



**AGENDA COVER**  
Regular Joint Meeting of the  
**CAPITOLA CITY COUNCIL/  
REDEVELOPMENT AGENCY**  
MEETING DATE: THURSDAY, FEBRUARY 10, 2011

CITY COUNCIL CHAMBERS: 420 CAPITOLA AVENUE, CAPITOLA

**CLOSED SESSION**

**5:30 P.M.**

**JOINT CITY COUNCIL/REDEVELOPMENT AGENCY REGULAR MEETING**

**7:00 P.M.**

*Elected Officials*

*Dennis Norton, Mayor  
Michael Termini, Vice Mayor  
Stephanie Harlan, Council Member  
Kirby Nicol, Council Member  
Sam Storey, Council Member*

*Jacques Bertrand, City Treasurer*

*City Staff Members*

*Jamie Goldstein, City Manager  
John G. Barisone, City Attorney  
Pamela Greeninger, City Clerk  
Mike Card, Chief of Police  
Derek Johnson,  
Community Development Director  
Steven Jesberg, Public Works Director*

**Notice regarding City Council Meetings:** The City Council meets regularly on the 2nd and 4th Thursday of each month immediately following the Redevelopment Agency Meeting, at approximately 7:00 p.m., in the City Hall Council Chambers located at 420 Capitola Avenue, Capitola.

**Notice regarding Redevelopment Agency Meetings:** Redevelopment Agency meetings are held on the 2nd and 4th Thursday of each month commencing between 6 p.m. and 7 p.m. The exact time of commencement will be determined by the Executive Director (based upon his/her estimate of time required) and shall be set forth in the notice of meeting posted at the place of meeting in accordance with Govt. Code §54954.2(a). Exceptions are the 2<sup>nd</sup> meeting in November is held on the 4<sup>th</sup> Tuesday, and in December when there is only one regular meeting on the 2<sup>nd</sup> Thursday of the month.

**Agenda and Agenda Packet Materials:** The City Council/Redevelopment Agency Agenda and the complete Agenda Packet are available on the Internet at the City's website: [www.ci.capitola.ca.us](http://www.ci.capitola.ca.us). Agendas are also available at the Capitola Post Office located at 826 Bay Avenue, Capitola.

**Agenda Document Review:** The complete agenda packet is available at City Hall and at the Capitola Branch Library, 2005 Wharf Road, Capitola, on the Monday prior to the Thursday meeting. Need more information? Contact the City Clerk's office at 831-475-7300.

**Agenda Materials Distributed after Distribution of the Agenda Packet:** Pursuant to Government Code §54957.5, materials related to an agenda item submitted after distribution of the agenda packet are available for public inspection at the Reception Office at City Hall, 420 Capitola Avenue, Capitola, California, during normal business hours.

**Americans with Disabilities Act:** Disability-related aids or services are available to enable persons with a disability to participate in this meeting consistent with the Federal Americans with Disabilities Act of 1990. Assisted listening devices are available for individuals with hearing impairments at the meeting in the City Council Chambers. Should you require special accommodations to participate in the meeting due to a disability, please contact the City Clerk's office at least 24-hours in advance of the meeting at (831) 475-7300. In an effort to accommodate individuals with environmental sensitivities, attendees are requested to refrain from wearing perfumes and other scented products.

**Televised Meetings:** City Council/Redevelopment Agency meetings are cablecast "Live" on Charter Communications Cable TV Channel 8 and are recorded to be replayed at 12:00 Noon on the Saturday following the meetings on Community Television of Santa Cruz County (Charter Channel 71 and Comcast Channel 25). Meetings can also be viewed from the City's website: [www.ci.capitola.ca.us](http://www.ci.capitola.ca.us).



# AGENDA

## Regular Joint Meeting of the CAPITOLA CITY COUNCIL/REDEVELOPMENT AGENCY Thursday, February 10, 2011

### **5:30 P.M - CLOSED SESSION - CITY MANAGER'S OFFICE**

An announcement regarding the items to be discussed in Closed Session will be made in the City Hall Council Chambers prior to the Closed Session. Members of the public may, at this time, address the City Council/Redevelopment Agency Directors on closed session items only.

#### **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Govt. Code §54956.9a)**

Talbert vs. City of Capitola, et al [U.S. District Court Case No. C 10-03113 JW (N.D. Cal.)]

Surf and Sand, LLC vs. City of Capitola, et al (Surf & Sand Mobile Home Park) [Superior Court of the State of California for County of Santa Cruz, Case #CV 167716]

Surf and Sand, LLC vs. City of Capitola, et al (Surf & Sand Mobile Home Park) [U.S. District Court N.D., Case No. C09-05542 RS (Judge Richard Seeborg)]

Los Altos/El Granada Investors vs. City of Capitola, et al (Castle Mobile Estates) [U.S. District Court N.D., Case No. CV 04-05138 JF (Judge Jeremy Fogel)]

Vieira Enterprises, Inc. vs. City of Capitola (Cabrillo Mobile Estates)

City of Capitola vs. Soquel Union Elementary School District  
Santa Cruz Superior Court Case #167649

#### **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to subdivision (b) of Government Code §54956.9:  
One Case: Vieira Enterprises, Inc. vs. City of Capitola (Cabrillo Mobile Estates)

*The City is in receipt of a December 30, 2010, Fair Return rent increase application for Cabrillo Mobilehome Park, which claims that if it is not granted in its entirety, the City will be liable for the unconstitutional taking of Mr. Vieira's property and further claims that the City's past enforcement of its rent control ordinance has already functioned to effect such a taking.*

**REGULAR JOINT MEETING  
OF THE CAPITOLA CITY COUNCIL/REDEVELOPMENT AGENCY**

**ROLL CALL AND PLEDGE OF ALLEGIANCE**

Council Members/Directors Harlan, Termini, Nicol, Storey,  
and Mayor/Chairperson Norton

**\* \* \* PRESENTATIONS \* \* \***

Presentation by Julie Boudreau, Education and Outreach Coordinator  
for Hospice of Santa Cruz County

Presentation by Carrie Stevens, Program Manager  
for Big Brothers Big Sisters

**1. REPORT ON CLOSED SESSION**

**2. ORAL COMMUNICATIONS**

A. Additions and Deletions to Agenda

B. Public Comments

*Oral Communications allows time for members of the Public to address the City Council/Redevelopment Agency on any item not on the Agenda. Presentations will be limited to three minutes per speaker. Individuals may not speak more than once during Oral Communications. All speakers must address the entire legislative body and will not be permitted to engage in dialogue. All speakers are requested to print their name on the sign-in sheet located at the podium so that their name may be accurately recorded in the minutes. A MAXIMUM of 30 MINUTES is set aside for Oral Communications at this time.*

C. Staff Comments

D. City Council/RDA Director/Treasurer Comments/Committee Reports

*City Council Members/Redevelopment Agency Directors/City Treasurer may comment on matters of a general nature or identify issues for staff response or future council/RDA consideration. Council Members/RDA Directors/Committee Representatives may present oral updates from standing committees at this time.*

E. Committee Appointments

*Council Members/RDA Directors/Committee Representatives may present oral updates from standing committees at this time. Committee appointments may also be made by the City Council/Redevelopment Agency at this time.*

- 1) Nomination of City Representative to serve on the Santa Cruz County Hazardous Materials Advisory Commission.

F. Approval of Check Register Reports

- 1) City: Approval of City Check Register Reports dated January 21 and January 28, 2011
- 2) RDA: Approval of Redevelopment Agency Check Register Report dated January 21, 2011

**3. CONSENT CALENDAR**

*All matters listed under "Consent Calendar" are considered by the City Council/Redevelopment Agency to be routine and will be enacted by one motion in the form listed below. There will be no separate discussion on these items prior to the time the Council votes on the action unless members of the public or the Council request specific items to be discussed for separate review. Items pulled for separate discussion will be considered following "Other Business."*

- A. Approve Reading by Title of all Ordinances and Resolutions and declare that said Titles which appear on the Public Agenda shall be determined to have been read by Title and Further Reading Waived.
- B. City/RDA: Approve City Council/Redevelopment Agency Minutes of the Joint Regular Meetings of January 13 and January 27, 2011.
- C. Receive Planning Commission Action Minutes for the Regular Meeting of February 3, 2011.
- D. RDA: Receive RDA Treasurer's Report for the quarter ended December 31, 2010 (Unaudited).
- E. Approve request from the Capitola-Soquel Chamber of Commerce for a Special Event Permit for the 6<sup>th</sup> Annual Vintage Motorcycle Show "Bikes on the Bay" with DJ Music to be held on Sunday, June 26, 2011, from 9:00 a.m. to 4:00 p.m. at the Capitola Mall; and approve grant for permit fees in the Amount of \$150.
- F. Approve request from the Capitola-Soquel Chamber of Commerce for a Special Event Permit, Encroachment Permit and Entertainment Permit for the 29<sup>th</sup> Annual Art & Wine Festival in Capitola Village and live music in Esplanade Park on Saturday and Sunday, September 10 and 11, 2011; and approve grant for permits and Police and Public Works Department fees in the amount of \$2,303.

3. CONSENT CALENDAR - Continued

- G. Approve Special Event Permit Request by the Capitola Art & Cultural Commission for the 2011 Twilight Concert Series at the Bandstand in Esplanade Park on 11 Wednesday evenings from 6:00 p.m. to 8:00 p.m., and the hanging of a banner prior to each concert.

4. PUBLIC HEARINGS

*Public Hearings are intended to provide an opportunity for public discussion of each item listed as a Public Hearing. The following procedure is followed for each Public Hearing listed: 1) Staff Explanation; 2) Public Discussion; 3) Council Comments; 4) Close public portion of the Hearing; 5) City Council discussion; and 6) Decision.*

NOTE: 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 court action within ninety (90) days following the date on which the decision becomes final as provided in Code of Civil Procedure §1094.6. Please refer to code of Civil Procedure §1094.6 to determine how to calculate when a decision becomes “final.” Please be advised that in most instances the decision become “final” upon the City Council’s announcement of its decision at the completion of the public hearing. Failure to comply with this 90-day rule will preclude any person from challenging the City Council decision in court.

- A. Public Hearing on Project Application #10-104, 100-200 Kennedy Drive, to consider Appeal of a Planning Commission approval for a Master Use Permit for an existing industrial property in the IP (Industrial Park) Zoning District; APN: 036-031-01; Filed: 12/15/10; Property Owner: John McCoy. Presentation: Community Development Department.
- B. Public Hearing to consider Ordinance on SmartMeters. Presentation: Public Works Department.

5. OTHER BUSINESS

- A. Approval of the draft Bicycle Transportation Plan. Staff recommendation: approve the draft Bicycle Transportation Plan, adopt Resolution authorizing the submittal of the Bicycle Transportation Account Grant Application for FY 2011-2012, and approve a Notice of Exemption pursuant to Sections 15301 and 15304 of the California Environmental Quality Act.

5. OTHER BUSINESS - Continued

- B. Request from the Capitola Public Safety and Community Service Foundation for approval of a Special Event Permit for the 6<sup>th</sup> Annual Capitola Rod & Custom Classic Car Show in Capitola Village on Saturday and Sunday, June 11 and 12, 2011, and approval of a grant in the amount of \$1,406. Staff recommendation: approve Special Event Permit and a Grant in the amount of \$1,406 for Permit Fees.

*AT THIS POINT, ITEMS REMOVED FROM CONSENT CALENDAR WILL BE CONSIDERED*

6. COUNCIL/RDA DIRECTOR/STAFF COMMUNICATIONS

7. ADJOURNMENT

Adjourn to a Special Joint Budget Session of the City Council/Redevelopment Agency to be held on Thursday, February 17, 2011, at 6:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.



Item #: **2.E.1)**

## **CITY COUNCIL AGENDA REPORT**

### **MEETING OF FEBRUARY 10, 2011**

FROM: OFFICE OF THE CITY CLERK

DATE: FEBRUARY 1, 2011

SUBJECT: NOMINATION OF THE CITY'S REPRESENTATIVE TO THE COUNTY OF SANTA CRUZ HAZARDOUS MATERIALS ADVISORY COMMISSION

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**Recommended Action:** By motion, nominate Gene Benson to continue to serve as the City's Representative on the County of Santa Cruz Hazardous Materials Advisory Commission, and direct staff to forward the City Council's nomination to Mark Stone, Chairperson of the Board of Supervisors, who will make the actual appointment.

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#### **BACKGROUND**

On July 14, 2005, the City Council nominated Gene Benson to serve as the city's representative to the County of Santa Cruz Hazardous Materials Advisory Commission. Mr. Benson was appointed to fill the unexpired term which ended on April 1, 2007, and was subsequently nominated and appointed by the Board to serve on the current term which ends April 1, 2011.

#### **DISCUSSION**

The Board of Supervisors has informed Mr. Benson that his term on the Hazardous Materials Advisory Commission will expire on April 1, 2011, and that if he is interested in continuing to serve as the City of Capitola's representative, he should inform the City Council.

On January 25, 2011, the council members received the attached email from Mr. Benson informing them of his interest to continue to serve on the Hazardous Materials Advisory Commission. Mr. Benson plans to attend the February 10, 2011, meeting and will be available to report on commission activities and respond to questions of council members.

Mayor Norton asked staff to include this item on the Council's agenda for consideration. The City Council has the option of nominating Gene Benson to serve another 4-year term, or to seek letters of interest from Capitola citizens interested in serving as the city's representative on the Hazardous Materials Advisory Commission .

#### **ATTACHMENTS**

Email dated 1/25/11 from Gene Benson

**Report Prepared By:** Pamela Greeninger, MMC  
City Clerk

**Reviewed and Forwarded  
By City Manager:** \_\_\_\_\_

## Greeninger, Pam

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**From:** Gene Benson [gnbenson@pacbell.net]  
**Sent:** Tuesday, January 25, 2011 4:49 PM  
**To:** City Council  
**Subject:** Santa Cruz County Hazardous Materials Advisory Commission

Council members,

It has been my privilege to represent the City of Capitola on the Santa Cruz County Hazardous Materials Advisory Commission for the past four years. My term on the advisory commission expires on April 1, 2011.

The City of Capitola needs to appoint a citizen to continue providing city representation on the advisory commission.

I would be very pleased to continue representing the City of Capitola on this commission. In the interest of full disclosure, since my original appointment by the City of Capitola I have been elected to the Board of Directors of Central Fire Protection District, I do not see any conflict in continuing to serve on the advisory commission.

If you have any questions please do not hesitate to contact me.

