adopted a water efficient landscape ordinance or has not adopted certain findings that the adoption of the ordinance is unnecessary.

This bill would specify that the provision making the model ordinance applicable to a local agency on and after January 1, 1993, does not apply to chartered cities. The bill would require the department, to the extent funds are appropriated, not later than January 1, 2009, by regulation, to update the model ordinance in accordance with specified requirements. The bill would require the department to prepare and submit to the Legislature a prescribed report before the adoption of the updated model ordinance. The bill would require a local agency, not later than January 1, 2010, to adopt the updated model ordinance or other water efficient

landscape ordinance that is at least as effective in conserving water as the updated model ordinance. The bill would make the updated model ordinance applicable within the jurisdiction of a local agency, including a chartered city, if, by January 1, 2010, the local agency has not adopted its own water efficient landscape ordinance or the updated model ordinance. The bill would require each local agency, not later than January 31, 2010, to notify the department as to whether the local agency is subject to the department's updated model ordinance and, if not, to submit to the department a copy of the water efficient landscape ordinance adopted by the local agency, among other documents. The bill would require the department, to the extent funds are appropriated, not later than January 31, 2011, to prepare and submit a report to the Legislature relating to the status of water efficient landscape ordinances adopted by local agencies.

By imposing requirements on local agencies in connection with the adoption of water efficient landscape ordinances, the bill would impose a state-mandated local program.

(3) Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission), after one or more public hearings, to take specified action to reduce the wasteful, uneconomic, inefficient, or unnecessary consumption of energy. Existing law requires the Energy Commission, by January 1, 2004, to amend specified regulations to require that residential clothes washers manufactured on or after January 1, 2007, be at least as water efficient as commercial clothes washers, and to take certain other related action.

This bill would require the Energy Commission, in consultation with the department, to adopt, to the extent funds are available, by regulation performance standards and labeling requirements for landscape irrigation equipment, including irrigation controllers, moisture sensors, emission devices, and valves to reduce the wasteful, uneconomic, inefficient, or unnecessary consumption of energy or water. The bill would require the Energy Commission to adopt those requirements for landscape irrigation controllers and moisture sensors by January 1, 2010, and, on and after January 1, 2012, would prohibit the sale or installation of an irrigation controller or moisture sensor for landscape use unless the controller or sensor meets those adopted requirements. The bill would require the Energy Commission, on or before January 1, 2010, to prepare and submit to the Legislature a report that sets forth a proposed schedule for adopting performance standards and labeling requirements for emission devices and valves.

(4) Existing law generally requires an urban water supplier to install water meters on all municipal and industrial service connections located within its service area on or before January 1, 2025.

This bill would require a water purveyor as defined, to require as a condition of new retail water service on and after January 1, 2008, the installation of separate water meters to measure the volume of water used exclusively for landscape purposes. The bill would make this requirement applicable to specified service connections.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 1353.8 is added to the Civil Code, to read:

1353.8. The architectural guidelines of a common interest development shall not prohibit or include conditions that have the effect of prohibiting the use of low water-using plants as a group.

SEC. 2. Article 10.8 (commencing with Section 65591) of Chapter 3 of Division 1 of Title 7 of the Government Code is repealed.

SEC. 3. Article 10.8 (commencing with Section 65591) is added to Chapter 3 of Division 1 of Title 7 of the Government Code, to read:

Article 10.8. Water Conservation in Landscaping

65591. This article shall be known and may be cited as the Water Conservation in Landscaping Act.

65592. Unless the context requires otherwise, the following definitions govern the construction of this article:

- (a) "Department" means the Department of Water Resources.
- (b) "Local agency" means any city, county, or city and county, including a charter city or charter county.
- (c) "Water efficient landscape ordinance" means an ordinance or resolution adopted by a local agency, or prepared by the department, to address the efficient use of water in landscaping.

65593. The Legislature finds and declares all of the following:

- (a) The waters of the state are of limited supply and are subject to ever increasing demands.
- (b) The continuation of California's economic prosperity is dependent on adequate supplies of water being available for future uses.
- (c) It is the policy of the state to promote the conservation and efficient use of water and to prevent the waste of this valuable resource.
- (d) Landscapes are essential to the quality of life in California by providing areas for active and passive recreation and as an enhancement to the environment by cleaning air and water, preventing erosion, offering fire protection, and replacing ecosystems lost to development.
- (e) Landscape design, installation, maintenance, and management can and should be water efficient.
- (f) Section 2 of Article X of the California Constitution specifies that the right to use water is limited to the amount reasonably required for the

beneficial use to be served and the right does not and shall not extend to waste or unreasonable use or unreasonable method of use.

(g) (1) The Legislature, pursuant to Chapter 682 of the Statutes of 2004, requested the California Urban Water Conservation Council to convene a stakeholders work group to develop recommendations for improving the efficiency of water use in urban irrigated landscapes.

(2) The work group report includes a recommendation to update the model water efficient landscape ordinance adopted by the department pursuant to Chapter 1145 of the Statutes of 1990.

(3) It is the intent of the Legislature that the department promote the use of this updated model ordinance.

(h) Notwithstanding Article 13 (commencing with Section 65700), this article addresses a matter that is of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Accordingly, it is the intent of the Legislature that this article, except as provided in Section 65594, apply to all cities and counties, including charter cities and charter counties.

65594. (a) Except as provided in Section 65595, if by January 1, 1993, a local agency did not adopt a water efficient landscape ordinance and did not adopt findings based on climatic, geological, or topographical conditions, or water availability that state that a water efficient landscape ordinance is unnecessary, the model water efficient landscape ordinance adopted by the department pursuant to Chapter 1145 of the Statutes of 1990 shall apply within the jurisdiction of the local agency as of that date, shall be enforced by the local agency, and shall have the same force and effect as if adopted by the local agency.

(b) Notwithstanding subdivision (b) of Section 65592, subdivision (a) does not apply to chartered cities.

(c) This section shall apply only until the department updates the model ordinance.

65595. (a) (1) To the extent funds are appropriated, not later than January 1, 2009, by regulation, the department shall update the model water efficient landscape ordinance adopted pursuant to Chapter 1145 of the Statutes of 1990, after holding one or more public hearings. The updated model ordinance shall be based on the recommendations set forth in the report prepared pursuant to Chapter 682 of the Statutes of 2004 and shall meet the requirements of Section 65596.

(2) Before the adoption of the updated model ordinance pursuant to paragraph (1), the department shall prepare and submit to the Legislature a report relating to both of the following:

(A) The extent to which local agencies have complied with the model water efficient landscape ordinance adopted pursuant to Chapter 1145 of the Statutes of 1990.

(B) The department's recommendations regarding the landscape water budget component of the updated model ordinance described in subdivision (b) of Section 65596.

(b) Not later than January 31, 2009, the department shall distribute the updated model ordinance adopted pursuant to subdivision (a) to all local agencies and other interested parties.

(c) On or before January 1, 2010, a local agency shall adopt one of the following:

(1) A water efficient landscape ordinance that is, based on evidence in the record, at least as effective in conserving water as the updated model ordinance adopted by the department pursuant to subdivision (a).

(2) The updated model ordinance described in paragraph (1).

(d) If the local agency has not adopted, on or before January 1, 2010, a water efficient landscape ordinance pursuant to subdivision (c), the updated model ordinance adopted by the department pursuant to subdivision (a) shall apply within the jurisdiction of the local agency as of that date, shall be enforced by the local agency, and shall have the same force and effect as if adopted by the local agency.

(e) Nothing in this article shall be construed to require the local agency's water efficient landscape ordinance to duplicate, or to conflict with, a water efficiency program or measure implemented by a public water system, as defined in Section 116275 of the Health and Safety Code, within the jurisdictional boundaries of the local agency.

65596. The updated model ordinance adopted pursuant to Section 65595 shall do all the following in order to reduce water use:

(a) Include provisions for water conservation and the appropriate use and groupings of plants that are well-adapted to particular sites and to particular climatic, soil, or topographic conditions. The model ordinance shall not prohibit or require specific plant species, but it may include conditions for the use of plant species or encourage water conserving plants. However, the model ordinance shall not include conditions that have the effect of prohibiting or requiring specific plant species.

(b) Include a landscape water budget component that establishes the maximum amount of water to be applied through the irrigation system, based on climate, landscape size, irrigation efficiency, and plant needs.

(c) Promote the benefits of consistent local ordinances in neighboring areas.

(d) Encourage the capture and retention of stormwater onsite to improve water use efficiency or water quality.

(e) Include provisions for the use of automatic irrigation systems and irrigation schedules based on climatic conditions, specific terrains and soil types, and other environmental conditions. The model ordinance shall include references to local, state, and federal laws and regulations regarding standards for water-conserving irrigation equipment. The model ordinance may include climate information for irrigation scheduling based on the California Irrigation Management Information System.

(f) Include provisions for onsite soil assessment and soil management plans that include grading and drainage to promote healthy plant growth and to prevent excessive erosion and runoff, and the use of mulches in shrub areas, garden beds, and landscaped areas where appropriate.

(g) Promote the use of recycled water consistent with Article 4 (commencing with Section 13520) of Chapter 7 of Division 7 of the Water Code.

(h) Seek to educate water users on the efficient use of water and the benefits of doing so.

(i) Address regional differences, including fire prevention needs.

(j) Exempt landscaping that is part of a registered historical site.

(k) Encourage the use of economic incentives to promote the efficient use of water.

(l) Include provisions for landscape maintenance practices that foster long-term landscape water conservation. Landscape maintenance practices may include, but are not limited to, performing routine irrigation system repair and adjustments, conducting water audits, and prescribing the amount of water applied per landscaped acre.

(m) Include provisions to minimize landscape irrigation overspray and runoff.

65597. Not later than January 31, 2010, each local agency shall notify the department as to whether the local agency is subject to the department's updated model ordinance adopted pursuant to Section 65595, and if not, shall submit to the department a copy of the water efficient landscape ordinance adopted by the local agency, and a copy of the local agency's findings and evidence in the record that its water efficient landscape ordinance is at least as effective in conserving water as the department's updated model ordinance. Not later than January 31, 2011, the department shall, to the extent funds are appropriated, prepare and submit a report to the Legislature summarizing the status of water efficient landscape ordinances adopted by local agencies.