Sincerely,

Gene Benson





## CITY COUNCIL AGENDA REPORT

### MEETING OF FEBRUARY 10, 2011

FROM: FINANCE DEPARTMENT  
 DATE: February 2, 2011  
 SUBJECT: APPROVAL OF CITY CHECK REGISTER REPORTS

**Recommended Action:** By motion and roll call vote, that the City Council approve the attached Check Register Reports for January 21 and January 28, 2011.

#### DISCUSSION

The attached Check Registers for:

Date	Starting Check #	Ending Check #	Total Checks	Amount
1/21/11	65309	65358	50	\$156,378.16
1/28/11	65359	65404	46	\$46,247.42
Payroll 1/28/11				\$177,367.24
Total				\$379,992.82

The check register of 1/14/11 ended with check #65308.

Wires issued, and a brief description of the expenditure:

Date	Issued to:	Dept.	Purpose	Amount
1/31/11	PERS Payment	CM	CALPERS - Payroll Contr. for 1/28/11 payroll	\$44,166.74

Following is a list of checks issued for more than \$10,000.00, and a brief description of the expenditure:

Check	Issued to:	Dept.	Purpose	Amount
65319	CalPERS Health Ins.	CM	Feb11 Employee Health Ins, Employee funded	\$48,765.53
65325	Endeman, Lincoln, Turek & Heater	CM	Nov10 Rent Control Legal Fees	\$41,483.53
65341	SCC Sanitation District	PW	10/11 Sewer Service, PacCove & Jade St	\$22,910.57

On March 28, 2002, Council adopted Ordinance 838, which amended the City Municipal Code as follows:

"3.28.010 Auditing. All claims for salaries and wages of officers and employees and payroll-related withholdings, assessments, and attachments against the treasury of the City and all other claims for payment may be audited and allowed by the City Manager or his/her designee prior to payment thereof."

"3.28.050 Approval. All claims against the City treasury are to be allowed for payment by the City Manager or his/her designee and are to be presented to the City Council as an informational item as part of their regularly scheduled meetings after their issuance for ratification."

**RESOLUTION NO. 2683** On September 22, 1994, Resolution No. 2683 was passed and adopted by the City Council. This resolution includes the following text:

Be it hereby resolved by the City Council of the City of Capitola that the City Manager is authorized, as cash shortages arise, to make temporary cash loans between and among the General Fund and all other City funds except the Redevelopment Agency; Special Assessment District funds; and The Village and Beach Parking Fund; and

Be it further resolved that such interfund loans shall be repaid by the borrowing fund to the lending fund as soon as, in the opinion of the City Manager, it is fiscally prudent to do so; and

Be it further resolved that the City Manager shall report to the City Council at its next regularly scheduled meeting, the amounts of such Interfund loans actually made; the funds from which and to which such Interfund loans were made; and the anticipated date the loans will be repaid.

The bank statement reconciliation has not been completed for the month. Bank reconciliation is completed and reported in conjunction with the monthly Treasurer's report. All checks on these registers have been deducted from the corresponding fund's cash balance. Interfund loans are not recorded on the financial records on a regular basis, except at year-end for financial reporting purposes.

There are several significant timing issues that create cash flow shortages:

- Triple flip delay of Sales Tax from monthly to December and April (~\$500,000/2x year)
- Worker's Compensation premiums are paid annually in July (\$473,220)
- Self Insurance/Liability is an annual payment due in July (\$52,270)
- Police Communication JPA annual payment (\$459,500), paid quarterly

As of 2/2/11 the total cash available is \$2,098,001. The General Operating Fund has a cash balance of \$449,876. Internal Service Funds (#2210 through #2214) were created for City budget purposes and are reclassified for financial reporting into the General Fund. The Compensated Absences Fund (#2216) has a positive cash balance of \$24,556. The Capital Improvement Projects has a positive cash balance of \$719,318. By Council direction the Emergency Reserves Fund (#1020) may not participate in cash loans.

For cash flow purposes these funds are available to the General Fund. A consolidation of these cash balances results in a cash position of \$2,098,001.

The following table shows the funds that are consolidated:

**CASH POSITION - CITY OF CAPITOLA 2/2/11**

	Temporary <u>Loans</u>	<u>Net Balance</u>
General Fund		449,876
Worker's Comp. Ins. Fund		9,259
Self Insurance Liability Fund		226,761
Stores Fund		21,292
Information Technology Fund		160,021
Equipment Replacement		332,538
Compensated Absences Fund		24,556
Contingency Reserve Fund		-
Public Employee Retirement - PERS		154,124
Open Space Fund		256
Capital Improvement Projects		719,318
<b>TOTAL GENERAL FUND &amp; COUNCIL DESIGNATED FUNDS</b>		<b><u>2,098,001</u></b>

On a fiscal year basis the City's annual budget balances expenditures and revenue in the General Fund. Due to the timing of revenue receipts, during most of the fiscal year General Fund expenditures will outpace revenue.

To resolve this cash flow issue, in July of this fiscal year a \$1,247,152 loan from Contingency Reserve was transferred to the General Fund. The Contingency Reserve was established to "provide a prudent level of financial resources to protect against temporary revenue shortfalls or unanticipated operating costs, and/or to meet short-term cash flow requirements."

Although it is anticipated the Contingency Reserve loan will be sufficient to provide operational cash in the General Fund, in some fiscal years the General Fund may borrow additional funds from Internal Service Funds, particularly in November and December prior to the receipt of Property Tax revenue.

It is anticipated the Contingency Reserve loan to General Fund will be repaid by June 30, 2011.

**ATTACHMENTS**

Check Registers for January 21 and January 28, 2011.

**Report Prepared By: Linda Benko  
AP Clerk**

**Reviewed and Forwarded  
by City Manager:**

Checks dated 1/21/11 numbered 65309 to 65358 for a total of \$156,378.16 have been reviewed and authorized for distribution by the City Manager and City Treasurer.

As of 1/21/11 the unaudited cash balance is \$2,608,377

CASH POSITION - CITY OF CAPITOLA 1/21/11

	Temporary <u>Loans</u>	<u>Net Balance</u>
General Fund		602,762
Worker's Comp. Ins. Fund		9,259
Self Insurance Liability Fund		226,761
Stores Fund		21,528
Information Technology Fund		160,498
Equipment Replacement		332,538
Compensated Absences Fund		29,661
Contingency Reserve Fund		-
Public Employee Retirement - PERS		504,355
Open Space Fund		256
Capital Improvement Projects		720,758
<b>TOTAL GENERAL FUND &amp; COUNCIL DESIGNATED FUNDS</b>		<u><u>2,608,377</u></u>

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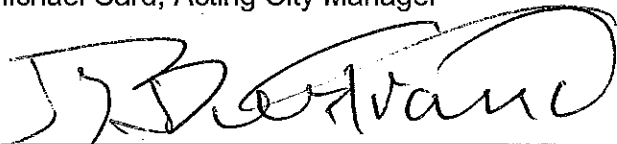
It is anticipated the Contingency Reserve loan to General Fund will be repaid by June 30, 2011.



Michael Card, Acting City Manager

1/21/11

Date



Jacques J.J. Bertrand, City Treasurer

1-21-11

Date

City of Capitola  
**City Checks Issued 1/21/11**

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
65309	01/21/2011 Invoice 199665	Open	Date 01/07/2011	Description Battery-PD	APPLIED CONCEPTS INC.	\$73.20
65310	01/21/2011 Invoice COUNT	Open	Date 01/14/2011	Description Contribution toward Homeless Count in Capitola	APPLIED SURVEY RESEARCH	\$300.00
65311	01/21/2011 Invoice 305693 305723	Open	Date 01/05/2011 01/06/2011	Description Sod mix Sod mix	APTOS LANDSCAPE SUPPLY, INC.	\$85.02
65312	01/21/2011 Invoice 500579655-11	Open	Date 12/20/2010	Description License Fee, CY2011	ASCAP	\$309.00
65313	01/21/2011 Invoice Dec10-Jan11	Open	Date 01/06/2011	Description Credit Card Charges, Dec-Jan	BANK OF AMERICA	\$1,174.32
65314	01/21/2011 Invoice 334	Open	Date 01/13/2011	Description Employment Testing, PD (Houtchens	BAY AREA POLYGRAPH	\$200.00
65315	01/21/2011 Invoice 422468	Open	Date 12/28/2010	Description Nov 2010 Surf & Sand Legal Issues	BERLINER-COHEN	\$5,115.00
65316	01/21/2011 Invoice 2942268	Open	Date 01/04/2011	Description Drill bits- PC fence	BIG CREEK LUMBER	\$70.29
65317	01/21/2011 Invoice 2134775-2011	Open	Date 12/08/2010	Description Music License Fee, 2011	BROADCAST MUSIC INC.	\$305.00
65318	01/21/2011 Invoice 828957	Open	Date 01/17/2011	Description Fingerprinting	CA DEPARTMENT OF JUSTICE	\$32.00
65319	01/21/2011 Invoice 0806-000Feb2011	Open	Date 01/14/2011	Description Feb 2011 Health Ins Premium, Employee Funded	CalPERS Health Insurance	\$48,765.53

City of Capitola  
**City Checks Issued 1/21/11**

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
65320	01/21/2011	Open			<b>CDW GOVERNMENT INC.</b>	\$2,951.09
	Invoice		Date	Description		Amount
	VXL7241		12/22/2010	Computer Supplies-IT		\$399.96
	VXV1738		12/27/2010	Credit		(\$109.25)
	VQV0309		11/23/2010	Email Archiver		\$5,301.83
	WCG1119		01/10/2011	Credit for return of Server		(\$2,641.45)
				Fund 2211, IT		
65321	01/21/2011	Open			<b>CRYSTAL SPRINGS WATER CO.</b>	\$108.00
	Invoice		Date	Description		Amount
	60094-Dec10		12/31/2010	Dec Drinking Water, All Sites		\$108.00
65322	01/21/2011	Open			<b>CVS PHARMACY INC.</b>	\$25.76
	Invoice		Date	Description		Amount
	8866		01/18/2011	Office Supplies-PD		\$25.76
65323	01/21/2011	Open			<b>D-MAIL INC.</b>	\$426.70
	Invoice		Date	Description		Amount
	D-8385		12/22/2010	City Newsletter Mailing		\$426.70
65324	01/21/2011	Open			<b>DE LAGE LANDEN FINANCIAL SERVICES,</b>	\$337.16
	Invoice		Date	Description		Amount
	8214020		12/24/2010	Copier Lease Payment		\$337.16
				Fund 2210, Stores		
65325	01/21/2011	Open			<b>DEVCO OIL INC.</b>	\$1,976.81
	Invoice		Date	Description		Amount
	70599		12/23/2010	458 Gal Gas		\$1,453.29
	70600		12/23/2010	160 Gal Diesel		\$523.52
65326	01/21/2011	Open			<b>ENDEMAN, LINCOLN, TUREK &amp; HEATER</b>	\$41,483.53
	Invoice		Date	Description		Amount
	291456		12/28/2010	Nov10 Legal Services, El Ganada Inv		\$1,637.70
	291458		12/27/2010	Nov10 Legal Services, Rent Control I		\$39,845.83
65327	01/21/2011	Open			<b>EXTRA SPACE STORAGE OF SC INC</b>	\$247.00
	Invoice		Date	Description		Amount
	Jan2011		01/14/2011	Evidence Storage Expense-PD		\$247.00
65328	01/21/2011	Open			<b>GRANITE ROCK COMPANY</b>	\$473.80
	Invoice		Date	Description		Amount
	617186		12/31/2010	Granitepatch-Fund 1310, Gas Tax		\$473.80
65329	01/21/2011	Open			<b>JOHNSON, ROBERTS, &amp; ASSOCIATES</b>	\$25.56
	Invoice		Date	Description		Amount
	114606		12/23/2010	Background check, new hire-PD		\$25.56
65330	01/21/2011	Open			<b>KING'S PAINT AND PAPER, INC.</b>	\$35.28
	Invoice		Date	Description		Amount
	A131064		01/04/2011	Paint		\$20.58
	A131253		01/07/2011	Paint		\$14.70

# City Checks Issued 1/21/11

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
65331	01/21/2011	Open			<b>LABOR READY SOUTHWEST INC.</b>	\$794.39
	Invoice		Date	Description		Amount
	52171559		12/31/2010	FY 10/11 Temporary Staff		\$794.39
65332	01/21/2011	Open			<b>LEAGUE OF CALIFORNIA CITIES</b>	\$5,507.00
	Invoice		Date	Description		Amount
	105311		01/14/2011	Membership Dues for CY2011		\$5,507.00
65333	01/21/2011	Open			<b>MID-COUNTY AUTO SUPPLY</b>	\$70.60
	Invoice		Date	Description		Amount
	247342		12/28/2010	Auto Parts-F250		\$44.38
	247312		12/28/2010	Auto Parts-F250		\$26.22
65334	01/21/2011	Open			<b>MONTGOMERY, DOUGLAS , H</b>	\$540.80
	Invoice		Date	Description		Amount
	Winter2011		01/17/2011	Instructor Payment, Winter 2011		\$540.80
65335	01/21/2011	Open			<b>NATIONAL CRIME PREVENTION COUNCIL</b>	\$430.25
	Invoice		Date	Description		Amount
	109633		08/30/2010	Halloween bags-PD		\$430.25
65336	01/21/2011	Open			<b>ORCHARD SUPPLY HARDWARE</b>	\$335.02
	Invoice		Date	Description		Amount
	6007-4760639		01/05/2011	Misc. - PC fence		\$82.10
	6007-4760667		01/05/2011	Misc. - PC Fence		\$69.11
	3011-4792898		01/03/2011	Mop		\$32.76
	6011-4792928		01/03/2011	Cable Ties		\$15.27
	6011-4793427		01/05/2011	Fertilizer		\$24.02
	6014-0032533		12/03/2010	Misc. Supplies		\$69.88
	6011-4794433		11/29/2010	Saw blades		\$10.88
	6011-4779146		12/16/2010	Level		\$7.64
	6011-4779191		12/16/2010	Bolts		\$18.67
	6012-3188996		12/23/2010	Misc.Supplies		\$4.69
65337	01/21/2011	Open			<b>PALACE ART &amp; OFFICE SUPPLIES</b>	\$384.62
	Invoice		Date	Description		Amount
	884312		01/04/2011	Office Supplies		\$75.46
	883375		01/04/2011	Office Supplies		\$19.65
	883879		01/04/2011	paper, jacket file, calendar-PD		\$137.26
	883872		01/04/2011	Office supplies-PD		\$85.24
	884774		01/06/2011	Office Supplies, City Hall		\$41.50
	8574749		01/05/2011	Office Supplies		\$25.51
				Fund 2210, Stores=\$136.61		
65338	01/21/2011	Open			<b>PHIL ALLEGRI ELECTRIC, INC.</b>	\$1,003.67
	Invoice		Date	Description		Amount
	15643		12/30/2010	ADA phone		\$574.17
	15644		12/30/2010	Street lights-Fund 1310, Gas Tax		\$429.50