65598. Any model ordinance adopted pursuant to this article shall exempt cemeteries from all provisions of the ordinance except those set forth in subdivisions (h), (k), and (l) of Section 65596. In adopting language specific to cemeteries, the department shall recognize the special landscape management needs of cemeteries.

65599. Any actions or proceedings to attach, review, set aside, void, or annul the act, decision, or findings of a local agency on the ground of noncompliance with this article shall be brought pursuant to Section 1085 of the Code of Civil Procedure.

SEC. 4. Section 25401.9 is added to the Public Resources Code, to read:

25401.9. (a) To the extent that funds are available, the commission, in consultation with the Department of Water Resources, shall adopt by regulation, after holding one or more public hearings, performance standards and labeling requirements for landscape irrigation equipment, including, but not limited to, irrigation controllers, moisture sensors, emission devices, and valves, for the purpose of reducing the wasteful, uneconomic, inefficient, or unnecessary consumption of energy or water.

(b) For the purposes of complying with subdivision (a), the commission shall do all of the following:

(1) Adopt performance standards and labeling requirements for landscape irrigation controllers and moisture sensors on or before January 1, 2010.

(2) Consider the Irrigation Association’s Smart Water Application Technology Program testing protocols when adopting performance standards for landscape irrigation equipment, including, but not limited to, irrigation controllers, moisture sensors, emission devices, and valves.

(3) Prepare and submit a report to the Legislature, on or before January 1, 2010, that sets forth on a proposed schedule for adopting performance standards and labeling requirements for emission devices and valves.

(c) On and after January 1, 2012, an irrigation controller or moisture sensor for landscape irrigation uses may not be sold or installed in the state unless the controller or sensor meets the performance standards and labeling requirements established pursuant to this section.

SEC. 5. Article 4.5 (commencing with Section 535) is added to Chapter 8 of Division 1 of the Water Code, to read:

Article 4.5. Irrigated Landscape

535. (a) A water purveyor shall require as a condition of new retail water service on and after January 1, 2008, the installation of separate water meters to measure the volume of water used exclusively for landscape purposes.

(b) Subdivision (a) does not apply to either of the following:

(1) Single-family residential connections.

(2) Connections used to supply water for the commercial production of agricultural crops or livestock.

(c) Subdivision (a) applies only to a service connection for which both of the following apply:

(1) The connection serves property with more than 5,000 square feet of irrigated landscape.

(2) The connection is supplied by a water purveyor that serves 15 or more service connections.

(d) For the purposes of this section, “new retail water service” means the installation of a new water meter where water service has not been previously provided, and does not include applications for new water service submitted before January 1, 2007.

SEC. 6. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

O

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SANTA CRUZ
REPEALING CHAPTER 16.16 OF THE SANTA CRUZ MUNICIPAL CODE
AND ADDING CHAPTER 16.16 OF THE MUNICIPAL CODE
PERTAINING TO WATER EFFICIENT LANDSCAPING

BE IT ORDAINED by the City Council of the City of Santa Cruz as follows:

SECTION 1: Chapter 16.16 of the Santa Cruz Municipal Code is hereby repealed.

SECTION 2: Chapter 16.16 of the Santa Cruz Municipal Code is hereby enacted to read as follows:

“Chapter 16.16

Water Efficient Landscaping

Sections:

- 16.16.010 Purpose.
- 16.16.020 Definitions.
- 16.16.030 Applicability.
- 16.16.040 Landscape Plan Review and Approval Required.
- 16.16.050 Persons Qualified to Prepare Landscape Plans.
- 16.16.060 Contents of Plans.
- 16.16.070 Landscape Water Conservation Standards.
- 16.16.080 Alternative to Turf Limitations.
- 16.16.090 Final Inspection/Water Audit.
- 16.16.100 Irrigation System Management and Maintenance.
- 16.16.110 Provisions for Existing Landscapes Over One Acre in Size.
- 16.16.120 Exceptions.
- 16.16.130 Administrative Enforcement.
- 16.16.140 Limit of City Responsibility.

- 16.16.010 Purpose

The purposes of this chapter are to promote efficient water use, to manage peak season water demand, and to preserve water storage in order to ensure a reliable and adequate public water supply by regulating landscape design, construction, and maintenance. It is also the purpose of this chapter to comply with California Government Code section 65591 et. seq., the Water Conservation in Landscaping Act.

- 16.16.020 Definitions

For the purpose of this chapter, the following words shall have the meanings set forth below:

- (a) “applied water” means the portion of water supplied by the irrigation system to the landscape.

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- (b) “automatic irrigation controller” means an automatic timing device used to remotely control valves that operate an irrigation system. Automatic irrigation controllers schedule irrigation events using either evapotranspiration (weather-based) or soil moisture data.
- (c) “backflow prevention device” means a safety device used to prevent pollution or contamination of the water supply due to the reverse flow of water from the irrigation system.
- (d) “CCF” means one hundred cubic feet, a common billing unit used by water agencies for basing charges for water service. One hundred cubic feet equals 748 gallons.
- (e) “certified irrigation designer” means a person certified to design irrigation systems by an accredited academic institution, a professional trade organization, or other program such as the US Environmental Protection Agency’s WaterSense irrigation designer certification program and Irrigation Association’s Certified Irrigation Designer program.
- (f) “certified landscape irrigation auditor” means a person certified to perform landscape irrigation audits by an accredited academic institution, a professional trade organization or other program such as the US Environmental Protection Agency’s WaterSense irrigation auditor certification program and Irrigation Association’s Certified Landscape Irrigation Auditor program.
- (g) “common area” means those areas in a residential development that are owned, shared, and available for use by all residents, and managed by either the homeowner’s association or governing board.
- (h) “community garden” means a plot of land used by a community group and open to the public for the cultivation of flowers, vegetables, edible plants, or fruit.
- (i) “conversion factor (0.00083)” means the number that converts acre-inch per acre per year to CCF per square foot per year.
- (j) "director" means the director of the water department of the City of Santa Cruz, or the director’s authorized representative.
- (k) “drip irrigation” means any non-spray low volume irrigation system utilizing emission devices with a flow rate measured in gallons per hour. Low volume irrigation systems are specifically designed to apply small volumes of water slowly at or near the root zone of plants.
- (l) “establishment period” means the first year after installing the plant in the landscape or the first two years if irrigation will be terminated after establishment. Typically, most plants are established after one or two years of growth.

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- (m) “ET adjustment factor” means a factor of 0.7, that, when applied to reference evapotranspiration, adjusts for plant factors and irrigation efficiency, two major influences upon the amount of water that needs to be applied to the landscape.
- (n) “expanded service” means an additional water meter or larger capacity meter is required to serve the proposed development, as determined by the water agency.
- (o) “evapotranspiration rate” means the quantity of water evaporated from adjacent soil and other surfaces and transpired by plants during a specified time.
- (p) “flow rate” means the rate at which water flows through pipes, valves and emission devices, measured in gallons per minute, gallons per hour, or cubic feet per second.
- (q) “hydrozone” means a portion of the landscaped area having plants with similar water needs. A hydrozone may be irrigated or non-irrigated.
- (r) “irrigation audit” means an in-depth evaluation of the performance of an irrigation system. An irrigation audit includes, but is not limited to: inspection, system tune-up, system test with distribution uniformity or emission uniformity, reporting overspray or runoff that causes overland flow, and preparation of an irrigation schedule.
- (s) “irrigation efficiency” means the measurement of the amount of water beneficially used divided by the amount of water applied. Irrigation efficiency is derived from measurements and estimates of irrigation system characteristics and management practices.
- (t) “irrigation survey” means an evaluation of an irrigation system that is less detailed than an irrigation audit. An irrigation survey includes, but is not limited to: inspection, system test, and written recommendations to improve performance of the irrigation system.
- (u) “irrigation water use analysis” means an analysis of water use data based on meter readings and billing data.
- (v) “landscape architect” means a person who holds a license to practice landscape architecture in California as further defined by the California Business and Professions Code, Section 5615.
- (w) “landscape area” means all the planting areas, turf areas, and water features in a landscape design plan subject to the landscape water budget calculation. The landscape area does not include footprints of buildings or structures, sidewalks, driveways, parking lots, decks, patios, gravel or stone walks, other pervious or non-pervious hardscapes, other non-irrigated areas designated for non-development (e.g., open spaces and existing native vegetation), agricultural uses, commercial nurseries and sod farms.

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- (x) “landscape water budget” means the upper limit of annual applied water for the established landscaped area. It is based on the region’s reference evapotranspiration, type of plant material, and landscape area as specified in Section 16.16.070 (b).
- (y) “landscape contractor” means a person licensed by the State of California to construct, maintain, repair, install, or subcontract the development of landscape systems.
- (z) “lateral line” means the water delivery pipeline that supplies water to the emitters or sprinklers from the valve.
- (aa) “local agency” means a city or county, including a charter city or charter county, or water agency that is responsible for adopting and implementing this Chapter. The local agency is also responsible for the enforcement of this Chapter, including but not limited to, in the case of a city or county, approval of a permit and plan check or design review of a project; and in the case of a water agency, approval of a new or expanded water service application.
- (bb) “low volume irrigation” means the application of irrigation water at low pressure through a system of tubing or lateral lines and low-volume emitters such as drip, drip lines, and bubblers.
- (cc) "low water use plant" means a plant species whose water needs are compatible with local climate and soil conditions. Species classified as "very low water use" and "low water use" by WUCOLS, having a regionally adjusted plant factor of 0.0 through 0.3, shall be considered low water use plants.
- (dd) “Model Water Efficient Landscape Ordinance” means the regulations developed by the California Department of Water Resources required by the California Water Conservation in Landscaping Act and contained in the California Code of Regulations, Title 23, Division 2, Chapter 2.7.
- (ee) “modified service” means a substantial change in the water use characteristics of an existing service connection (for example, converting from a single family residential service to multiple residential service, or from a residential use to a commercial use).
- (ff) “mulch” means any organic material such as leaves, bark, straw, compost, or inorganic mineral materials such as rocks, gravel, and decomposed granite left loose and applied to the soil surface for the beneficial purposes of reducing evaporation, suppressing weeds, moderating soil temperature, and preventing soil erosion.
- (gg) “native plant” means a plant indigenous to a specific area of consideration. For the purposes of these guidelines, the term shall refer to plants indigenous to the coastal ranges of Central and Northern California, and more specifically to such

plants that are suited to the ecology of the present or historic natural community(ies) of the project's vicinity.

- (hh) "new construction" means the construction of a new building or structure containing a landscape or other new land improvement, such as a park, playground, or greenbelt without an associated building.
- (ii) "overhead sprinkler irrigation systems" means systems that deliver water through the air (e.g., spray heads and rotors).
- (jj) "overspray" means the irrigation water which is delivered beyond the target area.
- (kk) "pervious" means any surface or material that allows the passage of water through the material and into the underlying soil.
- (ll) "plant factor" or "plant water use factor" is a factor, when multiplied by ETo, estimates the amount of water needed by plants.
- (mm) "precipitation rate" means the rate of application of water measured in inches per hour.
- (nn) "project applicant" means the individual or entity submitting a landscape plan required under 16.16.030, in connection with a building permit application or design review from the local land use agency or requesting new, modified or increased water service from the water agency. A project applicant may be the property owner or his or her designee.
- (oo) "rain sensor" or "rain sensing shutoff device" means a component which automatically suspends an irrigation event when it rains.
- (pp) "recreational area" means areas dedicated to active play such as parks, playgrounds, sports fields, and golf courses where turf provides a playing surface.
- (qq) "reference evapotranspiration" or "ETo" means a standard measurement of environmental parameters which affect the water use of plants.
- (rr) "rehabilitated landscape" means any project that is required to modify its existing landscape as a condition of a land use approval or a discretionary permit or any re-landscaping project that requires a permit, plan check, design review, or requires a new or expanded water service application.
- (ss) "runoff" means water which is not absorbed by the soil or landscape to which it is applied and flows from the landscape onto other areas.
- (tt) "soil moisture sensing device" or "soil moisture sensor" means a device that measures the amount of water in the soil. The device may also suspend or initiate an irrigation event.
- (uu) "sprinkler head" means a device which delivers water through a nozzle.

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- (vv) “station” means an area served by one valve or by a set of valves that operate simultaneously.
- (ww) “turf” means a ground cover surface of mowed grass that requires frequent watering during the growing season. Annual bluegrass, Kentucky bluegrass, Perennial ryegrass, Red fescue, and Tall fescue are cool-season grasses. Bermuda grass, Kikuyu grass, Seashore Paspalum, St. Augustine grass, Zoysia grass, and Buffalo grass are warm-season grasses.
- (xx) “valve” means a device used to control the flow of water in the irrigation system.
- (yy) “water feature” means a design element where open water performs an aesthetic or recreational function. Water features include ponds, lakes, waterfalls, fountains, artificial streams, spas, and swimming pools (where water is artificially supplied).
- (zz) “WUCOLS” means the Water Use Classification of Landscape Species published by the University of California Cooperative Extension, the Department of Water Resources and the Bureau of Reclamation, 2000, and any subsequent revisions.

16.16.030 Applicability

The director shall be responsible for assuring that all applicants for new, increased, or modified water service within the City water service area shall comply with the standards set forth in this chapter as a condition of receiving water service.

- (a) The provisions of this Chapter shall apply to all of the following landscape projects:
 - (1) New commercial, industrial, and public development projects requiring a building permit, land use approval/design review or requiring a new, expanded, or modified water service.
 - (2) Existing commercial, industrial, and public development that is required to rehabilitate or modify their landscape as part of a land use approval/design review process shall also be required to comply with the provisions of this Chapter in the relandscaped area.
 - (3) Developer-installed landscaping. New single and multiple family residential development projects resulting in three or more dwelling units with a total irrigated landscape area which is installed by the developer equal to or greater than 2,500 square feet.
 - (4) Single family and two-unit residences. New single-family and two-unit residential development projects on a parcel of land less than 10,000 square feet shall be required to meet only provision regarding turf limits listed in Section 16.16.070 (c) and spray irrigation setbacks listed in Section 16.16.070 (e). Such projects are encouraged to follow voluntary water efficient landscape guidelines/checklists.

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- (5) New single-family and two-unit residential development projects on a parcel of land equal to or greater than 10,000 square feet shall be required to meet all standards set forth below.
 - (6) New recreation areas. New parks, playgrounds, sports fields, and golf courses are subject to the all the provisions of this Chapter except the turf area limits set forth in Section 16.16.070 (c) (1).
- (b) The provisions of this Chapter shall not apply to:
- (1) Remodels/additions to existing one and two unit homes.
 - (2) Existing landscapes of less than one acre in size.
 - (3) Ecological restoration projects that do not require a permanent irrigation system.
 - (4) Community gardens.
 - (5) Registered local, state, or federal historical sites where landscaping establishes an historical landscape style, as determined by a public board or commission responsible for architectural review or historic preservation.
 - (6) Enclosed, private yards and patios in multi-family residential developments.
- (c) Pre-existing landscapes over one acre in size. Existing large landscapes, including existing cemeteries, shall be subject only to the provisions for existing landscapes listed in Section 16.16.110.

16.16.040 Landscape Plan Review and Approval Required

No person shall install landscaping for a project subject to this chapter without the review and approval required by this chapter.

- (a) Design Review. For projects requiring design review or a discretionary land use approval, the applicant shall submit a landscape concept plan. The landscape concept plan shall include general representation of the site features, existing and proposed buildings, proposed planting areas, and the proposed method and type of irrigation.
- (b) Building Permit/Plan Check. A complete landscape plan must be submitted and found to satisfy the requirements of this Chapter before the local agency can approve a building permit application, or the director can approve an application for water service and the installation of new water meter, or authorize a change in water service. The City shall notify the applicant in writing if plans are found to be incomplete or inconsistent with the standards and indicate where such additions or revisions are necessary.

- (c) Plan Review Fee. landscape plan review fee set by resolution of the City Council shall accompany each such application to cover the City's cost to review the landscape plan.

16.16.050 Persons Qualified to Prepare Landscape Plans

Landscape plans for all projects, except a single family or two-unit residence, shall be prepared by, and bear the signature of, a certified irrigation designer, a certified landscape irrigation auditor, a licensed landscape architect, a licensed landscape contractor, a licensed professional engineer, or any other person authorized by the State to do this work.

16.16.060 Contents of Plans

Landscape plans shall consist of separate planting, irrigation, and grading plans, all drawn at the same size and scale, and shall accurately and clearly include the following information:

- (a) Project information
 - (1) Project applicant/contact person;
 - (2) Address;
 - (3) Parcel number(s);
 - (4) Total landscape area, in square feet;
 - (5) Source and type of water supply (potable/recycled/other alternative, including graywater), including number and size of service connections.

- (b) Planting Plan

Planting plans shall identify and locate the following:

- (1) New and existing trees, shrubs, ground covers, and turf areas within the developed landscape area;
- (2) Planting legend indicating all plant species by botanical name and common name, spacing, and quantities of each type of plant by container size;
- (3) Water use classification (high, moderate, low, or very low) for each plant material specified, according to WUCOLS;
- (4) Each hydrozone (including high, medium, and low water uses) delineated and labeled, including the square footage for each area;
- (5) Property lines, streets, and street names;

- (6) Building locations, driveways, sidewalks, retaining walls, and other hardscape features;
- (7) Appropriate scale and north arrow;
- (8) Planting specifications and details.

(c) Irrigation Plan

Irrigation plans shall identify and locate the following:

- (1) Irrigation point of connection (POC) to water system;
- (2) Static water pressure at POC;
- (3) Location and size of water meter(s);
- (4) Backflow prevention devices as may be required the water supply agency;
- (5) Manual shut off valves;
- (6) Location, size, and type of all components of the irrigation system, including automatic controllers, main and lateral lines, valves, sprinkler heads and nozzles, riser protection equipment, soil moisture sensors, pressure regulator, drip and low volume irrigation equipment;
- (7) Flow rate (gallons per minute or gallons per hour), precipitation rate (inches per hour) and design operating pressure (psi) for each irrigation circuit;
- (8) Irrigation legend with the manufacturer name, model number, and general description for all specified equipment, separate symbols for all irrigation equipment with different spray patterns, spray radius, and precipitation rates;
- (9) Irrigation system specifications and details for assembly and installation;
- (10) Recommended irrigation schedule for each month, including number of irrigation days per week, number of start times (cycles) per day and minutes of run time per cycle required for each irrigation event designed to avoid runoff, and estimated amount of applied irrigation water expressed in gallons per month and gallons per year, for the established landscape;
- (11) The parameters used for programming the weather-based irrigation system controller schedule for the established landscape including: soil type, slope, plant type, and type of irrigation nozzle/emitter used for each circuit;
- (12) Calculation of landscape water budget;

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- (13) Stormwater management/rainwater collection features and facilities.
- (d) Grading Plan (not required when landscaped slopes on the site are less than 10%)
 - (1) Finish grades, contours, and spot elevations;
 - (2) Grading volume (cubic yards);
 - (3) Elevations of building floors, parking lots, and streets;
 - (4) Location and height of retaining walls;
 - (5) Drainage patterns and drainage control facilities.
- (e) Specifications.
 - (1) In addition to planting, irrigation, and grading plans, any written specifications prepared for a project that are applicable to the landscape improvements shall be submitted for review.