## City Checks Issued 1/21/11

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
65339	01/21/2011 Invoice 2011-00000460 366668	Open	Date 01/04/2011 01/03/2011	Description Postage for meter - REC Potage Meter Rent, Q4 CY2010 Fund 2210, Stores=\$209.76	PITNEY BOWES INC.	\$729.75
65340	01/21/2011 Invoice 2011PropTax	Open	Date 01/03/2011	Description Property Tax for 411 Capitola Ave.	ROBERT DEACON	\$4,218.00
65341	01/21/2011 Invoice 2010/11PacCove 2010/11 Sewer	Open	Date 01/11/2011 01/11/2011	Description SCC 10/11 Sewer Service for Pac Co SCC 10/11 Sewer Service Jade St Pa	SANTA CRUZ COUNTY SANITATION DISTF	\$22,910.57
65342	01/21/2011 Invoice 20417	Open	Date 01/10/2011	Description Toner-Fund 2211, IT	STAPLES	\$221.25
65343	01/21/2011 Invoice 2018804	Open	Date 01/17/2011	Description Prints from SmugMug for Museum	SWIFT, CAROLYN	\$616.08
65344	01/21/2011 Invoice 3917-15306	Open	Date 01/01/2011	Description Website Hosting, Jan2011	THE INTERNET CONNECTION INC.	\$150.00
65345	01/21/2011 Invoice 93030-Jan11	Open	Date 01/01/2011	Description Monthly Dental & Vision- Employee Funded	TLC ADMINISTRATORS, INC.	\$4,781.50
65346	01/21/2011 Invoice 20101207	Open	Date 12/07/2010	Description Sec 125 Plan Amendment	TLC ADMINISTRATORS, INC.	\$150.00
65347	01/21/2011 Invoice 954791021	Open	Date 01/08/2011	Description Weekly shipping-PD	UNITED PARCEL SERVICE	\$33.93
65348	01/21/2011 Invoice 6061	Open	Date 01/10/2011	Description Postage for mailing of Early Spring br REC	UNITED STATES POSTAL SERVICE	\$5,300.00
65349	01/21/2011 Invoice 5970	Open	Date 01/05/2011	Description Emergency Tree Work, Wharf Rd	WILLIAMS TREE SERVICE, INC.	\$490.00
65350	01/21/2011 Invoice T8376	Open	Date 01/01/2011	Description Dec. K-9 training	WITMER-TYSON IMPORTS INC.	\$500.00



**City Checks Issued 1/21/11**

<b>Check Number</b>	<b>Invoice Number</b>	<b>Status</b>	<b>Invoice Date</b>	<b>Description</b>	<b>Payee Name</b>	<b>Transaction Amount</b>
65351	01/21/2011 Invoice 127339	Open	Date 12/28/2010	Description 30 Stop signs	<b>ZUMAR INDUSTRIES INC.</b>	\$1,214.64 \$1,214.64
65352	01/21/2011 Invoice 502793	Open	Date 12/10/2010	Description Installed new radar in patrol units	<b>Beck's Service</b>	\$325.00 \$325.00
65353	01/21/2011 Invoice Arthur Donation	Open	Date 01/14/2011	Description Refund - Finance Dept	<b>Capitola Public Safety Foundation</b>	\$25.00 \$25.00
65354	01/21/2011 Invoice 2000727.002	Open	Date 01/17/2011	Description Refund from account	<b>Kemerling, John</b>	\$53.10 \$53.10
65355	01/21/2011 Invoice 2000726.002	Open	Date 01/17/2011	Description Refund - Canceled class	<b>Medcalf, Cessy</b>	\$72.00 \$72.00
65356	01/21/2011 Invoice 6476	Open	Date 12/29/2010	Description Certification of Radar units-PD	<b>The Radar Shop</b>	\$132.00 \$132.00
65357	01/21/2011 Invoice 20110120	Open	Date 01/20/2011	Description Riparian Restoration	<b>McMENAMIN, GEORGE</b>	\$325.00 \$325.00
65358	01/21/2011 Invoice Dec 2010	Open	Date 12/31/2010	Description WATER BILLS FOR STREET MEDIA	<b>SANTA CRUZ MUNICIPAL UTILITIES</b>	\$543.94 \$543.94
<b>Check Totals:</b>				<b>Count</b>	<b>50</b>	<b>Total \$156,378.16</b>

Checks dated 1/28/11 numbered 65359 to 65404 for a total of \$46,247.42 have been reviewed and authorized for distribution by the City Manager and City Treasurer.

As of 1/28/11 the unaudited cash balance is \$2,461,258

CASH POSITION - CITY OF CAPITOLA 1/28/11

	Temporary <u>Loans</u>	<u>Net Balance</u>
General Fund		419,251
Worker's Comp. Ins. Fund		9,259
Self Insurance Liability Fund		226,761
Stores Fund		21,292
Information Technology Fund		160,021
Equipment Replacement		332,538
Compensated Absences Fund		24,556
Contingency Reserve Fund		-
Public Employee Retirement - PERS		548,007
Open Space Fund		256
Capital Improvement Projects		719,318
TOTAL GENERAL FUND & COUNCIL DESIGNATED FUNDS		<u>2,461,258</u>

On a fiscal year basis the City's annual budget balances expenditures and revenue in the General Fund. Due to the timing of revenue receipts, during most of the fiscal year General Fund expenditures will outpace revenue.

To resolve this cash flow issue, in July of this fiscal year a \$1,247,152 loan from Contingency Reserve was transferred to the General Fund. The Contingency Reserve was established to "provide a prudent level of financial resources to protect against temporary revenue shortfalls or unanticipated operating costs, and/or to meet short-term cash flow requirements."

Although it is anticipated the Contingency Reserve loan will be sufficient to provide operational cash in the General Fund, in some fiscal years the General Fund may borrow additional funds from Internal Service Funds, particularly in November and December prior to the receipt of Property Tax revenue.

It is anticipated the Contingency Reserve loan to General Fund will be repaid by June 30, 2011.

  
\_\_\_\_\_  
Derek Johnson, Acting City Manager

\_\_\_\_\_  
1/28/11  
Date

  
\_\_\_\_\_  
Jacques J.J. Bertrand, City Treasurer

\_\_\_\_\_  
1-27-11  
Date

# City Checks Issued 1/28/11

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
65359	01/28/2011 Invoice 3690	Open	Date 01/19/2011	Description Sweeper brooms-Fund 1310, Gas Tax	ACME ROTARY BROOM SERVICE	\$1,301.37
65360	01/28/2011 Invoice 1834671	Open	Date 01/03/2011	Description Dec10 Telephone Service Fund 2211, IT=\$259.08	AT&T/CALNET 2	\$2,107.20
65361	01/28/2011 Invoice 2642	Open	Date 01/18/2011	Description Monthly Landscape Maint fee, Pac Cove N	BACK TO EDEN LANDSCAPING INC.	\$575.00
65362	01/28/2011 Invoice Breslin-Jan4	Open	Date 01/26/2011	Description Privates Kesler	BRESLIN-KESSLER, PAUL	\$1,140.00
65363	01/28/2011 Invoice 827400	Open	Date 01/06/2011	Description Four Fingerprint appts	CA DEPARTMENT OF JUSTICE	\$128.00
65364	01/28/2011 Invoice Feb2011	Open	Date 01/19/2011	Description Long Term Disability Ins, PD	CALIFORNIA LAW ENFORCEMENT AS	\$390.00
65365	01/28/2011 Invoice POA-Jan28-11	Open	Date 01/21/2011	Description POA Dues, Jan 28, Employee Funded	CAPITOLA PEACE OFFICERS ASSOCI	\$653.07
65366	01/28/2011 Invoice 7924	Open	Date 12/31/2010	Description Dec 2010 Janitorial Services, all sites Fund 1311, Wharf=\$145.00	CLEAN BUILDING MAINTENANCE	\$3,542.00
65367	01/28/2011 Invoice 1120063	Open	Date 01/03/2011	Description Cleaning supplies	CLEAN SOURCE	\$1,594.29
65368	01/28/2011 Invoice 70585 70584	Open	Date 12/30/2010 12/30/2010	Description 80 Gal Diesel 444 Gal Gas	DEVCO OIL INC.	\$1,730.93
65369	01/28/2011 Invoice 43798	Open	Date 01/13/2011	Description Smog Inspection, 2005 Chevy Impala	ED'S PORTOLA ARCO	\$103.52
65370	01/28/2011 Invoice 2748251	Open	Date 01/13/2011	Description Irrigation supplies	EWING IRRIGATION	\$40.59

# City Checks Issued 1/28/11

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
65371	01/28/2011	Open			<b>HARRIS &amp; ASSOCIATES</b>	\$1,440.00
	Invoice		Date	Description		Amount
	12606		01/13/2011	Capitola Road Traffic Calming Project - de		\$790.00
	12608		01/13/2011	Design for Cherry Street Road Improveme		\$650.00
				Fund 1200, CIP		
65372	01/28/2011	Open			<b>HOWARD, CHARLIE</b>	\$1,320.00
	Invoice		Date	Description		Amount
	01/10-01/14/11		01/24/2011	FY 10/11 In-House Mechanic		\$710.00
	01/17-01/21/11		01/24/2011	FY 10/11 In-House Mechanic		\$610.00
65373	01/28/2011	Open			<b>ICMA RETIREMENT TRUST 457</b>	\$6,232.50
	Invoice		Date	Description		Amount
	ICMA-Jan28-11		01/21/2011	Retirement Plan Contribution, Employee F		\$6,232.50
65374	01/28/2011	Open			<b>JIM CLARK BACKFLOW</b>	\$270.00
	Invoice		Date	Description		Amount
	11111		01/11/2011	Backflow Testing		\$270.00
65375	01/28/2011	Open			<b>LABOR READY SOUTHWEST INC.</b>	\$942.59
	Invoice		Date	Description		Amount
	52311559		01/07/2011	FY 10/11 Temporary Staff		\$942.59
65376	01/28/2011	Open			<b>LAW ENFORCEMENT PSYCHOLOGIC</b>	\$350.00
	Invoice		Date	Description		Amount
	111217		01/13/2011	Potential Employee Assessment		\$350.00
65377	01/28/2011	Open			<b>LIUNA PENSION FUND</b>	\$462.00
	Invoice		Date	Description		Amount
	LIUNA-Jan11		01/21/2011	Jan11 Pension Contr, Employee Funded		\$462.00
65378	01/28/2011	Open			<b>MID-COUNTY AUTO SUPPLY</b>	\$1,067.21
	Invoice		Date	Description		Amount
	247686		12/31/2010	Auto Parts-Sweeper (Fund1310, Gas Tax)		\$19.60
	246815		12/22/2010	Auto Parts Return		(\$91.98)
	247456		12/29/2010	Auto Parts-F250		\$443.04
	247538		12/29/2010	Auto Parts-F250		\$6.76
	247639		12/30/2010	Auto Parts-Harley Motorcycle		\$109.20
	247966		01/04/2011	Auto Parts-PW Vehicles		\$116.14
	247810		01/03/2011	Auto Parts-PD Vehicles		\$99.71
	247800		01/03/2011	Auto Parts-John Deere Loader		\$246.80
	247960		01/04/2011	Auto Parts		\$117.94
65379	01/28/2011	Open			<b>MILLER'S TRANSFER &amp; STORAGE CO</b>	\$174.80
	Invoice		Date	Description		Amount
	81608		01/04/2011	Records, Dec Handling, Jan Storage		\$174.80
65380	01/28/2011	Open			<b>MISSION LINEN SUPPLY</b>	\$883.40
	Invoice		Date	Description		Amount
	Mission-Dec10		01/01/2011	Dec10 Cleaning and Laundry Service		\$883.40

# City Checks Issued 1/28/11

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
65381	01/28/2011	Open			<b>ORCHARD SUPPLY HARDWARE</b>	\$163.10
	Invoice		Date	Description		Amount
	6011-4793202		01/04/2011	Flashlight		\$5.45
	6013-1216665		01/07/2011	Plants		\$14.09
	6015-2276552		01/13/2011	Misc. Supplies		\$23.57
	6011-7825269		01/13/2011	Supplies for Center		\$87.37
	6015-2276611		01/13/2011	Auto Parts		\$32.62
65382	01/28/2011	Open			<b>PACIFIC PUBLISHING</b>	\$1,661.13
	Invoice		Date	Description		Amount
	22407		12/31/2010	Printing of City Newsletter		\$1,661.13
65383	01/28/2011	Open			<b>PALACE ART &amp; OFFICE SUPPLIES</b>	\$511.30
	Invoice		Date	Description		Amount
	884425		01/05/2011	Office Supplies, City Hall		\$37.13
	884959		01/07/2011	Office Supplies		\$30.58
	884991		01/07/2011	Office Supplies		\$12.28
	8577802		01/12/2011	Recognition & Awards Exp		\$15.20
	885509		01/11/2011	Office supplies		\$259.80
	885388		01/11/2011	Paper		\$64.17
	885553		01/11/2011	Misc Supplies		\$92.14
				Fund 2210, Stores=\$236.30		
65384	01/28/2011	Open			<b>ProBUILD COMPANY LLC</b>	\$175.69
	Invoice		Date	Description		Amount
	5472372		12/02/2010	Cable Ties/Wrench		\$75.48
	5480720		01/06/2011	Wood		\$100.21
65385	01/28/2011	Open			<b>RED SHIFT INTERNET SERVICES</b>	\$115.11
	Invoice		Date	Description		Amount
	1420461		01/01/2011	Internet Access, Jan11		\$49.94
	1420460		01/01/2011	Internet access, Jan 11-Fund 2211, IT		\$65.17
65386	01/28/2011	Open			<b>ROM, HILLEL</b>	\$150.00
	Invoice		Date	Description		Amount
	2011-00000466		01/24/2011	Sports Officials January 13 to 22 2011		\$150.00
65387	01/28/2011	Open			<b>ROYAL WHOLESALE ELECTRIC</b>	\$84.12
	Invoice		Date	Description		Amount
	7719-545973		01/03/2011	Lamps		\$21.85
	7719-545978		01/10/2011	Electrical plugs		\$53.53
	7719-546196		01/10/2011	Lamps - CPD		\$8.74
65388	01/28/2011	Open			<b>SANTA CRUZ COUNTY INFORMATION</b>	\$502.78
	Invoice		Date	Description		Amount
	Jan2011		01/05/2011	Monthly SCAN Charges, PD-Jan2011		\$502.78
65389	01/28/2011	Open			<b>SANTA CRUZ COUNTY OFFICE OF ED</b>	\$182.00
	Invoice		Date	Description		Amount
	11097		01/06/2011	5 Fingerprint Appts		\$182.00

# City Checks Issued 1/28/11

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
65390	01/28/2011 Invoice Nov-Jan H2O	Open	Date 01/11/2011	Description Semi-Monthly Water Usage, Irrigation (ear Fund 1311, Wharf Fund=\$310.31	SOQUEL CREEK WATER DISTRICT	\$4,484.77
65391	01/28/2011 Invoice 295337	Open	Date 01/11/2011	Description Plants	SOQUEL NURSERY GROWERS, INC.	\$50.10
65392	01/28/2011 Invoice 974855313-109	Open	Date 01/03/2011	Description Cell Phone Service, Dec 2010	SPRINT	\$2,421.94
65393	01/28/2011 Invoice 23407	Open	Date 01/19/2011	Description Computer Supplies-Fund 2211, IT	STAPLES	\$152.58
65394	01/28/2011 Invoice SmugMug-1-11 Betsys Target	Open	Date 01/21/2011 01/21/2011 01/21/2011	Description Reimb Photos for Museum Reimb Museum purchases Reimb Museum Purchases	SWIFT, CAROLYN	\$660.34
65395	01/28/2011 Invoice 5236765-3	Open	Date 01/21/2011	Description City Employee Life and Disability Ins-Feb1	THE HARTFORD -PRIORITY ACCOUNT	\$1,734.39
65396	01/28/2011 Invoice 2011-00000467	Open	Date 01/24/2011	Description Sports Officials January 13 to 22 2011	THILL, WENDY	\$80.00
65397	01/28/2011 Invoice PARS-Jan28-11	Open	Date 01/21/2011	Description PARS Contr assoc with semi weekly payro	UNION BANK OF CALIFORNIA	\$402.48
65398	01/28/2011 Invoice UPEC-Jan11	Open	Date 01/21/2011	Description Union Dues, Jan 11, Employee Funded	UPEC LIUNA LOCAL 792	\$1,706.25
65399	01/28/2011 Invoice 168439313	Open	Date 01/08/2011	Description Lease Fee, PD Copier	US BANK	\$250.06
65400	01/28/2011 Invoice BIA-Holiday	Open	Date 01/21/2011	Description Reimb purch of Holiday Lights for Esplanad Fund 1321, BIA	Wetsel, Gary	\$163.30
65401	01/28/2011 Invoice 66575482	Open	Date 01/13/2011	Description Medical supplies	ZEE MEDICAL SERVICE CO.	\$137.38

**City Checks Issued 1/28/11**

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
65402	01/28/2011 Invoice 10-055	Open	Date 01/24/2011	Description Tree Permit Deposit Refund	Epperson, Randall	\$500.00 \$500.00
65403	01/28/2011 Invoice 20110126	Open	Date 01/21/2011	Description Refund Bandstand Deposit	Wilcox, Jason	\$1,500.00 \$1,500.00
65404	01/28/2011 Invoice Feb2011	Open	Date 01/27/2011	Description Rent, PD Annex, Feb 2011	ROBERT DEACON	\$2,010.13 \$2,010.13
Check Totals:				Count	46	Total \$46,247.42



Item #: 2.F.2)

## CAPITOLA REDEVELOPMENT AGENCY AGENDA REPORT

MEETING OF FEBRUARY 10, 2011

FROM: FINANCE DEPARTMENT  
DATE: February 2, 2011  
SUBJECT: APPROVAL OF RDA CHECK REGISTER REPORT

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**Recommended Action:** By motion and roll call vote, that the RDA Board approve the Check Register Report dated January 21, 2011 as submitted.

---

### DISCUSSION

The attached Check Register for the referenced date:

Date	Starting Check #	Ending Check #	Total Checks	Amount
1/21/11	2896	2899	4	\$175,899.84

The prior RDA check register report of January 7, 2011 ended with check number 2895.

The following checks were issued for more than \$10,000.00:

Check	Issued to:	Dept.	Purpose	Amount
2897	Capitola City Treasurer	CM	Reimb Rispin Labor Costs, PW & PD	\$12,412.76
2898	SCC Auditor Controller	CM	Library Trust Fund Pmt, FY10/11	\$162,900.00

As of 2/2/11 the unaudited cash balance in the RDA account is \$4,209,936.33

### ATTACHMENTS

Check Register Report dated:  
January 21, 2011

Report Prepared By: Linda Benko  
AP Clerk

Reviewed and Forwarded  
By Executive Director:

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# RDA Checks Issued 1/21/11

Check number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
2896	01/21/2011 Invoice 643670	Open	Date 01/07/2011	Description Matter#82432.00001	BEST BEST & KRIEGER LLP	\$262.08 \$262.08
2897	01/21/2011 Invoice PW-7-12/2010 Rispin-PDQ42010	Open	Date 01/11/2011 01/11/2011	Description PW Rispin Labor Costs, Jul-Dec; Reimb PD Exp, Rispin	CAPITOLA CITY TREASURER	\$12,412.76 \$2,415.00 \$9,997.76
2898	01/21/2011 Invoice 76-126	Open	Date 01/11/2011	Description Library Trust Fund, FY10/11 Pay	SANTA CRUZ COUNTY AUDITOR-CON	\$162,900.00 \$162,900.00
2899	01/21/2011 Invoice 011105	Open	Date 01/04/2011	Description Nov 2010 Rispin Environmental f	STRELOW CONSULTING	\$325.00 \$325.00
Check Totals:					Count 4	Total \$175,899.84

The attached checks have been printed and released under the RDA Executive Director's approval. Included are checks numbered 2896 to 2899 totaling \$175,899.84 and dated 1/21/11.

These checks has been reviewed and authorized for distribution.

The unaudited cash balance in the RDA account as of 1/21/11 is \$4,209,871.73

	1/21/11		1/21/11
Michael Card, Acting City Manager For Jamie Goldstein, Executive Director-RDA	Date	Debbie Johnson, Treasurer – RDA	Date



Item #: **3.B.**

# CITY COUNCIL/REDEVELOPMENT AGENCY AGENDA REPORT

## MEETING OF FEBRUARY 10, 2011

FROM: OFFICE OF THE CITY CLERK/RDA SECRETARY

DATE: February 1, 2011

SUBJECT: **CAPITOLA CITY COUNCIL/REDEVELOPMENT AGENCY MINUTE APPROVAL**  
MINUTES OF THE JOINT REGULAR MEETINGS OF JANUARY 13 AND 27, 2011

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**Recommended Action:** By motion, that the City Council/Redevelopment Agency Directors approve the subject minutes as submitted.

---

### **DISCUSSION**

Attached for City Council/Redevelopment Agency review and approval are the subject minutes.

### **ATTACHMENTS**

Minutes of January 13 and 27, 2011

**Report Prepared By:** Pamela Greeninger, MMC  
City Clerk/RDA Secretary

**Reviewed and Forwarded by**  
**City Manager/Executive Director:** \_\_\_\_\_

**CITY OF CAPITOLA  
CITY COUNCIL/REDEVELOPMENT AGENCY**

January 13, 2011  
Capitola, California

**MINUTES OF A REGULAR JOINT MEETING**

**5:30 P.M - CLOSED SESSION - CITY MANAGER'S OFFICE**

At 5:32 p.m. in the City Hall Council Chambers, Mayor/Chairperson Norton noted that all City Council Members/Redevelopment Agency Directors were present. He made an announcement regarding the items to be discussed in Closed Session, as follows:

**CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION** (Govt. Code §54956.9a)

Surf and Sand, LLC vs. City of Capitola, et al. (Surf & Sand Mobile Home Park)

[Superior Court of the State of California for County of Santa Cruz, Case #CV 167716]

Surf and Sand, LLC vs. City of Capitola, et al. (Surf & Sand Mobile Home Park)

[U.S. District Court N.D., Case No. C09-05542 RS (Judge Richard Seeborg)]

Los Altos/El Granada Investors vs. City of Capitola, et al. (Castle Mobile Estates)

[U.S. District Court N.D., Case No. CV 04-05138 JF (Judge Jeremy Fogel)]

Vieira Enterprises, Inc. vs. City of Capitola (Cabrillo Mobile Estates)

**CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to subdivision (b) of Government Code §54956.9:

One Case: Vieira Enterprises, Inc. vs. City of Capitola (Cabrillo Mobile Estates)

*The City is in receipt of a December 30, 2010, Fair Return rent increase application for Cabrillo Mobilehome Park, which claims that if it is not granted in its entirety, the City will be liable for the unconstitutional taking of Mr. Vieira's property and further claims that the City's past enforcement of its rent control ordinance has already functioned to effect such a taking.*

Mayor/Chairperson Norton noted there was no one in the audience; therefore, the City Council/Redevelopment Agency recessed at 5:33 p.m. to the Closed Session in the City Manager's Office.

**REGULAR JOINT MEETING OF THE CAPITOLA CITY COUNCIL/REDEVELOPMENT AGENCY**

Mayor/Chairperson Norton called the Regular Joint Meeting of the Capitola City Council/Redevelopment Agency to order at 7:05 p.m. on Thursday, January 13, 2011, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

**ROLL CALL AND PLEDGE OF ALLEGIANCE**

**PRESENT:** Council Members/Directors Stephanie Harlan, Michael Termini, Kirby Nicol, Sam Storey, and Mayor/Chairperson Dennis Norton

**ABSENT:** None

**OTHERS:** City Treasurer Jacques Bertrand and Redevelopment Agency Treasurer Debbie Johnson

**STAFF:** City Manager/Executive Director Jamie Goldstein, City Attorney/General Counsel John G. Barisone, Community Development Director/Deputy Executive Director Derek Johnson, Public Works Director Steve Jesberg, Police Captain Tom Held, Assistant to the City Manager Lisa Murphy, and City Clerk/Secretary Pamela Greeninger

**\*\*\* PRESENTATIONS \*\*\*****Proclamation for National Blood Donor Month – January 2011  
to Donor Recruitment Account Manager Patti Childress  
of the American Red Cross [120-40]**

Mayor Norton read and presented the Proclamation designating January 2011 as National Blood Donor Month to Patti Childress of the American Red Cross. Ms. Childress thanked the Mayor and responded to questions of council members regarding the use of blood in our area. She announced that the third annual City of Capitola blood drive will be held on Wednesday, June 1<sup>st</sup>, at Jade Street Community Center.

**Presentation by Catherine Patterson-Valdez, Program Director  
from Community Bridges – Lift Line Program [330-30]****Presentation by Lisa Berkowitz, Program Director  
from Community Bridges - Meals on Wheels [330-30]**

Lisa Berkowitz and Catherine Patterson-Valdez provided an overview of the various services provided by Community Bridges to the residents of Capitola, specifically the Meals on Wheels and the Lift Line Programs. They shared an audio recording from a Meals on Wheels volunteer and responded to questions of council members.

Council Member Storey said he is intimately aware of the services provided by these programs in our community, and he thanked them for the service they provide.

**Recognition of Ron Burke for his service on the  
Capitola Planning Commission from December 2006 to December 2010 [740-50/120-40]**

Mayor Norton presented Ron Burke with a Certificate of Appreciation for his service on the Capitola Planning Commission from December 2006 to December 2010 as former Council Member Robert Begun's appointment. Mayor Norton said Ron has been extremely dedicated to the city; he also noted that Ron has served as the Planning Commission's representative to the Capitola Commission on the Environment and to the Traffic & Parking Commission.

Ron Burke thanked the mayor and council for this recognition. He said he loves serving his community, and he encouraged others to get involved serving the city on a board or committee.

**1. REPORT ON CLOSED SESSION [520-25] (Note: This report was given at the end of  
the meeting and placed here for the record.)**

City Attorney Barisone announced that the City Council/Redevelopment Agency Directors met in Closed Session from approximately 5:30 to 6:40 p.m. In addition to all five council members/directors being present, City Manager Goldstein, City Attorney Barisone and Deputy City Attorney George Kovacevich were present.

The items discussed in closed session were those items listed on the posted Agenda. The city council/directors received status updates from the City Attorney and the City Manager pertaining to continued defense of existing mobile home park matters relating to Surf & Sand and Los Altos/El Granada Investors (Castle Mobile Estates). Direction was provided to staff pertaining to ongoing defense of those matters. No reportable action was taken in closed session.

Vieira Enterprises vs. City of Capitola (Cabrillo Mobile Estates) - The City Council did not discuss the Vieira Enterprises lawsuit, which was filed against the City of Capitola and pertains to the service reduction assessment.

1. REPORT ON CLOSED SESSION (Continued)

Conference with Legal Counsel – Anticipated Litigation - One Case: Vieira Enterprises, Inc. vs. City of Capitola (Cabrillo Mobile Estates) - The City Council discussed a potential lawsuit in connection with a fair rate of return application, which has been filed with the City of Capitola. The Council received a status report from the City Attorney and the City Manager pertaining to that matter, but took no reportable action in closed session.

2. ORAL COMMUNICATIONS

A. Additions and Deletions to Agenda

1) Public Works Director Jesberg recommended that Item 5.H. regarding the electric vehicle charge station be continued to the next meeting, as staff has received a revised agreement and needs more time to analyze it prior to council's action.

**ACTION:** Council Member Storey moved, Council Member Termini continue Item 5.H. pertaining to a Grant for an Electric Vehicle Charging Station Installation to the next regular meeting of the City Council to be held on January 27, 2011. The motion carried unanimously.

2) City Manager Goldstein noted that staff has prepared a "Revised" Agenda Report for Item 5.A. pertaining to the request from JFS, Inc., operators of Capitola Boat & Bait, for rent relief. Copies have been provided at each council member's place.

B. Public Comments

Gary Richard Arnold addressed the Council pertaining to the millions of tons of aerosols that are being sprayed into the atmosphere. Mr. Arnold said this is a very important concern. He submitted a written document and provided DVDs pertaining to this matter to each council member.

C. Staff Comments

1) Community Development Director Johnson said he attended the AMBAG meeting, and the board is discussing the Blueprint – they deferred the matter to the next meeting. He said staff would be distributing a copy of that document.