16.16.070 Landscape Water Conservation Standards

- (a) Dedicated Landscape Water Meter
 - (1) Separate water service meters shall be required for all new landscaping, except a single family or two-unit residence, which equals or exceeds 5,000 square feet in area, and for renovated landscape sites that result in expansion of the total landscaped area equal to or more than 5,000 square feet.
 - (2) For all new nonresidential landscapes not required to have a separate water service meter, a private irrigation sub-meter shall be installed between the point of connection on the domestic water service and first irrigation valve. The submeter shall register water use in cubic feet.
- (b) Landscape Water Budget
 - (1) The landscape water budget for new landscapes shall be no more than 70 percent of reference evapotranspiration per square foot of landscaped area. The landscape water budget shall be calculated using the equation below:
$$\text{Landscape Water Budget} = (0.7) (ET_o) (0.00083) (LA), \text{ where:}$$
$$\text{Water Budget} = \text{annual upper limit of irrigation water allowed (CCF/year)}$$

0.7 = ET adjustment factor

ET_o = Reference evapotranspiration (inches per year)

0.00083 = Conversion factor to CCF

LA = Landscape area (square feet)

- (2) New landscapes that include a recreation area or are irrigated with recycled water are allowed an additional 30 percent of reference evapotranspiration per square foot for a total of 100 percent of reference evapotranspiration per square foot.
 - (3) The estimated annual water use, calculated by adding the amount of water recommended in the irrigation schedule, or by another method approved by the water agency, shall not exceed the annual landscape water budget.
 - (4) The landscape water budget assigned for a given irrigation account shall not be increased unless review of subsequent landscape plans has occurred and approval of said plans has been obtained by the land use or water agency.
- (c) Turf Limits
- (1) The combined size of turf and areas devoted to high water use plants, decorative pools, fountains, water features and swimming pools shall be limited to no more than 25 percent of the total developed landscape area. This limit does not apply to recreation areas requiring large turf areas for their primary function. However, recreation areas shall be designed to limit turf in any portion of the landscaped area not essential for the operation of the recreational facility.
 - (2) Except when required as a storm water best management practice, turf shall not be planted in the following conditions:
 - a) Planting areas less than 8 feet wide in any direction;
 - b) On slopes greater than 5 percent;
 - c) In street medians, traffic islands, planter strips, and parking lot islands.
 - (3) Turf varieties shall be water-conserving species, such as tall and hard fescues.
- (d) Landscape Design
- (1) Except for areas designated for turf or high water use plants, all plants shall be composed of very low to moderate water use plants, as identified in Water Use Classification of Landscape Species (WUCOLS Guide) or other species, including native plants that are well-adapted to the climate of the region, and require minimal water once established.

- (2) Plants having similar water requirements shall be grouped together in distinct hydrozones, and where irrigation is required, the distinct hydrozones shall be irrigated with separate valves.
 - (3) Planting of trees and the protection and preservation of existing native species and natural areas is encouraged.
 - (4) Water in decorative pools and fountains must be recirculated.
- (e) Irrigation Design
- (1) All irrigation systems shall be designed to avoid runoff, over-spray, low-head drainage and other similar conditions where water flows off-site on to adjacent property, non-irrigated area, walks, roadways, or structures.
 - (2) Areas less than eight feet wide must be irrigated with subsurface or low volume irrigation.
 - (3) Point source irrigation is required where plant height maturity will affect the uniformity of an overhead system.
 - (4) All overhead spray nozzles shall have a precipitation rate of no more than one inch per hour.
 - (5) Overhead sprinkler systems shall not be permitted within 24 inches of any non-permeable surface, including driveways and sidewalks. The setback area may be planted or unplanted. Allowable irrigation within the setback may include drip, subsurface, or other low volume, non-spray irrigation technology.
 - (6) Plants that require different amounts of water shall be irrigated using separate irrigation circuits and valves.
 - (7) Trees shall be watered using separate irrigation circuits.
 - (8) Where available, recycled water shall be used to irrigate landscapes.
- (f) Irrigation Equipment
- (1) A pressure regulator shall be installed if pressure at the water meter exceeds 80 psi.
 - (2) Weather-based or other sensor-based, self-adjusting irrigation controllers shall be required, where feasible.
 - (3) Irrigation systems shall be equipped with rain-sensing devices to prevent irrigation during rainy weather.

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- (4) Sprinkler heads shall have matched precipitation rates within each control circuit valve and shall be selected for proper coverage and precipitation rate, thereby minimizing over spray and runoff.
 - (5) Anti-drain check valves shall be installed at strategic points to minimize or prevent low-head drainage.
 - (6) Swing joints or other riser protection components are required on all risers located in high traffic areas.
 - (7) The irrigation system shall provide for the installation of a manual shut-off valve installed as close as possible to the point of connection to minimize water loss in case of an emergency or routine repair. Additional manual shut off valves shall be installed as necessary.
- (g) Soil Management, Preparation, and Mulching
- (1) Soil shall be prepared for planting by ripping and incorporating an organic amendment at the rate of six cubic yards per 1000 square feet into the top six inches, or amended with organic material as recommended by landscape architect or soil laboratory report.
 - (2) All exposed soil surfaces of non-turf areas within the developed landscape area must be mulched with a minimum three-inch layer of organic material.
 - (3) A laboratory analysis and soil management report shall be completed and submitted for review on projects where significant mass grading is planned and the recommendations incorporated into the landscape plans.
- (h) Stormwater Management
- (1) Implementing storm water best management practices to minimize runoff and increase on-site retention and infiltration is encouraged.
- (i) Alternative Water Sources
- (1) Irrigating with alternative water sources such as recycled water, graywater, or rainwater is encouraged where available onsite and permitted.

16.16.080 Alternative to Turf Limitations

The project applicant, in lieu of the requirement that the portion of the landscape devoted to turf, high water use plants, water features, and swimming pools be limited to no more than 25 percent of the total landscape area, may elect to complete the water efficient landscape equations and worksheets contained in Appendix B of the State of California Model Water Efficient Landscape Ordinance. In such cases, selected plant materials and overall landscape design shall not cause the estimated total water use to exceed the landscape water budget.

16.16.090 Final Inspection/Water Audit

The Director shall have the right to enter upon any premises to make an inspection at any time before, during, and after irrigation system and landscape installation for the purpose of enforcing this chapter.

- (a) Upon installation and completion of the landscape, the City shall make a final inspection or require a certified irrigation auditor to conduct a water audit to verify that the landscape improvements were completed in accordance with approved plans. The final inspection or water audit shall verify that:
 - (1) The installed irrigation system is in a leak-free condition.
 - (2) The installed irrigation system is functioning as designed, specified, and approved.
 - (3) The irrigation system does not cause water waste due to runoff, low head drainage, overspray or other similar condition where water flows onto adjacent property, non-irrigated areas structures, walkways, roadways or other paved areas.
 - (4) The person responsible for long-term landscape maintenance and irrigation management at the property has received the recommended irrigation schedule.
- (b) The project must pass inspection or audit before the building permit can be signed off and approved for occupancy.
- (c) Water audit required for large turf areas. Properties with turf areas over 5,000 square feet, upon completing the installation of the landscaping and irrigation system, shall be required to have an irrigation audit performed by a certified landscape irrigation auditor prior to the final field inspection.

16.16.100 Irrigation System Management and Maintenance

- (a) Maintenance. Landscape shall be maintained in good working condition and properly adjusted to ensure water efficiency. Any broken or malfunctioning equipment, including but not limited to main and lateral lines or control valves shall be repaired promptly with identical equipment to maintain the original design integrity.
- (b) Irrigation System Inspections. Irrigation system shall be inspected regularly to correct misaligned, clogged or broken heads, missing heads and risers, stuck valves, and leaks. The irrigation meter shall be read periodically to check consumption and detect any leakage.
- (c) Watering Schedule. Watering schedules shall be adjusted periodically to reflect seasonal variations in plant water requirements. Whenever possible, irrigation

management shall incorporate the use of real-time, ETo data from the California Irrigation Management Information System (CIMIS) or similar weather-based irrigation scheduling system.

- (d) Irrigation Operation. Irrigation shall be scheduled between the hours of 10:00 p.m. and 10:00 a.m. when daily temperature and wind conditions are at a minimum.

16.16.110 Provision for Existing Landscaping Over One Acre in Size

The City will assign a landscape water budget to each existing landscape with a dedicated irrigation account over one acre in size based on 70 percent of reference evapotranspiration, or 100 percent of reference evapotranspiration for recreation areas. When evaluation of these properties shows that annual water use exceeds the landscape water budget, the customer will be required to have a certified irrigation auditor perform a water audit and make recommendations as necessary to reduce water consumption consistent with the landscape water budget.

16.16.120 Exceptions

The purpose of this Chapter is to make optimum use of the water resources available to the City water department service area and to manage peak season water demands. As technology changes and more information is available regarding plant materials, irrigation equipment and techniques, and maintenance techniques that enhance water conservation, the Director may allow the substitution of well-designed conservation alternatives or innovations which equally reduce water consumption and meet the intent of this chapter.

16.16.130 Administrative Enforcement

In addition to any other remedy provided by the Santa Cruz Municipal Code, any provision of this Chapter may be enforced by an administrative order issued pursuant to any one of the administrative processes set forth in Title 4 of the Santa Cruz Municipal Code. The Water Commission shall serve as the administrative enforcement hearing officer for the purpose of considering appeals.

16.16.140 Limit of City Responsibility

The City of Santa Cruz has limited water resources that are vulnerable to shortage in drought conditions. Residential, commercial and irrigation accounts in the water department service area are therefore subject to water restrictions or mandatory rationing during a declared water shortage emergency. Compliance with this chapter does not guarantee the survival of landscape plants or the availability of water for landscape irrigation based on this chapter. Irrigation shall be scheduled according to any water shortage regulations or restrictions in effect.

SECTION 3: Severability. The provisions of this chapter are hereby declared to be severable and if any sentence, clause, section or part hereof is held to be unconstitutional, it is the intent of the City Council that such portion of such chapter be severable from the remainder, and that the remainder be given full force and effect.

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SECTION 4: This ordinance shall be in full force and take effect thirty (30) days following its final adoption. Applications for building permits submitted prior to the effective date will be subject to landscape water conservation regulations in effect at that time.”

PASSED FOR PUBLICATION this 25th day of May, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: _____
Mayor

ATTEST: _____
City Clerk

PASSED FOR FINAL ADOPTION this 8th day of June, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: _____
Mayor

ATTEST: _____
City Clerk

This is to certify that the above
and foregoing document is the
original of Ordinance No.
and that it has been published or
posted in accordance with the
Charter of the City of Santa Cruz

City Clerk



CITY COUNCIL AGENDA REPORT

DATE: 05/10/2010

AGENDA OF: 05/25/2010

DEPARTMENT: Water

SUBJECT: Water Shortage Regulations and Restrictions. (WT)

RECOMMENDATION: Introduction of an ordinance for publication repealing Ordinance No. 2009-14 and adding a new Chapter 16.01 to the Santa Cruz Municipal Code.

BACKGROUND: On April 28, 2009, Council adopted an updated water shortage ordinance and declared a Stage 2 water shortage for 2009. Prior to its adoption by Council, the Water Commission had reviewed this ordinance and requested that staff bring the ordinance back for further review after water restrictions had ended for the season.

DISCUSSION: There were two issues raised by the Water Commission that it wished to revisit:

- Whether the ordinance should be codified as part the Municipal Code, and
- Clarify exactly how the ordinance is put into effect.

The concern with having ordinance in an uncodified form was related to the ease and accessibility by which the public could review the regulations. While the ordinance was made available and accessible on the City's website, it was considered not as transparent as if it were more directly available online through the Municipal Code.

The other concern had to do with language in the ordinance that made it confusing to know if the ordinance was temporary or permanent, and under what conditions the provisions of the ordinance were in full force and effect.

Staff discussed these concerns with the City Attorney who was instrumental in drafting the ordinance and he agreed with the second concern raised by the Water Commission. As a result, a change has been made to the language clarifying when and how water shortage regulations go into effect, and, and the same time, the format has been changed so that the ordinance it can be codified as a chapter of the Municipal Code.

Now, under section 16.01.020, the ordinance reads that the provisions "shall take effect whenever the Director finds and determines that a water shortage exists or is imminent...and a declaration of a water shortage is made by a resolution of the City Council." They remain in effect only for the duration of the water shortage as set forth in the resolution. This way, the ordinance and accompanying regulations can remain on the books, but the regulations can be invoked only as water supply circumstances dictate. The benefit of using a resolution is that it

can be adopted quickly, at a single City Council meeting. It also satisfies the requirement in the California Water Code that the governing body of the water supplier make the declaration.

The only changes to the wording from the uncodified version adopted by City Council last year are contained in sections 16.01.020 and 16.01.040 regarding the declaration and duration of a water shortage. In addition, all references to the word “ordinance” have been changed to “chapter.” Otherwise, the regulations remain unchanged.

WATER COMMISSION ACTION: The Water Commission reviewed the changes at its March 1, 2010 meeting. The Commission voted unanimously to recommend that City Council adopt the revised ordinance as Chapter 16.01 of the Santa Cruz Municipal code.

FISCAL IMPACT: None at this time.

Submitted by:

Approved by:

Bill Kocher
Water Director

Richard C. Wilson
City Manager

Attachments: Ordinance

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SANTA CRUZ REPEALING ORDINANCE 2009-14 AND ADDING A NEW CHAPTER 16.01 OF THE MUNICIPAL CODE PROHIBITING AND REGULATING CERTAIN USES OF WATER FROM THE CITY WATER SUPPLY SYSTEM NOT ESSENTIAL TO THE PUBLIC HEALTH AND SAFETY FOR WATER CONSERVATION PURPOSES, PRESCRIBING PENALTIES FOR VIOLATIONS, AND ESTABLISHING A WATER SHORTAGE APPEAL BOARD

BE IT ORDAINED by the City Council of the City of Santa Cruz as follows:

SECTION 1: Ordinance 2009-14 is hereby repealed.

SECTION 2: Chapter 16.01 of the Santa Cruz Municipal Code is hereby enacted to read as follows:

“Chapter 16.01

Water Shortage Regulations and Restrictions

Sections:

- 16.01.010 Findings.
 - 16.01.020 Declaration of Water Shortage.
 - 16.01.030 Application of Regulations.
 - 16.01.040 Precedence of Regulations.
 - 16.01.050 Definitions.
 - 16.01.060 Water Waste Prohibitions.
 - 16.01.070 Stage 1: Water Shortage Alert.
 - 16.01.080 Stage 2: Water Shortage Warning.
 - 16.01.090 Stage 3: Water Shortage Emergency.
 - 16.01.100 Stage 4: Severe Water Shortage Emergency.
 - 16.01.110 Stage 5: Critical Water Shortage Emergency.
 - 16.01.120 Exceptions.
 - 16.01.130 Water Shortage Appeal Board.
 - 16.01.140 Administrative Enforcement.
 - 16.01.150 Additional Enforcement Authority.
 - 16.01.160 Severability.
- 16.01.010 FINDINGS.

WHEREAS, the City of Santa Cruz water system draws almost exclusively on local surface water sources, whose yield varies from year to year depending on the amount of rainfall received and runoff generated during the winter season; and

WHEREAS, the City water system is susceptible to water shortages in dry and critically dry years or in periods of prolonged regional drought when water conditions characterized by low surface flows in the north coast streams and San Lorenzo River sources, depleted storage in Newell Creek Reservoir, or both, reduce the available supply to a level that cannot support seasonal water demand; and

WHEREAS, on March 10, 2009, the City Council of the City of Santa Cruz adopted an updated Water Shortage Contingency Plan that describes how the City will respond to future water shortages and lists the various actions the City would take to reduce water demand under different water shortage scenarios ranging from 5 percent or less up to and including a 50 percent seasonal water supply deficiency; and

WHEREAS California Water Code sections 350 et seq. authorize water suppliers, after holding a properly noticed public hearing and after making certain findings, to declare a water shortage (emergency) and to adopt such regulations and restrictions to conserve the water supply for the greatest public benefit with particular regard for domestic use, sanitation, and fire protection; and

WHEREAS, the voluntary and mandatory water conservation measures and progressive restrictions on water use and method of use set forth herein provide an effective and immediately available means of conserving water which is essential during periods of water shortage to ensure a reliable and sustainable minimum supply of water for the public health, safety, and welfare and to preserve valuable limited reservoir storage, avoid depleting water storage to an unacceptably low level, and thereby lessen the possibility of experiencing more critical shortages if dry conditions continue or worsen; and

WHEREAS, the usage allotments hereinafter established will equitably spread the burden of restricted and prohibited usage in a manner prescribed by the City's Water Shortage Contingency Plan over all City Water Department customers and other consumers of City water; and

WHEREAS, the purposes of this chapter are to conserve the water supply of the City of Santa Cruz for the greatest public benefit, to mitigate the effects of a water supply shortage on public health and safety and economic activity, and to budget water use so that a reliable and sustainable minimum supply of water will be available for the most essential purposes for the entire duration of the water shortage.

16.01.020 DECLARATION OF WATER SHORTAGE.

The provisions of this chapter shall take effect whenever the Director, upon engineering analysis of City water supplies, finds and determines that a water shortage exists or is imminent within the City of Santa Cruz water service area and a declaration of a water shortage is made by a resolution of the City Council, and they shall remain in effect for the duration of the water shortage set forth in the resolution.

16.01.030 APPLICATION OF REGULATIONS.

The provisions of this chapter shall apply to all persons using or consuming water both inside and outside the City and within the City water service area, and regardless of whether any person using water shall have a contract for water service with the City.

16.01.040 PRECEDENCE OF REGULATIONS.

Where other provisions of the Municipal Code, whether enacted prior or subsequent to this chapter, are inconsistent with this the provisions of this chapter, the provisions of this chapter shall supersede and control for the duration of the water shortage set forth in the resolution of the City Council.

16.01.050 DEFINITIONS.

- (a) "Director" refers to the Director of the City of Santa Cruz Water Department.
- (b) "Water" refers to water produced and served by the City of Santa Cruz Water Department.
- (c) "City" refers to the City of Santa Cruz.
- (d) "Water Department" refers to the City of Santa Cruz Water Department.
- (e) "Seasonal water demand" refers to the demand, measured in gallons, placed by customers on the City water supply between April 1 and October 31 each calendar year.
- (f) "Issue"/"Declare". Whenever this chapter references the Director's issuance or declaration of an alert, warning, emergency, or regulation, said alert, warning, emergency or regulation shall be put into effect by the placement of a legal advertisement in a newspaper of general circulation, by a posting on the City's internet website and by a posting in the following public places: Santa Cruz City Hall, 809 Center Street, Santa Cruz; Santa Cruz Water Department Office, 212 Locust Street, Santa Cruz; Capitola City Hall, 420 Capitola Avenue, Capitola, and the Santa Cruz County Governmental Center, 701 Ocean Street, Santa Cruz. Any such alert, warning, emergency or regulation shall take effect upon the date of its publication in the Santa Cruz Sentinel.
- (g) "Customer" shall refer to any account customer of the City of Santa Cruz Water Department as well as to any consumer of City water who may not be City of Santa Cruz Water Department account customer.
- (h) "Dry Year" refers to the type of water year under the City's water year classification system, which begins October 1 and ends September 30, in which the total annual discharge of the San Lorenzo River at Felton measures between 29,000 and 49,000 acre-feet.
- (i) "Critically Dry Year" refers to the type of water year under the City's water year classification system, which begins October 1 and ends September 30, in which the total annual discharge of the San Lorenzo River at Felton measures less than 29,000 acre-feet.

16.01.060 WATER WASTE PROHIBITIONS.

It shall be unlawful during any water shortage stage for any person, firm, partnership, association, corporation, political entity (including the City) or any other Water Department customer to use water for any of the following:

- (a) Fire Hydrants. Use of water from any fire hydrant unless specifically authorized by permit from the City, except by regularly constituted fire protection agencies for fire suppression purposes, or for other authorized uses, including distribution system flushing, fire flow testing, and filling of approved vehicles for sewer system flushing, storm drain maintenance, and street sweeping purposes.
- (b) Watering/Irrigation. The watering of grass, lawn, groundcover, shrubbery, open ground, crops and trees, including agricultural irrigation, in a manner or to an extent that causes

or allows excessive water flow or runoff onto an adjoining sidewalk, driveway, street, gutter or ditch.

(c) Plumbing Leaks. The escape of water through leaks, breaks, or other malfunctions within the water user's plumbing or distribution system for any period of time after such break or leak should have reasonably been discovered and corrected. It shall be presumed that a period of twenty-four hours after the water user discovers such break, leak or malfunction, or receives notice from the City of such condition, whichever occurs first, is a reasonable time within which to correct such condition or to make arrangements for correction.