2) Council Member Harlan expressed interest in adding an item to the agenda for council consideration pertaining to the governor's proposal to eliminate redevelopment. She commented on an email she received from Deanna Sessums of the League of California Cities requesting letters be written to state officials to protest elements of the proposed budget.

After council discussion it was the consensus of the city council to bring this matter back for consideration at the next council meeting.

D. City Council/RDA Director/Treasurer Comments/Committee Reports

1) Council Member Storey stated that he sits as the city's representative on the Library JPA. He announced that there would be a Special Meeting of the Library JPA Board to discuss critical decisions that must be made regarding the library system in Santa Cruz County on Monday, February 7, at 6 pm at the Loudon Nelson Center. He encouraged members of the public to attend that and future meetings of the Library JPA to be held on February 14 and 28, 2011.

## 2. D. Oral Communications (Continued)

2) Council Member Harlan provided a brief report on the AMBAG meeting she attended last night. AMBAG board members were given a copy of the draft Blueprint and the comments; however, they did not receive responses to the comments. The board requested that staff provide responses to all the comments prior to their next meeting so they could be prepared to make a decision.

In addition, she commented on the Strategic Growth Council, grants that will be issued to local jurisdictions, the 2010 Regional Progress Report, and a report on the Energy Watch Program. She said our council should become familiar with AB 32, Proposition 84, and the various sustainable elements that are coming through California. The board discussed the Ride Share Program and recommended hiring someone to work with large employers.

3) Mayor Norton stated that he would like dedicate tonight's meeting to Capitola resident Mark Sullivan who recently passed away. He noted that Mark was active in the community, having served on the original Arts Commission from September 1997 until April 2003. Mark could be seen in the audience at many regular meetings of the city council.

In 1994, Mark and his wife, Kathleen, received the first "Excellence in Design" Award for new residential construction for their residence located next door to City Hall on Beulah Drive. He commented on this award and said he would be interested in bringing it back.

Mayor Norton said Mark Sullivan was also elected to serve on the Redevelopment Agency Project Area Committee for the proposed Third Amendment to the Redevelopment Plan from December 1999 to March 2006, which was being considered for the Capitola Theater property and Village area.

Following his comments, Mayor Norton announced that tonight's meeting is dedicated to Mark Sullivan and that the City Council has a card for his wife, Kathleen, which will be delivered to her.

E. Committee Appointments

- 1) **Council Member Harlan appointments to the Finance Advisory Committee, the Commission on the Environment, and the Traffic & Parking Commission. Council Member Termini to confirm his appointment to the Traffic & Parking Commission. [330-40 FAC/430-05 COE/470-60 T&P/110-10]**

Council Member Harlan said she is happy to reappoint Kristin Jensen Sullivan to the Commission on the Environment, announced her appointment of TJ Welch to the Finance Advisory Committee, and reappointed Vicki Muse to continue to serve on the Traffic & Parking Commission.

**ACTION:** It was the consensus of the City Council to ratify Council Member Harlan's appointments as follows:

Finance Advisory Committee – Troy (TJ) Welch  
Commission on the Environment – Kristen Jensen Sullivan  
Traffic & Parking Commission – Vicki Muse

Council Member Termini also confirmed his appointment of Nels Westman to the Traffic and Parking Commission.

## 2. E. Oral Communications – Committee Appointments (Continued)

2) **Reconsideration of the City Council's nomination of Council Member Harlan to the Local Agency Formation Commission (LAFCO) [140-55]**

After reviewing the committees she has volunteered for, Council Member Harlan said she felt she had taken on more than she could handle and would like to see if another council member would be interested in being nominated to LAFCO.

Mayor Norton said he would volunteer to serve.

**ACTION:** It was the consensus of the City Council to nominate Mayor Norton to the Local Agency Formation Commission (LAFCO) for appointment by the City Selection Committee when the seat becomes available in May and directed staff to inform the City Selection Committee of the City's nomination.

3) **RDA: Appointments/reappointments to the Redevelopment Agency Library Ad Hoc Committee. Staff recommendation: Director appointments/reappointments. [230-10/110-10]**

Director Storey said he is willing to step down as the RDA Director Representative, since Michael Termini is the chair of the committee.

**ACTION:** It was the consensus of the Redevelopment Agency Directors to confirm Director Termini's appointment to serve on behalf of the Redevelopment Agency on the Library Ad Hoc Committee, replacing Director Storey. The following committee appointments were then made by the directors:

Director Harlan reappointed Carl La Mothe and Gayle Ortiz  
 Director Storey reappointed Lisa Steingrube  
 Director Termini appointed John Hofacre

F. **Approval of Check Register Reports**1) **City: Approval of City Check Register Reports for December 3, 10, 17, and 23, 2010 [300-10]**

**ACTION:** Council Member Termini moved, seconded by Council Member Harlan, to approve the Check Register Reports dated December 3, 10, 17 and 23, 2010, including checks numbered 64905 through 65001 in the amount of \$140,380.28, checks numbered 65002 through 65056 in the amount of \$95,336.84, checks numbered 65057 through 65150 in the amount of \$210,182.65 and checks numbered 6551 through 65201 in the amount of \$181,169.88 respectively; and payroll disbursements for the December 3, 17 and 30, 2010, payrolls in the amounts of \$187,968.07, \$170,565.24 and \$179,435.90 respectively, for a Grand Total of \$1,165,038.86, as submitted. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

2) **RDA: Approval of Redevelopment Agency Check Register Reports dated December 3, 10, and 23, 2010 [760-25]**

**ACTION:** Director Termini moved, seconded by Director Storey, to approve the RDA Check Register Reports dated December 3, 10 and 23, 2010, including checks numbered 2881 through 2884 in the amount of \$64,986.38, checks numbered 2885 through 2888 in the amount of \$27,081.75, and checks numbered 2889 through 2890 in the amount of \$28,046.25, respectively, as submitted. The motion carried on the following vote: AYES: Directors Harlan, Termini, Nicol, Storey, and Chairperson Norton. NOES: None. ABSENT: None. ABSTAIN: None.

### 3. CONSENT CALENDAR

Mayor/Chairperson Norton asked if there were any items on the Consent Calendar that members of the public or City Council/RDA Directors wished to pull for separate discussion.

Gary Richard Arnold said he would like to pull Items 3.B., approval of City Council Minutes, and 3.E., pertaining to the California Public Employees' Retirement System.

Mayor/Chairperson Norton advised Items 3.B. and E. would be discussed at the end of the meeting following Other Business Item 5.H. (*See discussion and action on Page 11852.*)

**CONSENT CALENDAR ACTION:** Council Member/Director Termini moved, seconded by Council Member/Director Harlan, to approve the Consent Calendar as recommended. The motion carried on the following vote: AYES: Council Members/Directors Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

**A. Approve Reading by Title of all Ordinances and Resolutions and declare that said Titles which appear on the Public Agenda shall be determined to have been read by Title and Further Reading Waived.**

**ACTION:** The City Council unanimously approved the reading by title of all Ordinances and Resolutions and declared that said titles which appear on the public agenda shall be determined to have been read by title and further reading waived.

**B. Approve City Council Minutes of the Regular Meeting of November 23, 2010, the Special Closed Session Meetings of November 29 and December 20, 2010, and the Special Meeting of December 8, 2010.**

*This item was pulled for separate discussion. (See page 11852 for action.)*

**C. RDA: Approve Minutes of the Regular Meeting of the Capitola Redevelopment Agency of December 9, 2010.**

**ACTION:** Director Termini moved, seconded by Director Harlan, to approve the Capitola Redevelopment Agency Minutes of the Regular Meeting of December 9, 2010, as submitted. The motion carried on the following vote: AYES: Directors Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

**D. Receive City Treasurer's Report for the month ended November 30, 2010 (Unaudited). [380-30]**

**ACTION:** Council Member Termini moved, seconded by Council Member Harlan, to accept the City Treasurer's Report for the Quarter Ended November 30, 2010 (Unaudited), as submitted. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

**E. Receive California Public Employees' Retirement System Annual Actuarial Valuation Reports as of June 30, 2009.**

*This item was pulled for separate discussion. (See page 11853 for action.)*

**F. Adopt Resolution Approving a Rate Schedule for Residential and Commercial Garbage Collection and Recycling in Capitola for 2011. [930-45]**

**ACTION:** Council Member Termini moved, seconded by Council Member Harlan, to approve Resolution No. 3850, Resolution Approving a Rate Schedule for Residential and Commercial Garbage Collection and Recycling in Capitola Effective January 1, 2011, Superceding Resolution No. 3792, as submitted. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.



## 3. CONSENT CALENDAR (Continued)

**G. Receive and file First Quarter 2010-2011 Sales Tax and Transient Occupancy Tax Status Report (Unaudited) for the City of Capitola. [390-70]**

**ACTION:** Council Member Termini moved, seconded by Council Member Harlan, to accept the First Quarter 2010-2011 Sales Tax and Transient Occupancy Tax Status Report (Unaudited) for the City of Capitola, as submitted. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

**H. City/RDA: Accept Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2010. [310-20/760-25 RDA]**

**ACTION:** Council Member/Director Termini moved, seconded by Council Member/Director Harlan, to accept the Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2010, as submitted. The motion carried on the following vote: AYES: Council Members/Directors Harlan, Termini, Nicol, Storey, and Mayor/Chairperson Norton. NOES: None. ABSENT: None. ABSTAIN: None.

## 4. PUBLIC HEARINGS – None

## 5. OTHER BUSINESS

**A. Request from JFS, Inc., operators of Capitola Boat and Bait, to exercise their option to extend the Wharf Lease and Mooring Concession Agreement for one year, and for rent relief for the months of January, February and March 2011. [280-25/500-10 A/C: JFS, Inc.]**

Assistant to the City Manager Murphy commented on the “revised” agenda report. She noted that the only matter for the City Council to consider is the request from JFS, Inc., for rent relief for the months of January, February and March of 2011.

Frank Ealy, Capitola Boat & Bait, explained that the Department of Fish & Game has decreased fishing, which has significantly reduced their income, and that is why they are requesting the rent waiver. Mr. Ealy also commented on the fish tank, which has been taken away due to state requirements.

Council discussion was followed by this action:

**ACTION:** Council Member Storey moved, seconded by Council Member Harlan, to grant the waiver request from JFS, Inc., and approved waiving the rent, except utility bills, for the months of January, February, and March 2011, as requested. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

Following action on this item, Council Member Harlan said she would like to see the fish tank on the Wharf again, and she asked staff to check with the Department of Fish & Game on this.

**B. City Council conceptual review of Public Art Project on 41<sup>st</sup> Avenue. Staff recommendation: receive report and provide direction. [1010-10]**

Assistant to the City Manager Murphy provided a brief verbal report on this item.

The City Council then heard from Roy Johnson, member of the Art & Cultural Commission and Chair of subcommittee for this project. He said the commission feels that an arts professional is necessary to manage the project. Mr. Johnson responded to questions of council members.

## 5. B. OTHER BUSINESS (Continued)

Council Member Termini, the council member representative on the commission, also commented on the proposed public art project for 41<sup>st</sup> Avenue.

Community Development Director Johnson discussed the need for careful coordination of this project with the General Plan Advisory Committee visioning process for 41<sup>st</sup> Avenue.

Assistant to the City Manager Murphy said no action was necessary. Staff would bring this matter back with a proposed RFP.

**ACTION:** It was the consensus of the City Council to receive the report.

**C. Budgeting Principals and Budget Calendar for Fiscal Year 2011-12. Staff recommendation: approve FY 2011-12 Budget Calendar. [330-05 FY2010-11]**

City Manager Goldstein summarized the written agenda report and responded to questions of council members.

There was concern expressed regarding the proposed Budget Study Session scheduled for May 19, which includes presentations of the CIP, Community Grants, and the Finance Advisory Committee.

**ACTION:** Council Member Termini moved, seconded by Council Member Nicol, to approve the proposed Budget Calendar for FY 2011-12, as amended to change the proposed May 19 special meeting date to Wednesday, May 25, 2011. The motion carried unanimously.

**D. Appointment/Reappointment of Standby City Council Members. Staff recommendation: City Council determination. [420-20]**

Council Members made the following appointments of their Standby City Council Members:

Council Member Harlan appointed Ron Graves

Council Member Termini appointed Michael Banks

Mayor Norton appointed Mark Sullivan

Council Member Nicol said Mick Routh will continue to be his Standby Council Member, and Council Member Storey said Maureen O'Malley-Moore will continue as his appointment.

**ACTION:** Council Member Harlan moved, seconded by Council Member Nicol, to approve the nominations of Standby City Council Members Ron Graves, Michael Banks and Mark Sullivan, and directed staff to inform the nominees of their appointment and to schedule the necessary Oath of Office of Standby City Council Members at a regular meeting of the City Council. The motion carried unanimously.

**E. Paper reduction for City Council/Redevelopment Agency Meeting Agenda Packets. Staff recommendation: Council direction. [520-10]**

City Manager/Executive Director Goldstein summarized the agenda report and responded to questions pertaining to the proposed transitioning from printed paper agenda packets to digital agenda packets. He commented on Brown Act concerns and said staff would need to develop a policy regarding use of the Internet during meetings.

## 5. E. OTHER BUSINESS (Continued)

Information Systems Specialist Larry Laurent was also available to respond to questions of council members/directors regarding the proposed technology. He commented on the way the agenda packet is currently available on the website and explained how that would change.

Council Member/Director Storey said he would like to see that there is a hard copy available in the event his device does not work he needs a backup.

Considerable discussion was followed by this action:

**ACTION:** Council Member/Director Termini moved, seconded by Council Member/Director Storey, to receive the staffs' report regarding transitioning from printed paper agenda packets to digital agenda packets, and directed staff to prepare an administrative policy for digital reading devices utilizing the proposed "stipend" program option. In addition, he proposed that the City Manager be authorized to purchase one iPad for the use of council members for a trial period.

City Manager/Executive Director Goldstein clarified that staff would prepare an administrative policy reflecting the comments received tonight. He received confirmation that the policy should be drafted in such a way as to include the Planning Commissioners and department heads being eligible as well.

There was further discussion of the motion prior to calling for the vote. The motion carried on the following vote: AYES: Council Members/Directors Harlan, Termini, Nicol, Storey, and Mayor/Chairperson Norton. NOES: None. ABSENT: None. ABSTAIN: None.

**F. City/RDA: City Council/Redevelopment Agency Minutes. Staff recommendation: approve implementation of Action Minute format as the City's formal record of City Council/Redevelopment Agency Minutes. [170-10]**

City Attorney Barisone responded to questions of Council Members/Directors pertaining to whether there were any legal implications in preparation of minutes in an action-minute format.