(d) Washing of Exterior Surfaces. The washing of sidewalks, walkways, driveways, parking lots, patios, or other exterior surfaces unless the hose is equipped with an automatic shutoff nozzle.

(e) Cleaning of Structures and Vehicles. The cleaning of building exteriors, mobile homes, cars, boats, and recreational vehicles unless the hose is equipped with an automatic shutoff nozzle.

(f) Fountains and Decorative Water Features. The operation of a water fountain or other decorative water feature that does not use re-circulated water.

(g) Commercial Car Washes. The washing of vehicles at a commercial car wash unless the facility utilizes water recycling equipment, or operates on a timer for a limited time period and shuts off automatically at the expiration of the time period.

(h) Construction. The use of potable water for dust control or soil compaction purposes in construction activities where there is a reasonably available source of reclaimed water appropriate for such use.

(i) The indiscriminate running of water or washing with water not otherwise prohibited in this section, which is wasteful, and without reasonable purpose.

16.01.070 STAGE 1: WATER SHORTAGE ALERT.

(a) The Director is empowered to issue a Water Shortage Alert and to enforce the water shortage restrictions in this Section upon finding that the magnitude of an anticipated water shortage, per the criteria delineated in the City's adopted Water Shortage Contingency Plan, will be five percent (5%) and a minimal consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water supply conditions. In a Stage 1 water shortage, the City will enforce the following water shortage restrictions with the objective of realizing a seasonal water demand reduction of 125 million gallons or an average daily water demand reduction of 600,000 gallons.

(b) During Stage 1, it shall be unlawful for any person, firm, partnership, association, corporation, political entity (including the City) or any other Water Department customer:

1. to water or irrigate lawn, landscape, or other vegetated area between the hours of 10:00 a.m. and 5:00 p.m., except when performed with a bucket or watering can, or by use of a drip irrigation system or similar low-volume, non-spray irrigation equipment, or for very short periods of time for the express purpose of allowing landscape contractors to adjust or repair an irrigation system;

2. to use a hose that is not equipped with a shut off nozzle;

3. to use potable water to wash down hard or paved surfaces, including but not limited to sidewalks, walkways, driveways, parking lots, tennis courts, patios, or other paved surfaces, except when it is necessary to alleviate safety or sanitation hazards or to prepare paved surfaces for sealing;

4. to initially fill or to drain and refill residential swimming pools;
5. to serve water in a restaurant or other commercial food service establishment except upon the request of a patron; and/or
6. to operate a hotel, motel or other commercial lodging establishment without offering patrons the option to forego the daily laundering of towels, sheets and linens.

16.01.080 STAGE 2: WATER SHORTAGE WARNING.

(a) The Director is empowered to issue a Water Shortage Warning and to enforce the water shortage restrictions in this Section upon finding that the magnitude of an anticipated water shortage, per the criteria delineated in the City's adopted Water Shortage Contingency Plan, will be between five percent (5%) and fifteen percent (15%) and a moderate consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water supply conditions. In a Stage 2 water shortage, the City will enforce the following water shortage restrictions with the objective of realizing a seasonal water demand reduction of up to 375 million gallons and an average daily water demand reduction of up to 1.8 million gallons.

(b) During Stage 2, it shall be unlawful for any person, firm, partnership, association, corporation, political body (including the City) or other Water Department customer:

1. to water or irrigate lawn, landscape, or other vegetated area between the hours of 10:00 a.m. and 5:00 p.m., except when performed with a bucket or watering can, or by use of a drip irrigation system or similar low-volume, non-spray irrigation equipment, or for very short periods of time for the express purpose of allowing landscape contractors to adjust or repair an irrigation system;
2. to use a hose that is not equipped with a shut off nozzle;
3. to use potable water to wash down hard or paved surfaces, including but not limited to sidewalks, walkways, driveways, parking lots, tennis courts, patios, or other paved surfaces, except when it is necessary to alleviate safety or sanitation hazards or to prepare paved surfaces for sealing;
4. to initially fill or to drain and refill residential swimming pools;
5. to serve water in a restaurant or other commercial food service establishment except upon the request of a patron;
6. to operate a hotel, motel or other commercial lodging establishment without offering patrons the option to forego the daily laundering of towels, sheets and linens;
7. to water or irrigate lawn, landscape, or other vegetated area on days of the week other than the two days of the week authorized and publicized by the Director, except when performed with a bucket or watering can, or by use of a drip irrigation system or similar low-volume, non-spray irrigation equipment, or for very short periods of time for the express purpose of allowing landscape contractors to adjust or repair an irrigation system. Hourly restrictions set forth in subsection (1) above continue to apply on authorized watering days. This provision shall not apply to commercial growers/nurseries or to residential vegetable gardens/edible plantings watered with a hose equipped with a shut off nozzle;
8. to water or irrigate lawn, landscape, or other vegetated area using an automatic irrigation system for more than fifteen minutes per watering station per assigned day. This provision shall not apply to automatic irrigation systems exclusively using low output sprinkler equipment, including rotors, stream rotors, or micro-spray systems;
9. to wash the exterior of dwellings, buildings or structures (with the exception of window washing and preparation of property for painting or for sale);

10. to irrigate or water landscapes in a manner that conflicts with a customer's landscape irrigation water budget when such a budget is required by the Director per the criteria delineated in the City's adopted Water Shortage Contingency Plan; and/or

11. to disobey Water Department direction to large commercial, industrial or irrigation customers using 1,337 or more billing units (one million gallons) per year to conduct water use audits, to prepare water conservation plans and to submit progress reports, or to immediately repair water system leaks, including leaks attributable to faulty pipes or fixtures.

16.01.090 STAGE 3: WATER SHORTAGE EMERGENCY.

(a) The Director is empowered to declare a Water Shortage Emergency and to enforce the water shortage restrictions in this Section upon finding that the magnitude of an anticipated water shortage, per the criteria delineated in the City's adopted Water Shortage Contingency Plan, will be between fifteen percent (15%) and twenty five percent (25%) and a significant consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water supply conditions. In a Stage 3 water shortage, the City will enforce the following water shortage restrictions with the objective of realizing a seasonal water demand reduction of up to 625 million gallons and an average daily water demand reduction of up to 3.0 million gallons.

(b) During Stage 3, it shall be unlawful for any person, firm, partnership, association, corporation, political body (including the City) or other Water Department customer:

1. to water or irrigate lawn, landscape, or other vegetated area between the hours of 10:00 a.m. and 5:00 p.m., except when performed with a bucket or watering can, or by use of a drip irrigation system or similar low-volume, non-spray irrigation equipment, or for very short periods of time for the express purpose of allowing landscape contractors to adjust or repair an irrigation system;

2. to use a hose that is not equipped with a shut off nozzle;

3. to use potable water to wash down hard or paved surfaces, including but not limited to sidewalks, walkways, driveways, parking lots, tennis courts, patios, or other paved surfaces, except when it is necessary to alleviate safety or sanitation hazards or to prepare paved surfaces for sealing;

4. to initially fill or to drain and refill any swimming pools, outdoor spas, wading pools, and ornamental water features;

5. to serve water in a restaurant or other commercial food service establishment except upon the request of a patron;

6. to operate a hotel, motel or other commercial lodging establishment without offering patrons the option to forego the daily laundering of towels, sheets and linens;

7. to water or irrigate lawn, landscape, or other vegetated area on days of the week other than the specified day(s) of the week authorized and publicized by the Director, except when performed with a bucket or watering can, or by use of a drip irrigation system or similar low-volume, non-spray irrigation equipment, or for very short periods of time for the express purpose of allowing landscape contractors to adjust or repair an irrigation system. Hourly restrictions set forth in subsection (1) above continue to apply on authorized watering days. This provision shall not apply to commercial growers/nurseries or to residential vegetable gardens/edible plantings watered with a hose equipped with a shut off nozzle;

8. to water or irrigate lawn, landscape, or other vegetated area using an automatic irrigation system for more than ten minutes per watering station per assigned day. This

provision shall not apply to automatic irrigation systems exclusively using low output sprinkler equipment, including rotors, stream rotors, or micro-spray systems;

9. to wash the exterior of dwellings, buildings or structures (with the exception of window washing and preparation of property for painting or for sale);

10. to irrigate or water landscapes in a manner that conflicts with a customer's landscape irrigation water budget when such a budget is required by the Director per the criteria delineated in the City's adopted Water Shortage Contingency Plan; and/or

11. to disobey Water Department direction to large commercial, industrial or irrigation customers using 1,337 or more billing units (one million gallons) per year to conduct water use audits, to prepare water conservation plans and to submit progress reports, or to immediately repair water system leaks, including leaks attributable to faulty pipes or fixtures;

12. to violate residential customer water rationing regulations, including regulations intended to preclude excessive water usage and specifying maximum water usage limitations, issued by the Director in accordance with guidelines set forth in the City's adopted Water Shortage Contingency Plan; and/or

13. to disobey Water Department directives issued to commercial customers requiring the prominent placement of "Save Water" signage at specified locations at the customer's premises.

16.01.100 STAGE 4: SEVERE WATER SHORTAGE EMERGENCY.

(a) The Director is empowered to declare a Severe Water Shortage Emergency and to enforce the water shortage restrictions in this Section upon finding that the magnitude of an anticipated water shortage, per the criteria delineated in the City's adopted Water Shortage Contingency Plan, will be between twenty five percent (25%) and thirty five percent (35%) and an extraordinary consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water supply conditions. In a Stage 4 water shortage, the City will enforce the following water shortage restrictions with the objective of realizing a seasonal water demand reduction of up to 875 million gallons and an average daily water demand reduction of up to 4.2 million gallons.

(b) During Stage 4, it shall be unlawful for any person, firm, partnership, association, corporation, political body (including the City) or other Water Department customer:

1. to water or irrigate landscape or other vegetated area between the hours of 10:00 a.m. and 5:00 p.m., except when performed with a bucket or watering can, or by use of a drip irrigation system or similar low-volume, non-spray irrigation equipment, or for very short periods of time for the express purpose of allowing landscape contractors to adjust or repair an irrigation system;

2. to use a hose that is not equipped with a shut off nozzle;

3. to use potable water to wash down hard or paved surfaces, including but not limited to sidewalks, walkways, driveways, parking lots, tennis courts, patios, or other paved surfaces, except when it is necessary to alleviate safety or sanitation hazards or to prepare paved surfaces for sealing;

4. to fill or to top off any swimming pools, outdoor spas, wading pools, and ornamental water features;

5. to serve water in a restaurant or other commercial food service establishment except upon the request of a patron;

6. to operate a hotel, motel or other commercial lodging establishment without offering patrons the option to forego the daily laundering of towels, sheets and linens;

7. to water or irrigate landscape or other vegetated area on days of the week other than the specified day(s) of the week authorized and publicized by the Director, except when performed with a bucket or watering can, or by use of a drip irrigation system or similar low-volume, non-spray irrigation equipment, or for very short periods of time for the express purpose of allowing landscape contractors to adjust or repair an irrigation system. Hourly restrictions set forth in subsection (1) above continue to apply on authorized watering days. This provision shall not apply to commercial growers/nurseries or to residential vegetable gardens/edible plantings watered with a hose equipped with a shut off nozzle;

8. to water landscapes using automatic irrigation systems for more than ten minutes per watering station per assigned day. This provision does not apply to automatic irrigation systems using water efficient devices, including but not limited to weather-based controllers, drip/micro-irrigation systems and stream rotor sprinklers.

9. to wash the exterior of dwellings, buildings or structures (with the exception of window washing and preparation of property for painting or for sale);

10. to irrigate or water landscapes in a manner that conflicts with a customer's landscape irrigation water budget when such a budget is required by the Director per the criteria delineated in the City's adopted Water Shortage Contingency Plan; and/or

11. to disobey Water Department direction to large commercial, industrial or irrigation customers using 1,337 or more billing units (one million gallons) per year to conduct water use audits, to prepare water conservation plans and to submit progress reports, or to immediately repair water system leaks, including leaks attributable to faulty pipes or fixtures;

12. to violate residential customer water rationing regulations, including regulations intended to preclude excessive water usage and specifying maximum water usage limitations, issued by the Director in accordance with guidelines set forth in the City's adopted Water Shortage Contingency Plan;

13. to disobey Water Department directives issued to commercial customers requiring the prominent placement of "Save Water" signage at specified locations at the customer's premises;

14. to violate commercial customer water rationing regulations, including regulations intended to preclude excessive water usage and specifying maximum water usage limitations, issued by the Director in accordance with guidelines set forth in the City's adopted Water Shortage Contingency Plan;

15. to disobey a Water Department order to customers identified as "dedicated irrigation accounts" directing those customers to further limit their landscape irrigation and watering activity so as to preserve only the customers' most valuable trees and plants;

16. to water lawns or turf, unless such watering is authorized by the Director in accordance with a landscape irrigation water budget and is consistent with the guidelines set forth in the City's adopted Water Shortage Contingency Plan;

17. to install new landscaping which requires any irrigation or watering;

18. to wash or clean vehicles, including but not limited to automobile, truck, van, bus, motorcycle, boat, or trailer including the washing of fleet vehicles and the washing of vehicles on dealer lots. This restriction will not apply to commercial car wash businesses which use recycled water; and/or

19. to exercise any rights conferred by hydrant and bulk water permits that were issued prior to the Severe Water Shortage Emergency declaration absent special permission

granted by the Director. Said special permission may be granted only for projects necessary to protect the public health, safety and welfare where no alternative to potable water exists and for emergency response purposes.

16.01.110 STAGE 5: CRITICAL WATER SHORTAGE EMERGENCY.

(a) The Director is empowered to declare a Critical Water Shortage Emergency and to enforce the water shortage restrictions in this Section upon finding that the magnitude of an anticipated water shortage, per the criteria delineated in the City's adopted Water Shortage Contingency Plan, shall be between thirty five percent (35%) and fifty percent (50%) and an extreme consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water supply conditions. In a Stage 5 water shortage, the City will enforce the following water shortage restrictions with the objective of realizing a seasonal water demand reduction of up to 1,250 million gallons and an average daily water demand reduction of up to 6.0 million gallons.

(b) During Stage 5, it is unlawful for any person, firm, partnership, association, corporation, political body (including the City) or other Water Department customer:

1. to water or irrigate any outdoor landscaping, unless such watering is authorized by the Director and is consistent with the guidelines set forth in the City's adopted Water Shortage Contingency Plan;
2. to use a hose that is not equipped with a shut off nozzle;
3. to use water for any outdoor washing purpose including commercial car washing, window washing, and paint preparation;
4. to fill or to top off any swimming pools, outdoor spas, wading pools, and ornamental water features;
5. to serve water in a restaurant or other commercial food service establishment except upon the request of a patron;
6. to operate a hotel, motel or other commercial lodging establishment without offering patrons the option to forego the daily laundering of towels, sheets and linens;
7. to use water for recreational purposes;
8. to operate public swimming pools;
9. to operate public showers;
10. to disobey Water Department direction to large commercial, industrial or irrigation customers using 1,337 or more billing units (one million gallons) per year to conduct water use audits, to prepare water conservation plans and to submit progress reports, or to immediately repair water system leaks, including leaks attributable to faulty pipes or fixtures;
11. to violate residential customer water rationing regulations, including regulations intended to preclude excessive water usage and specifying maximum water usage limitations, issued by the Director in accordance with guidelines set forth in the City's adopted Water Shortage Contingency Plan;
12. to violate commercial customer water rationing regulations, including regulations intended to preclude excessive water usage and specifying maximum water usage limitations, issued by the Director in accordance with guidelines set forth in the City's December 2008 Water Shortage Contingency Plan;
13. to disobey Water Department directives issued to commercial customers requiring the prominent placement of "Save Water" signage at specified locations at the customer's premises;

14. to install new landscaping which requires any irrigation or watering;
and/or

15. to exercise any rights conferred by hydrant and bulk water permits that were issued prior to the Critical Water Shortage Emergency declaration absent special permission granted by the Director. Said special permission may be granted only for projects necessary to protect the public health, safety and welfare where no alternative to potable water exists and for emergency response purposes.

16.01.120 EXCEPTIONS.

(a) The Director, upon application made in writing by a customer on a form promulgated by the Water Department and accompanied by supporting documentation, shall be authorized to issue an exception from the strict application of any restriction, regulation or prohibition enforced pursuant to this chapter, upon the customer's production of substantial evidence demonstrating the existence of one or more of the following circumstances that are particular to that customer and which are not generally shared by other Water Department customers:

1. Failure to approve the requested exception would cause a condition having an adverse effect on the health, sanitation, fire protection, or safety of the customer or members of the public served by the customer;

2. Strict application of the subject restriction, regulation or prohibition would impose a severe or undue hardship on a particular business customer or render it infeasible for a particular business customer or class of business customers to remain in operation;

3. Alternative restrictions to which the customer is willing to adhere are available that would achieve the same level of demand reduction as the restriction for which an exception is being sought and such alternative restrictions are enforceable by the Water Department;

4. Circumstances concerning the customer's property or business have changed since the implementation of the subject restriction warranting a change in the customer's water usage allocation; or

5. A hospital or health care facility customer using industry best management practices is eligible for an exception upon demonstrating that the subject restriction, regulation or prohibition is interfering with or preventing it from providing health care service to its customers in accordance with industry hygiene, sanitation and health care standards.

6. A business customer has already implemented environmental sustainability measures that have reduced water consumption to the maximum extent feasible. As used in this subsection the term "environmental sustainability measures" refers to installation of high efficiency plumbing fixtures, devices, equipment, and appliances, recycled water systems, and landscaping consisting exclusively of low water using plant materials using drip or similar high efficiency, non-spray irrigation systems, or to buildings that are designed, built, and continuously operated according to Leadership in Energy and Environmental Design (LEED) certification standards.

(b) In order to qualify for an exception, a customer must first complete a self water audit pursuant to standards and procedures promulgated by the Water Department. This audit shall be made part of the customer's exception application and water conservation measures indicated by the audit may be incorporated as conditions of approval to an exception in addition

to any other conditions of approval imposed by the Director in connection with the Director's approval of the customer's exception application.

16.01.130 WATER SHORTAGE APPEAL BOARD.

(a) A Water Shortage Appeal Board is hereby established and shall be eligible to convene upon the Director's issuance of any water shortage declaration and the implementation of water shortage restrictions pursuant to Sections 16.010.070 through 16.01.110. Thereafter the Water Shortage Appeal Board will remain available to convene for as long as the water shortage remains in effect.

(b) Under water shortage Stages 1 and 2, the Water Shortage Appeal Board will be comprised of members of the City Water Commission. Under water shortage Stages 3, 4, and 5, the Water Shortage Appeal Board will be appointed by City Council and will be comprised of one member of the Water Commission, one business customer, one landscape industry customer, one residential customer, and two at-large members who reside within the City's water service area.

(c) Any customer who considers an action taken by the Director or an enforcement official under the provisions of this chapter, including actions on exception applications and the assessment of administrative penalties, to have been erroneously taken or issued, may appeal that action or penalty to the Water Shortage Appeal Board in the following manner:

1. The appeal shall be made in writing, shall state the nature of the appeal specifying the action or penalty that is being appealed and the basis upon which the action or penalty is alleged to be in error. Penalty appeals shall include a copy of the Notice of Violation;

2. An appeal, to be effective, must be received by the Director not later than ten (10) business days following the date of the Notice of Violation or the date that the Director took the action which is the subject to the appeal;

(A) A water service resident who is not an account customer may notify the Water Department of his or her intention to file a petition to force the resident's account customer to appeal an excess water use penalty within ten (10) business days following the penalty;

(B) If the Water Department has been given a notice of intention to file a petition per subsection 2(A) by a water service area resident who is not an account customer, the appeal from the account customer must be received within fifteen (15) business days after the account customer has been petitioned by the resident.

3. The Director shall schedule the appeal for consideration by the Water Shortage Appeal Board at a Water Shortage Appeal Board meeting. The Water Shortage Appeal Board shall hear the appeal within 90 days of the date of the appeal and issue its decision within 30 days of the date of the hearing.