Council Member/Director Harlan explained why she prefers summary minutes, and she also noted that summary minutes are important for historical purposes.

**ACTION:** Council Member/Director Termini moved, seconded by Council Member/Director Nicol, to approve implementation of Action Minutes as the City's formal record of City Council/Redevelopment Agency Minutes, and as part of the motion that the City maintain the audio/video recordings of the meetings for at least 20 years.

Council Member/Director Storey thinks the written minutes are what people will go to for the decisions that were made, as well as the tenor of the discussion. He would support the motion if there were an amendment to allow the minority position to ask for his/her position to be reflected in the minutes.

Council Member/Director Termini suggested that if a statement is requested, it not be made until after the vote is taken.

Prior to the vote on the motion, Mayor/Chairperson Norton asked if the maker and second of the motion would accept the amendment proposed by Council Member/Director Storey to allow the minority position(s) to ask for his/her position to be reflected in the minutes; i.e., to insert a statement as to why he/she voted in the opposition to the motion. Council Member/Director Termini and Council Member/Director Nicol amended the motion accordingly.

The motion carried with Council Member/Director Harlan voting no.

## 5. OTHER BUSINESS (Continued)

- G. RDA: Resolution Amending Section 3.02 of the Redevelopment Agency Bylaws Pertaining to Regular Meeting Time. Staff recommendation: adopt Agency Resolution. [760-10]**

**ACTION:** Director Termini moved, seconded by Director Storey, to **Agency Resolution No. 2011-1, Repealing Agency Resolution No. 2010-4 and Amending Agency Resolution No. 7-01 by Amending Section 3.02 A of the Bylaws of the Redevelopment Agency of the City of Capitola Regarding Board Meeting Times**, as submitted. The motion carried on the following vote: AYES: Directors Harlan, Termini, Nicol, Storey, and Chairperson Norton. NOES: None. ABSENT: None. ABSTAIN: None.

- H. Grant for Electric Vehicle Charging Station Installation. Staff recommendation: approve recommended action accepting grant from Coulomb Technologies, Inc., authorizing the City Manager to execute agreements, approve installation of charging stations in Pacific Cove Parking Lot, and approve Notice of Exemption from CEQA for the installation of the charging stations. [390-25/500-10 A/C: Phat Energy]**

This item was continued pursuant to action taken under Oral Communications Item 2.A.1) as follows:

**ACTION:** Council Member Storey moved, Council Member Termini continue Item 5.H. pertaining to a Grant for Electric Vehicle Charging Station Installation to the next regular meeting of the City Council to be held on January 27, 2011. The motion carried unanimously.

AT THIS POINT, ITEMS REMOVED FROM CONSENT CALENDAR WILL BE CONSIDERED
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3. CONSENT CALENDAR (*Items pulled for separate discussion.*)

- B. Approve City Council Minutes of the Regular Meeting of November 23, 2010, the Special Closed Session Meetings of November 29 and December 20, 2010, and the Special Meeting of December 8, 2010.**

Gary Richard Arnold commented that he believes it would be helpful to include the report pertaining to the AMBAG meeting in the minutes. He commented on the Blueprint addressed by Council Member Harlan.

The City Council heard comments from Gary Richard Arnold and then took the following action:

**ACTION:** Council Member Termini moved, seconded by Council Member Storey, to approve the City Council Minutes of the Regular Meeting of November 23, 2010, the Special Closed Session Meetings of November 29 and December 20, 2010 and the Special Meeting of December 8, 2010, as submitted. The motion carried unanimously.

- E. Receive California Public Employees' Retirement System Annual Actuarial Valuation Reports as of June 30, 2009. [630-10]**

City Manager Goldstein provided a brief verbal report based on the written agenda report.

Gary Richard Arnold commented on international public and private pensions. He said Judge Roll, who was murdered in Phoenix, Arizona, last week, had ruled against President Obama's executive order that would allow the President to seize private monies without due process. He said the federal government is eyeing pensions, and people (both public and private) should keep an eye on it.

3. E. CONSENT CALENDAR *(Items pulled for separate discussion - continued.)*

The City Council received staffs' report and comments from Mr. Arnold and took the following action:

**ACTION:** Council Member Termini moved, seconded by Council Member Storey, to accept the California Public Employees' Retirement System Annual Actuarial Valuation Reports as of June 30, 2009, as submitted. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

**6. COUNCIL/RDA DIRECTORS/STAFF COMMUNICATIONS**

A. Council Member Termini reported that the Art & Cultural Commission has selected the bands for the Twilight Concerts.

B. Council Member Nicol commented on the climate change that is occurring around the world and is happy to live in Capitola.

C. Mayor Norton commented that he believes PG&E will begin installing SmartMeters in Capitola in the near future. He discussed the prior action taken by the city council, and he advised the Santa Cruz County Board of Supervisors is considering an ordinance that would allow residents to opt out of SmartMeters. Mayor Norton requested placing this item on the next available agenda to support Huffman's assembly bill, and to consider whether Capitola would want to impose a moratorium banning SmartMeters in Capitola, such as the county is proposing.

D. At 9:48 p.m., City Attorney Barisone announced that he did not provide his oral report on the closed session. Mayor Norton apologized for skipping that item. City Attorney Barisone provided the report at this time. *(See Item 1 on page 11844 for the Report on the Closed Session.)*

E. Council Member Harlan discussed oral communications from residents in the Sommerfeld Avenue and Lotman Drive neighborhood asking the council to consider closing the passageway from their neighborhood to Clares Street and the Capitola Mall. Council Member Harlan would like to move that matter up to the front burner if possible, as this is a safety issue.

Community Development Director Johnson responded saying that the Police Department has been working with the Sheriff's Department on enforcement in the area. He said staff is working on a report that will come back to the council with an update on this matter and what community development staff finds relative to the passageway and conditions of the project.

F. Mayor Norton said the speed limit in Capitola is 25 miles per hour except on 41<sup>st</sup> Avenue. He shared the Pace Car sticker and encouraged residents to pick one up at City Hall. By placing a sticker on your car, you are committing to drive 25 mph in Capitola.

**7. ADJOURNMENT**

The City Council/Redevelopment Agency adjourned at 9:53 p.m. in Memory of Mark Sullivan to its next Joint Regular Meeting to be held on Thursday, January 27, 2011, at 7:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

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Dennis Norton, Mayor

ATTEST: \_\_\_\_\_, MMC  
Pamela Greeninger, City Clerk

**CITY OF CAPITOLA  
CITY COUNCIL/REDEVELOPMENT AGENCY**

January 27, 2011  
Capitola, California

**MINUTES OF A REGULAR JOINT MEETING**

**5:30 P.M - CLOSED SESSION - CITY MANAGER'S OFFICE**

At 5:35 p.m. in the City Hall Council Chambers, Mayor/Chairperson Norton noted that all Council Members/Redevelopment Agency Directors were present, with the exception of Council Member/Director Harlan, who was present for the Closed Session in the City Manager's Office. Mayor/Chairperson Norton made an announcement regarding the items to be discussed in Closed Session, as follows:

**CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Govt. Code §54956.9a)**

Talbert vs. City of Capitola, et al [U.S. District Court Case No. C 10-03113 JW (N.D. Cal.)]

Surf and Sand, LLC vs. City of Capitola, et al (Surf & Sand Mobile Home Park)  
[Superior Court of the State of California for County of Santa Cruz, Case #CV 167716]

Surf and Sand, LLC vs. City of Capitola, et al (Surf & Sand Mobile Home Park)  
[U.S. District Court N.D., Case No. C09-05542 RS (Judge Richard Seeborg)]

Los Altos/El Granada Investors vs. City of Capitola, et al (Castle Mobile Estates)  
[U.S. District Court N.D., Case No. CV 04-05138 JF (Judge Jeremy Fogel)]

Vieira Enterprises, Inc. vs. City of Capitola (Cabrillo Mobile Estates)

**CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to subdivision (b) of Government Code §54956.9: One Case: Vieira Enterprises, Inc. vs. City of Capitola (Cabrillo Mobile Estates)  
*The City is in receipt of a December 30, 2010, Fair Return rent increase application for Cabrillo Mobilehome Park, which claims that if it is not granted in its entirety, the City will be liable for the unconstitutional taking of Mr. Vieira's property and further claims that the City's past enforcement of its rent control ordinance has already functioned to effect such a taking.*

**CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Govt. Code §54956.8)**

Property: McGregor Drive, APN 36-341-02 (City of Capitola, Owner)  
City Negotiator: City Manager  
Negotiating Parties: City and Soquel Creek Water District  
Under Negotiation: Real Property Lease/Sale

Mayor/Chairperson Norton noted there was no one in the audience; therefore, the City Council/Redevelopment Agency recessed at 5:36 p.m. to the Closed Session in the City Manager's Office.

**REGULAR JOINT MEETING OF THE CAPITOLA CITY COUNCIL/REDEVELOPMENT AGENCY**

Mayor/Chairperson Norton called the Regular Joint Meeting of the Capitola City Council/Redevelopment Agency to order at 7:03 p.m. on Thursday, January 27, 2011, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

**ROLL CALL AND PLEDGE OF ALLEGIANCE**

**PRESENT:** Council Members/Directors Stephanie Harlan, Michael Termini, Kirby Nicol, Sam Storey, and Mayor/Chairperson Dennis Norton  
**ABSENT:** Redevelopment Agency Treasurer Debbie Johnson  
**OTHERS:** City Treasurer Jacques Bertrand  
**STAFF:** Acting City Manager/Community Development Director/Deputy Executive Director Derek Johnson, Deputy City Attorney/Agency General Counsel Celestial Cassman, Public Works Director Steve Jesberg, Police Captain Tom Held, Assistant to the City Manager Lisa Murphy, and City Clerk/Secretary Pamela Greeninger

**\*\*\* PRESENTATIONS \*\*\***

**Oath of Office Ceremony for Standby City Council Members  
 Ron Graves and Mark Sullivan [420-20]**

Mayor Norton announced that newly appointed Standby City Council Members Michael Banks and Ron Graves were unable to attend tonight's meeting, and have been sworn in by the City Clerk at City Hall. Mark Sullivan came forward and City Clerk Greeninger administered the Oath of Office and provided him with information pertaining to his duties as a Standby City Council Member.

**1. REPORT ON CLOSED SESSION [520-25]**

Deputy City Attorney/Agency General Counsel Cassman reported that the City Council/RDA Directors convened in Closed Session at approximately 5:30 p.m. All members were present as were she, Deputy City Attorney Adair Patero, and Acting City Manager/Community Development Director Johnson. She identified the cases of existing litigation that were discussed as follows:

## Conference with Legal Counsel – Existing Litigation

Talbert vs. City of Capitola

Surf and Sand, LLC vs. City of Capitola, et al (Surf &amp; Sand Mobile Home Park)

[Superior Court of the State of California for County of Santa Cruz, Case #CV 167716]

Surf and Sand, LLC vs. City of Capitola, et al (Surf &amp; Sand Mobile Home Park)

[U.S. District Court N.D., Case No. C09-05542 RS (Judge Richard Seeborg)]

Los Altos/El Granada Investors vs. City of Capitola, et al (Castle Mobile Estates)

[U.S. District Court N.D., Case No. CV 04-05138 JF (Judge Jeremy Fogel)]

Vieira Enterprises, Inc. vs. City of Capitola (Cabrillo Mobile Estates)

Deputy City Attorney Cassman reported that council members received status updates and discussed all five cases of existing litigation. Following discussion, direction was given to legal counsel by the city council pertaining to ongoing defense of those cases. No reportable action was taken in Closed Session.

## Conference with Legal Counsel pertaining to one case of Anticipated Litigation - Vieira Enterprises, Inc. vs. City of Capitola (Cabrillo Mobile Estates)

Deputy City Attorney Cassman reported that the city council conferred with and instructed its legal counsel on this matter, but took no reportable action in Closed Session.

## Conference with Real Property Negotiators regarding McGregor Drive property, APN 36-341-02 (City of Capitola, Owner); Negotiating Parties: City and Soquel Creek Water District

The city council received information from its negotiators, Public Works Director Jesberg and Acting City Manager Johnson, regarding this matter. The council provided direction to its negotiator, but took no reportable action in Closed Session.

## 2. ORAL COMMUNICATIONS

### A. Additions and Deletions to Agenda

Council Member/Director Termini suggested continuing Item 5.B., pertaining to the Rispin Mansion proposal, in light of the Governor's proposal to eliminate redevelopment funding. He does not think it is appropriate to discuss any RDA expenditures or any considerations of expenditures until the state determines its budget for redevelopment. [275-05]

**ACTION:** A motion was made by Council Member/Director Termini to continue RDA Item 5.B. pertaining to the Rispin Mansion proposal, indefinitely. Mayor/Chairperson Norton seconded the motion.

Under discussion of the motion, concerns were expressed by council members/directors regarding postponing this item, because continuance is indefinite.

The makers of the motion amended the original motion to include direction to staff to come back with an analysis as to whether it would be in the Redevelopment Agency's interest to encumber RDA funds so that the agency's funds are protected, and to analyze the impacts of the state proposal pertaining to redevelopment. Direction was also given to bring back the Rispin Mansion proposal at that time, as the report may trigger some action to be taken in order to encumber RDA funds.

Members of the public were invited to address the council/directors regarding the motion to continue Item 5.B. The following people spoke:

Mary Healy, Francesco Court, said she is interested in seeing some type of development at the Rispin site that will reduce the undesirable activities occurring in the area, and she would like to see the wall removed.

Bud Carney, planning consultant, commented on Barry Swenson's proposal and concerns he has that it will meet the provisions of the stipulated judgment and amended project conditions. He also commented on redevelopment, saying it is a major tool to address local blight and low-income housing.

Phil Lopez, Clares Street, urged the agency directors not to postpone this item. He said the Governor's proposal is just a proposal – not law. Mr. Lopez expressed concerns about the condition of the property, and he encouraged the Redevelopment Agency directors to consider the Barry Swenson proposal. He believes a public-private partnership would be appropriate for the RDA to consider.

Following public comment, Council Member/Director Termini restated the amended motion to continue Item 5.B., Rispin Mansion Proposal, until staff returns with a more thorough report regarding the disposition of Redevelopment and RDA funds, with guidance and understanding of what will become of the city's RDA funds, and the best method for preserving them.

The motion carried on the following vote: AYES: Council Members/Directors Termini, Storey, and Mayor/Chairperson Norton. NOES: Council Members/Directors Harlan and Nicol. ABSENT: None. ABSTAIN: None.