4. The decision of the Water Shortage Appeal Board shall be final. In ruling on appeals, the Water Shortage Appeal Board shall strictly apply the provisions of this chapter, and shall not impose or grant terms and conditions not authorized by this chapter.

(d) The Chair of the Water Shortage Appeal Board shall have the discretion to divide the Board into two-three member hearing panels. Each hearing panel shall have the same authority to hear and rule upon appeals as the entire Water Shortage Appeal Board. A hearing panel shall have no more than one at-large appointee as a member. The decision of any hearing panel shall be final.

16.01.140 ADMINISTRATIVE ENFORCEMENT.

(a) Any person firm, partnership, association, corporation, political entity or other Water Department customer violating any provision of this chapter may be assessed an administrative penalty.

(b) Each and every day a violation of this chapter exists constitutes a separate and distinct offense for which an administrative penalty may be assessed.

(c) Penalties. The purpose of the administrative penalties assessed pursuant to this Section is to assure future chapter compliance by the cited customer through the imposition of increasingly significant penalties so as to create a meaningful disincentive to commit future chapter violations. In acknowledgment of the fact that the City's water is a scarce and irreplaceable commodity and that this chapter is intended to equitably distribute that commodity among Water Department customers and to assure that, to the extent feasible, City water is conserved and used only for purposes deemed necessary for public health and safety, the penalty schedule herein prescribed is not to be construed as creating a "water pricing" structure pursuant to which customers may elect to pay for additional water at significantly higher rates. To this end, a customer's repeated violation of the chapter shall result in either the installation of a flow restriction device or disconnection of the customer's property from the City's water service system at the customer's cost.

(d) Administrative penalties for failure to comply with water waste prohibitions requirements in Section 16.01.060 or mandatory water use restrictions and regulations commencing with Stage 1 in Section 6 are as follows:

1. First Offense: Written notice of violation and opportunity to correct violation.
2. Second Offense: A second violation within the preceding twelve (12) calendar months is punishable by a fine not to exceed one hundred dollars (\$100).
3. Third Offense: A third violation within the preceding twelve (12) calendar months is punishable by a fine not to exceed two hundred fifty dollars (\$250).
4. Fourth Offense: A fourth violation within the preceding twelve (12) calendar months is punishable by a fine not to exceed five hundred dollars (\$500). In addition to any fines, the Director may order a water flow restrictor device be installed.
5. Large customers. Administrative penalties for customers that use an average of 1,337 billing units (one million gallons) or more per calendar year shall be triple the amounts listed above.
6. Discontinuing Service. In addition to any fines and the installation of a water flow restrictor, the Director may disconnect a customer's water service for willful violations of mandatory restrictions and regulations in this chapter. Upon disconnection of water service, a written notice shall be served upon the customer which shall state the time, place, and general description of the prohibited or restricted activity and the method by which reconnection can be made.

(e) Excessive Water Use Penalties. An excessive use penalty shall be assessed where the customer, during any given billing cycle, uses more than the customer's water allotment per the Director's water rationing regulations issued pursuant to this chapter commencing with Stage 3 in Section 16.01.090. Excess use penalties shall be in addition to ordinary water consumption charges, as follows:

1. 1% to 10% over customer rationing allotment: \$25.00/CCF
2. More than 10% over customer rationing allotment: \$50.00/CCF

3. In addition to any excess use penalties, the Director may order a water flow restrictor device be installed and/or may disconnect a customer's water service for willful violations of the water rationing regulations in this chapter. Upon disconnection of water service, a written notice shall be served upon the customer which shall state the time, place, and general description the prohibited or restricted activity and the method by which reconnection can be made.

(f) Cost of Flow Restrictor and Disconnecting Service: A person or entity that violates this chapter is responsible for payment of charges for installing and/or removing any flow restricting device and for disconnecting and/or reconnecting service in accordance with the City's Miscellaneous Water Service Fee Resolution then in effect. The charge for installing and/or removing any flow restricting device must be paid before the device is removed. Nonpayment will be subject to the same remedies as nonpayment of basic water rates.

(g) Notice and Hearing. The Director will issue a Notice of Violation by mail or personal delivery at least ten (10) business days before taking any enforcement action described in subsection 13D. Such notice must describe the violation and the date by which corrective action must be taken. A customer may appeal the Notice of Violation by filing a written notice of appeal with the City no later than the close of business day before the date scheduled for enforcement action accompanied by a \$25 appeal fee. Any Notice of Violation not timely appealed will be final. Upon receipt of a timely appeal, a hearing on the appeal will be scheduled, and the City will mail written notice of the hearing date to the customer at least ten (10) days before the date of the hearing. Pending receipt of a written appeal or pending a hearing pursuant to an appeal, the Director may take appropriate steps to prevent the unauthorized use of water as appropriate to the nature and extent of the violation and the current declared water shortage condition.

16.01.150 ADDITIONAL ENFORCEMENT AUTHORITY.

In addition to the remedies referenced above, the Director is empowered to pursue any additional remedies necessary, including criminal, civil and administrative remedies listed in Title 4 of the Santa Cruz Municipal Code, to correct a violation of this chapter.

16.01.160 SEVERABILITY.

If any portion of this chapter is held to be unconstitutional, it is the intent of the City Council that such portion of the chapter be severable from the remainder and that the remainder be given full force and effect.”

SECTION 3: This ordinance shall take effect 30 days after final adoption.

ORDINANCE NO. 2010 -

PASSED FOR PUBLICATION this 25th day of May, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: _____
Mayor

ATTEST: _____
City Clerk

PASSED FOR FINAL ADOPTION on this 8th day of June, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: _____
Mayor

ATTEST: _____
City Clerk

This is to certify that the above and foregoing document is the original of Ordinance No. 2009-14 and that it has been published or posted in accordance with the Charter of the City of Santa Cruz.

City Clerk



City Council Meeting Calendar May 20, 2010

Date	Time	Location	Topic
June 7, 2010 and June 9, 2010 (if necessary)	8:30 a.m. – 5:00 p.m. 1:00 p.m. – 5:00 p.m.	Council Chambers	Special Meeting – Budget Hearings
June 8, 2010	1:30 p.m. 3:00 p.m. and 7:00 p.m.	Courtyard Conf. Room Council Chambers	Regular Council/Agency Closed Session Regular Council/Redevelopment Agency Open Sessions
June 22, 2010	1:30 p.m. 3:00 p.m. and 7:00 p.m.	Courtyard Conf. Room Council Chambers	Regular Council/Agency Closed Session Regular Council/Redevelopment Agency Open Sessions
July 13, 2010	1:30 p.m. 3:00 p.m. and 7:00 p.m.	Courtyard Conf. Room Council Chambers	Regular Council/Agency Closed Session Regular Council/Redevelopment Agency Open Sessions
July 27, 2010	1:30 p.m. 3:00 p.m. and 7:00 p.m.	Courtyard Conf. Room Council Chambers	Regular Council/Agency Closed Session Regular Council/Redevelopment Agency Open Sessions
August Break – No Council Meetings			
September 14, 2010	1:30 p.m. 3:00 p.m. and 7:00 p.m.	Courtyard Conf. Room Council Chambers	Regular Council/Agency Closed Session Regular Council/Redevelopment Agency Open Sessions
September 28, 2010	1:30 p.m. 3:00 p.m. and 7:00 p.m.	Courtyard Conf. Room Council Chambers	Regular Council/Agency Closed Session Regular Council/Redevelopment Agency Open Sessions
October 12, 2010	1:30 p.m. 3:00 p.m. and 7:00 p.m.	Courtyard Conf. Room Council Chambers	Regular Council/Agency Closed Session Regular Council/Redevelopment Agency Open Sessions
October 26, 2010	1:30 p.m. 3:00 p.m. and 7:00 p.m.	Courtyard Conf. Room Council Chambers	Regular Council/Agency Closed Session Regular Council/Redevelopment Agency Open Sessions
November 9, 2010	1:30 p.m. 3:00 p.m. and 7:00 p.m.	Courtyard Conf. Room Council Chambers	Regular Council/Agency Closed Session Regular Council/Redevelopment Agency Open Sessions

Council Membership in City Groups and Outside Agencies

Councilmembers will have the opportunity to present oral updates to Council and the public. Councilmembers may provide direction, request additional information or that a topic raised be agendized for future Council action. The Presiding Officer may request oral updates from Council ad hoc Committees.

The Presiding Officer will ask representatives of each entity if there is any oral update.

Name of Agency/Organization	Currently Serving
Association of Monterey Bay Area Governments (AMBAG)	L. Robinson, T. Madrigal (alternate)
City of Santa Cruz/Soquel Creek Water District (SqCWD) Desalination Project	D. Lane, M. Rotkin, R. Coonerty (Alt.)
City Schools Committee (Ad Hoc)	C. Mathews, T. Madrigal, R. Coonerty
Community Action Board	T. Madrigal, David Sweet (alternate)
Conference and Visitors' Council	C. Mathews, L. Robinson
Cultural Council Board City Representative	K. Beiers
Downtown Management Corporation	C. Mathews, L. Robinson
Economic Development Council (Mayor/Vice Mayor)	R. Coonerty, D. Lane, C. Mathews
Library Joint Powers Authority Board	K. Beiers, M. Rotkin, C. Mathews (alt.)
Library Financing Authority	M. Rotkin
Local Agency Formation Commission (LAFCO)	D. Lane
Monterey Bay Unified Air Pollution Control District	2010 City of Watsonville
Public Safety Committee	D. Lane, M. Rotkin, L. Robinson
Sanctuary Inter-Agency Task Force	K. Beiers, C. Mathews
Santa Cruz County Children's Network	D. Shoemaker, C. Scurich (alt.)
Santa Cruz Community Farmers Market, Inc.	L. Robinson
SC County Integrated Waste Management Local Task Force	M. Rotkin, Alan Schlenger (alternate) Bob Nelson, Mary Arman (alternate)
Santa Cruz Metropolitan Transit District Board	M. Rotkin, L. Robinson
SC County Regional Transportation Commission (SCCRTC)	D. Lane, L. Robinson (alternate)
Social Services Program Committee	R. Coonerty, C. Mathews, L. Robinson

Public comment on the reports given will be heard at a time to be determined by the Presiding Officer.