### B. Public Comments

1) Marilyn Garrett commented on SmartMeters and urged the Council to adopt and ordinance similar to the County of Santa Cruz prohibiting the installation of SmartMeters in Capitola.



2. B. Public Comments

2) MJ "Red" Malone, resident of the 750 Bay Avenue Senior Housing development, expressed concerns regarding the loss of 25 parking spaces, CC&Rs pertaining to dogs, the criteria for being able to live in the development (55+ years of age and low income), and when a change in income results in a need for a different type of unit.

Mayor/Chairperson Norton said the city is not the administrator of the project. He suggested Mr. Malone write a letter to the management with copies to council members/directors regarding his concerns.

Housing and Redevelopment Project Manager Foster responded to questions of council members/directors pertaining to issues raised by Mr. Malone.

Acting City Manager/Community Development Director Johnson recommended that since this item is not on the agenda, Housing and Redevelopment Project Manager Foster should research this and report back.

Council Member/Director Harlan said the city put a lot of staff time and funding into the project, and she would hope that we pay attention to this project and make sure the residents are happy.

C. Staff Comments

Acting City Manager/Community Development Director Johnson informed the City Council/RDA Directors that staff would be reporting on the passageway in the wall from the Sommerfeld/Lotman neighborhood to Capitola Mall at a future meeting as requested.

D. City Council/RDA Directors/Treasurer Comments/Committee Reports

1) City Treasurer Bertrand reported that the Finance Advisory Committee selected Bob Begun to serve as Chair, with Christine Buechting to remain Vice Chair. The committee has also changed its meeting day to the third Tuesday of each month at 6 p.m. in the Community Room.

2) Council Member Nicol said he visited the Capitola Beach Villas Project on 41<sup>st</sup> Avenue for information on rental of the units. He spent some time with the business manager and learned that 22 of the 55 units are rented, and 6 units are being offered for sale.

3) Mayor Norton said the Santa Cruz County Regional Transportation Commission was successful in acquiring the \$18.2 Million to acquire the rail corridor. He is excited that the corridor is in the public hands for future generations.

E. Committee Appointments

1) **City Council appointments to the General Plan Advisory Committee. Staff recommendation: confirm appointments and adopt Resolution Appointing Members to the General Plan Advisory Committee. [740-40]**

Mayor Norton reported on the nominations from the various committees/commissions as follows:

Planning Commission	- Ed Newman
Traffic and Parking Commission	- Linda Hanson
Commission on the Environment	- Kristin Jensen Sullivan
Finance Advisory Committee	- Jacques Bertrand
Art & Cultural Commission	- James Wallace
Economic Development Committee of the Chamber-	Gary Wetsel

## 2. E. 1) Committee Appointments (Continued)

Housing and Redevelopment Project Manager Foster provided a staff report utilizing a PowerPoint Presentation. He said the contract with Design Community Environment, the General Plan consultant, has been executed. He also said the city's website for the General Plan update is up and running at [www.plancapitola.com](http://www.plancapitola.com).

Following staffs' presentation, Council Members nominated public members to the GPAC as follows:

Council Member Storey nominated Bruce Arthur from the Depot Hill neighborhood, Council Member Nicol nominated Ron Burke from the Jewel Box neighborhood, Council Member Harlan nominated Rick Halterman West Capitola neighborhood, Council Member Termini nominated Ed Bottorff from the Upper and Lower Village neighborhood, and Mayor Norton nominated Ann Wilson from the East Capitola neighborhood.

Community Development Director Johnson said staff is shooting for Wednesday, February 16, as the first meeting of the committee, and will confirm the meeting date once staff has communicated with the consultants and committee members.

Council Member Termini said there is a distinct possibility that we may lose a member during this 3-year process, and questioned if the applicants not appointed could attend meetings and be considered for appointment if that were to occur. Community Development Director Johnson said the meetings are open to the public, and all are welcome to attend.

**ACTION:** Council Member Harlan moved, seconded by Council Member Termini, to adopt **Resolution No. 3851, Resolution Appointing Members to the General Plan Advisory Committee**, inserting the names of the confirmed nominations approved by the City Council, as follows:

Depot Hill neighborhood	- Bruce Arthur
Jewel Box neighborhood	- Ron Burke
West Capitola neighborhood	- Rick Halterman
Upper & Lower Village neighborhood	- Ed Bottorff
East Capitola neighborhood	- Ann Wilson
Planning Commission	- Ed Newman
Traffic and Parking Commission	- Linda Hanson
Commission on the Environment	- Kristin Jensen Sullivan
Finance Advisory Committee	- Jacques Bertrand
Art & Cultural Commission	- James Wallace
Economic Development Committee of the Capitola Soquel Chamber of Commerce	- Gary Wetsel

The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

## 2. E. Committee Appointments (Continued)

2) **Confirmation of Planning Commission appointments to the Art and Cultural Commission, the Commission on the Environment, and the Traffic and Parking Commission. [1010-60/430-05/470-60/110-10]**

**ACTION:** Council Member Nicol moved, seconded by Council Member Storey, to approve the Planning Commission nominations and made the following committee appointments:

Traffic and Parking Commission - Mick Routh  
 Commission on the Environment - Ron Graves  
 Art & Cultural Commission - Linda Smith

The motion carried unanimously.

F. **Approval of Check Register Reports**1) **City: Approval of City Check Register Reports for January 7 and January 14, 2011 [300-10]**

**ACTION:** Council Member Termini moved, seconded by Council Member Harlan, to approve the Check Register Reports dated January 7 and 14, 2011, including checks numbered 65204 through 65250 in the amount of \$125,654.91, and checks numbered 65251 through 65308 in the amount of \$335,138.16, respectively; and payroll disbursements for the January 14, 2011, payroll in the amount of \$181,496.37, for a Grand Total of \$642,289.44, as submitted. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and \*Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None. (\*Note: Mayor Norton abstained on Check #65292 to Santa Cruz Regional 911 in the amount of \$105,114.75, only.)

2) **RDA: Approval of Redevelopment Agency Check Register Reports dated January 7, 2011 [760-25]**

**ACTION:** Director Harlan moved, seconded by Director Termini, to approve the Check Register Report dated January 14, 2011, including checks numbered 2891 through 2895 in the amount of \$11,871.46, as submitted. The motion carried on the following vote: AYES: Directors Harlan, Termini, Nicol, Storey, and Chairperson Norton. NOES: None. ABSENT: None. ABSTAIN: None.

3. **CONSENT CALENDAR**

Mayor/Chairperson Norton asked if there were any items on the Consent Calendar that members of the public or city council wished to pull for separate discussion.

Council Member Harlan pulled Item 3.E., pertaining to an Offer of Dedication and Subdivision Agreement for the Hill Street Minor Land Division at 509 Hill Street. The city council heard from Council Member Harlan regarding that item at this time. (*See discussion under that item.*)

**CONSENT CALENDAR ACTION:** Council Member/Director Termini moved, seconded by Council Member/Director Harlan, to approve the Consent Calendar as recommended. The motion carried on the following vote: AYES: Council Members/Directors Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

A. **Approve Reading by Title of all Ordinances and Resolutions and declare that said Titles which appear on the Public Agenda shall be determined to have been read by Title and Further Reading Waived.**

**ACTION:** The City Council unanimously approved the reading by title of all Ordinances and Resolutions and declared that said titles which appear on the public agenda shall be determined to have been read by title and further reading waived.

## 3. CONSENT CALENDAR (Continued)

- B. Approve City Council Minutes of the Regular Meeting of December 9, 2010, the Special City Council Workshop of January 10, 2011, and the Special Closed Session Meeting of January 10, 2011.**

**ACTION:** Council Member Termini moved, seconded by Council Member Harlan, to approve the City Council Minutes of the Regular Meeting of December 9, 2010, the Special City Council Workshop of January 10, 2011, and the Special Closed Session Meeting of January 10, 2011, as submitted. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

- C. Receive Planning Commission Action Minutes for the Regular Meeting of January 20, 2011. [740-50]**

**ACTION:** Council Member Termini moved, seconded by Council Member Harlan, to receive the Planning Commission Action Minutes for the Regular Meeting of January 20, 2011, as submitted. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

- D. Receive City Treasurer's Report for the month ended December 31, 2010 (Unaudited). [380-30]**

**ACTION:** Council Member Termini moved, seconded by Council Member Harlan, to accept the City Treasurer's Report for the Month Ended December 31, 2010 (Unaudited), as submitted. The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

- E. Adopt Resolution Accepting an Offer of Dedication of land on Hill Street, APN 036-022-37, from J. Edison Corporation for street and pedestrian purposes, and approve Subdivision Agreement for the Hill Street Minor Land Division. [940-30/730-75/500-10 A/C: Edison, J. Corporation]**

Prior to action on the Consent Calendar, Council Member Harlan had a few questions regarding the subdivision agreement and acceptance of the offer of dedication of land for street and pedestrian purposes. She expressed concern about the length of time that has elapsed since this project was first approved, and she questioned what the city could do to make this happen sooner.

Public Works Director Jesberg explained the developer was unable to move forward due to health issues, but he is motivated to sell the homes and the buyers cannot move in until the improvements are completed.

**ACTION:** Council Member Termini moved, seconded by Council Member Harlan, to take the following recommended actions:

1. Approved a Subdivision Agreement between the City of Capitola and J. Edison Corporation covering construction of public improvements for the Hill Street Minor Land Division and providing securities for their completion and authorized the City Manager to sign the agreement on behalf of the City; and
2. Adopted **Resolution No. 3852, Resolution Accepting an Offer of Dedication of Land from J. Edison Corporation along Hill Street for Street and Pedestrian Purposes (509 Hill Street; APN 036-022-37).**

The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

**4. PUBLIC HEARINGS – None****5. OTHER BUSINESS**

- A. Council determination regarding new Community Grant applications for FY 2011-2012. Staff recommendation: Council to determine whether or not to allow a new agency or organization to apply for a Community Grant for FY 2011-2012. [330-30]**

Council Member Storey announced that since he is employed by an agency that receives community grant funds, he would be recusing himself from participating in this item. He left the Council Chambers at 8:06 p.m.

Council Member Nicol moved not to accept new applications. The motion failed for lack of second.

**ACTION:** Council Member Termini moved to accept new Community Grant applications for Fiscal Year 2011/2012. The motion was seconded by Mayor Norton. The motion carried on the following vote: AYES: Council Members Harlan, Termini, and Mayor Norton. NOES: Council Member Nicol. ABSENT: None. ABSTAIN: None. DISQUALIFIED: Council Member Storey.

- B. RDA: Rispin Mansion proposal. Staff recommendation: consider a proposal to save and restore the Rispin Mansion and provide direction to staff. [275-05]**

Chairperson Norton announced at the beginning of the meeting under Additions/Deletions to the agenda that this item was continued. See page 11857 for discussion and action. Chairperson Norton asked if anyone wished to address the agency directors at this time. No one spoke.

- C. Consider Letter in Opposition to Governor Brown's Proposal to Eliminate Redevelopment. Staff recommendation: authorize the Mayor to execute letters to State officials. [580-40]**

**ACTION:** Council Member Nicol moved, seconded by Council Member Harlan, to authorize the Mayor to execute letters to Governor Jerry Brown, State Senator Joseph Simitian, and State Assemblyman Bill Monning, opposing Governor Brown's proposal to eliminate Redevelopment. with the inclusion of the city's commitment to a permanent library in the letter. The motion carried unanimously.

- D. Village Parking Pay Station Program. Staff recommendation: approve the selection of Cale Parking Systems, USA, Inc., for the implementation of the Village Pay By Space Station Program and authorize the Public Works Director to negotiate and execute a final contract with Cale for replacing all parking meters along the Esplanade with pay stations at an estimated cost of \$100,000. [470-30/500-10 A/C: Cale Parking Systems, USA, Inc.]**

After receiving staff's report and responses to questions of council members by Public Works Director Jesberg, Mayor Norton asked if anyone from the public wished to address this item.

Marilyn Garrett expressed concerns about the use of microwave radiation in the pay station program. She submitted a copy of an article from "The EMR Policy Institute" entitled, "Blind Faith in Wireless Technology – Facts Everyone Should Know." Ms. Garrett urged the Council to keep the current coin meters, saying Capitola is about "nature," and it should be kept natural.

## 5. D. OTHER BUSINESS (Continued)

Ed Bottorff, member of the Traffic & Parking Commission, offered his support of the proposed pay to park program and said he would be willing to serve as an ambassador during the transition from parking meters to the new pay by space system.

**ACTION:** Council Member Termini moved, seconded by Council Member Storey, to approve the selection of Cale Parking Systems, USA, Inc., for the implementation of the Village Pay By Space Pay Station Program and authorized the Public Works Director to negotiate and execute a final contract and implementation plan with Cale for replacement of all parking meters along the Esplanade as recommended, with the added area on Monterey Avenue to Capitola Avenue, with pay stations at an estimated cost of \$100,000.

There was additional Council discussion regarding the motion prior to the following vote being taken: The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

**E. Grant for Electric Vehicle Charging Station Installation. Staff recommendation: approve recommended action accepting grant from Coulomb Technologies, Inc., authorizing the City Manager to execute agreements, approve installation of charging stations in Pacific Cove Parking Lot, and approve Notice of Exemption from CEQA for the installation of the charging stations. [370-40/500-10 A/C: Coulomb Technologies, Inc.,/500-10 A/C: Phat Energy]**

The City Council received a verbal report from Public Works Director Jesberg on this item. He introduced Sharon Sarris, Monterey Bay EV Alliance, who has been a key figure in obtaining funding for these electric vehicle charging stations. Ms. Sarris informed the Council that Capitola will be the first of 5 locations in the county taking advantage of this grant.

**ACTION:** Council Member Storey moved, seconded by Council Member Termini, to take the following actions, as recommended:

1. Accepted a grant from Coulomb Technologies, Inc., for two electric vehicle charging stations near City Hall and authorized the City Manager to execute two agreements with Coulomb;
2. Approved the installation of the charging stations in the Pacific Cove Parking Lot utilizing three parking spaces for two stations;
3. Awarded a sole source contract to Phat Energy in an amount not to exceed \$4,500 for the installation of the two charging stations at a site to be determined; and
4. Approved a Notice of Exemption from CEQA for the installation of the charging stations.

The motion carried on the following vote: AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

**6. COUNCIL/RDA DIRECTORS/STAFF COMMUNICATIONS**

Council Member Termini announced that a local celebrity – Kim Hogan – is celebrating her birthday today. The council members and others present sang ♪ *Happy Birthday* ♪ to Kim.

Council Member Harlan commented on the parking lot at the theater site where someone could not get out of the lot for over 30 minutes due to a malfunction in the gate.

Mayor Norton expressed concerns about the visibility on Stockton Avenue and the Esplanade. He said it is often difficult to see people in the crosswalks at night, and he wondered if additional lighting could be considered for that location.

**7. ADJOURNMENT**

The City Council/Redevelopment Agency adjourned at 9:16 p.m. to its next Regular Meeting to be held on Thursday, February 10, 2011, at 7:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

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Dennis Norton, Mayor

ATTEST:

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Pamela Greeninger, City Clerk, MMC



Item #: **3.C.**

## **CITY COUNCIL AGENDA REPORT**

**MEETING OF FEBRUARY 10, 2011**

FROM: COMMUNITY DEVELOPMENT DIRECTOR

DATE: FEBRUARY 3, 2011

SUBJECT: PLANNING COMMISSION ACTION MINUTES OF FEBRUARY 3, 2011

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### **1. ROLL CALL AND PLEDGE OF ALLEGIANCE**

Chairperson Ortiz called the Joint Meeting of the Planning Commission and Traffic and Parking Commission to order at 7:00 p.m.

Planning Commissioners, Ed Newman, Mick Routh, Linda Smith and Chairperson Gayle Ortiz  
Absent: Ron Graves

Traffic and Parking Commission Members: Ed Bottorff, Carin Hanna, Linda Hanson, Margaret Kinstler, Vicki Muse, Anne Nicol, Molly Ording, Peter Roddy, Nels Westman, (Note: Mick Routh sits on the Traffic and Parking Commission as the Planning Commission representative)  
Absent: Gary Wetsel

Staff: Community Development Director Derek Johnson  
Public Works Director Steven Jesberg  
Minute Clerk Danielle Uharriet

### **2. ORAL COMMUNICATIONS**

A. Additions and Deletions to Agenda - NONE

B. Public Comments - NONE

C. Commission Comments

Commissioner Smith complimented staff on the e-packet

D. Staff Comments - NONE

### **3. PRESENTATION**

Capitola Village Parking Structure Planning Project Report by Watry Design Inc. and Traffic Impact, Circulation, and Congestion Relief Study by RBF Consulting



#### **4. ADJOURNMENT**

The Planning Commission and the Traffic and Parking Commission adjourned the meeting at 8:35 p.m.

The Planning Commission adjourned to a Regular Meeting of to be held on Thursday, March 3, 2011 at 7:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

The Traffic and Parking Commission adjourned to a Regular Meeting to be held on Wednesday, February 9, 2011 at 6:30 p.m. in the Community Room, 420 Capitola Avenue, Capitola, California



# CAPITOLA REDEVELOPMENT AGENCY AGENDA REPORT

## MEETING OF FEBRUARY 10, 2011

FROM: FINANCE DEPARTMENT

DATE: FEBRUARY 2, 2011

SUBJECT: RDA Treasurer's Report for the quarter ended December 31, 2010 (unaudited)

**Recommended Action:** Accept quarterly report.

### BACKGROUND

The Capitola RDA Treasurer's report is presented quarterly to the RDA Board of Directors.

### DISCUSSION

Following is a summary of some key elements of the 12/31/10 RDA Annual Statement of Indebtedness:

<u>INDEBTEDNESS COMMITTED AS OF JUNE, 30, 2010</u>	Remaining Principal Due	Principal & Interest Due FY 2010-11	Source/Purpose of Indebtedness
<u>Debt</u>			
1.) Loan from City - Rispin land purchase	\$ 1,350,000	\$ 104,600	Rispin Purchase Agreement
2.) Loan from City - Cooperative Agreement	\$ 618,028	\$ 47,900	FY 1997 thru 2001 Admin Svcs Loan
3.) Loan from Stone & Youngberg/Chase NYC	\$ 1,000,000	\$ 47,500	Tax Allocation Note - 9/29/14
4.) Capitola Library Construction Contract	\$ 2,477,100	\$ 162,900	Capitola Library Construction - 2/1/18
5.) Santa Cruz County Agreement - Library Distr., Sect. 3	\$ 91,800	\$ 45,900	Yrs 1-20 Pass-throughs - 6/30/12
6.) Santa Cruz County Agreement - Special Distr., Sect. 4	\$ 40,200	\$ 20,100	Yrs 1-20 Pass-throughs - 6/30/12
	<u>\$ 5,577,128</u>	<u>\$ 428,900</u>	
<u>Annual Pass Throughs</u>			
7.) Santa Cruz County	\$ 4,713,776	\$ 528,000	Pass-through Agreement, est. 2002-17
8.) Central Fire District	\$ 3,077,775	\$ 323,000	Pass-through Agreement, est. 2002-17
9.) Library District	\$ 561,957	\$ 62,800	Pass-through Agreement, est. 2002-17
10.) Special District	\$ 289,060	\$ 27,600	Pass-through Agreement, est. 2002-17
11.) SERAF (Supplemental Educational Relief Augmentation Fund)	\$ 144,616	\$ 144,616	SERAF shift for FY009-10, 10-11
	<u>\$ 8,787,184</u>	<u>\$ 1,086,016</u>	
<u>Obligation to Low/Mod Housing</u>			
12.) 20% Housing Set-Aside	\$ 5,823,040	\$ 463,360	20% Pass through Req., est. 2002-17
<b>Total</b>	<u><b>\$ 20,187,352</b></u>	<u><b>\$ 1,978,276</b></u>	

RDA cash balance at quarter-end is as follows:

Total RDA Cash, 12/31/10			
	RDA Operating	Low/Moderate Income Housing	Total RDA Cash
Bank of America	\$ (106,300)	\$ 355,900	\$ 249,600
Local Agency Investment Fund (LAIF)	\$ 3,529,600	\$ 618,400	\$ 4,148,000
<b>Total RDA Cash</b>	<u><b>\$ 3,423,300</b></u>	<u><b>\$ 974,300</b></u>	<u><b>\$ 4,397,600</b></u>

The following table shows activity and resulting fund balances for RDA Operating and Low/Moderate Income Housing Funds:

	Beginning Fund Balance - 7/1/2010	Net Prior Qtr. Activity	Q2, 2010-11		Ending Fund Balance - 12/31/2010
			Revenue	Expenditures	
RDA Operating	\$ 3,067,100	\$ (181,700)	\$ 1,264,300	\$ 724,900	\$ 3,424,800
Low/Mod Housing	\$ 808,100	\$ (6,000)	\$ 252,900	\$ 78,900	\$ 976,100
<b>Total</b>	<b>\$ 3,875,200</b>	<b>\$ (187,700)</b>	<b>\$ 1,517,200</b>	<b>\$ 803,800</b>	<b>\$ 4,400,900</b>

Significant activity for second quarter 2010-11, ended December 31, 2010, includes:

Revenue

\$1,264,300 tax increment, offset by \$252,900 20% set aside pass through and revenue

Expenditures:

\$613,540 pass throughs associated with tax increment

\$49,200 First Time Home Buyer loan

\$30,000 Capitola Road/42<sup>nd</sup> Street Improvement project

\$28,140 Housing Services contracts

- \$22,900 Emergency Housing assistance of \$95,000 Community Action Board contract
- \$3,780 of \$7,560 Wharf Road Manor rent subsidy program
- \$1,490 of \$20,000 Housing Authority Security Deposit Program

\$26,155 interest only loan payment for City \$1,350,000 Rispin purchase loan

\$24,745 Rispin clean-up and securing site

\$20,460 tourism/economic development

- \$10,000 Q2 and Q3 payments for \$20,000 Capitola Chamber Visitor Services contract
- \$5,000 Q2 and Q3 payments for \$10,000 Capitola Chamber Economic Development contract
- \$2,885 quarterly payment for \$11,540 Santa Cruz County Conference and Visitors Council
- \$2,575 quarterly payment for \$10,300 Santa Cruz County Conference and Visitors Council Cultural Tourism contract

**Report prepared by:**

**Lonnie Wagner, Accountant II**

**Approved by:**

**Derek Johnson**

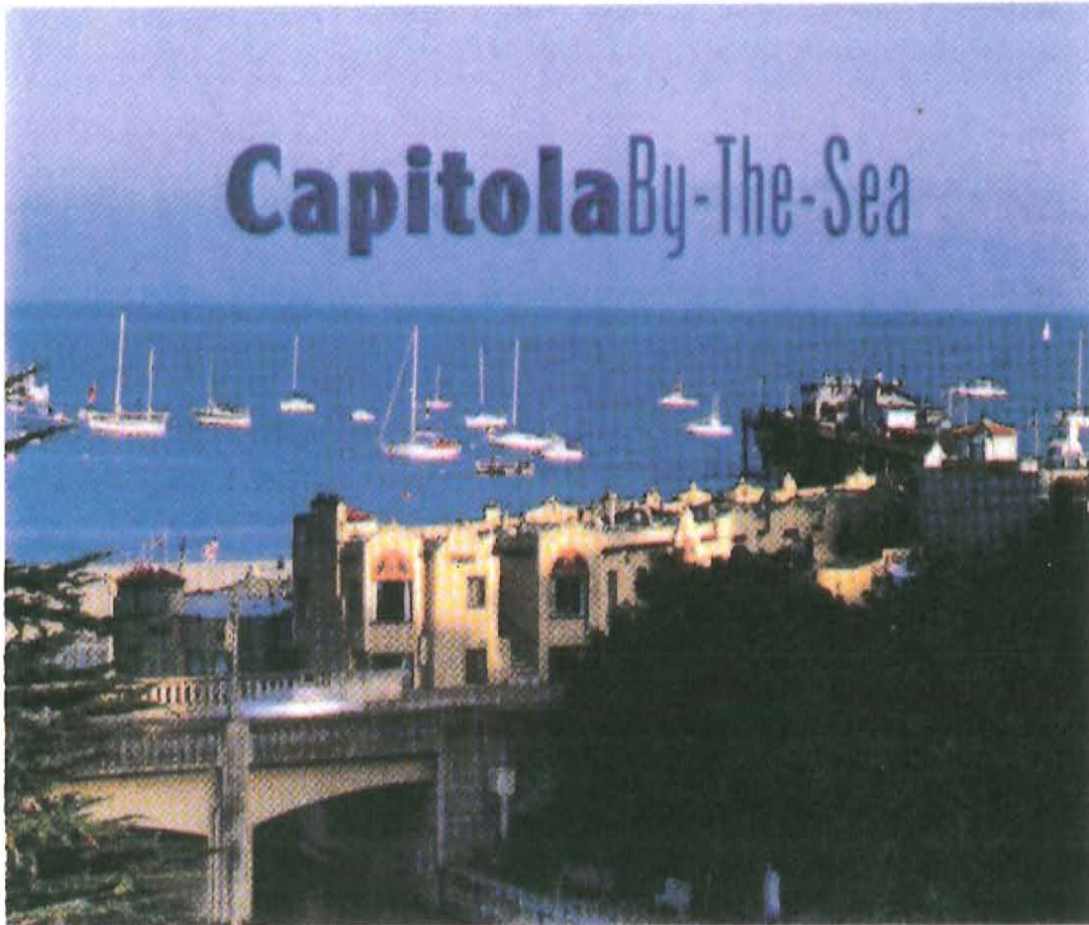
**Deputy Executive Director** \_\_\_\_\_

**Reviewed and forwarded by:**

**Debbie Johnson**

**RDA Treasurer** \_\_\_\_\_

**GENERAL SPECIAL EVENT  
PERMIT  
APPLICATION**



**CITY OF CAPITOLA**

**CAPITOLA VINTAGE MOTORCYCLE SHOW  
JUNE 26, 2011**

## SPONSORING ORGANIZATION AND APPLICANT INFORMATION

- Event Name: Capitola Vintage Motorcycle Show (Bikes on the Bay)
- Event Description: Motorcycle Display
- Event Purpose: Showcase Vintage Motorcycles
- Sponsor: Capitola-Soquel Chamber of Commerce
- Sponsor's Address: 716-G Capitola Avenue  

	street	
Capitola,	Ca.	95010
city	state	zip code
- Sponsoring Organization's Phone: ( 831 ) 475-6522
- FAX Number: ( 831 ) 475-6530 E-Mail Address: toni@capitolachamber.com
- Contact Person's Name: Toni Castro
- Business Phone: ( 831 ) 475-6522 Cellular Phone: ( 831 ) 359-1803
- FAX Number: ( 831 ) 475-6530 E-Mail Address: toni@capitolachamber.com

Will you be using a professional Special Event Organizer? If yes, please include all foregoing information about the organizer on a separate sheet of paper and attach to your application.

## EVENT INFORMATION

- Type of event:  Run  Festival  Parade  Sale  Motion Picture  Block Party
- Other (specify) Vintage Motorcycle Show
- Event Location: Capitola Mall
- Event Dates: June 26, 2011 Anticipated Attendance: 1,000
- Web Site Information: BikesontheBay.com. E-Mail Address: toni@capitolachamber.com
- Will the public be invited?  Yes  No

Actual hours open to the public or "advertised" event hours:

- Date: 06-26-11 Time: 9:00 AM/PM to 4:00 AM/PM
- Date: \_\_\_\_\_ Time: \_\_\_\_\_ AM/PM to \_\_\_\_\_ AM/PM
- Date: \_\_\_\_\_ Time: \_\_\_\_\_ AM/PM to \_\_\_\_\_ AM/PM
- Has this event taken place before?  Yes  No Any changes to this event?  Yes  No
- If yes, what changes? \_\_\_\_\_
- If yes, please attach a copy of your last permit for this event, if available.
- Will this event be promoted, advertised or marketed in any manner?  Yes  No
- Will there be live media coverage during your event?  Yes  No
- If yes, please explain: \_\_\_\_\_

- Are admission, entry or vendor participant fees required?  Yes  No
  - If yes, explain: Public admission fees: \$ none per person  
 Participant entry fees: \$ 20.00 per person  
 Vendor fees: \$ 40.00 per booth  
 Number of vendors: 15  
 How many vendors are for profit? 14  
 How many vendors are nonprofit? 1
  - \$ 2,000.00 Total estimated gross receipts, including tickets, product and sponsorship sales from this event. Explain how this amount was computed. Indicate amount per item.  
 \$ none Admission fees  
 \$ none Product fees  
 \$ 1,200.00 Sponsorship  
 \$ 800.00 Participant entry fees  
 \$ \_\_\_\_\_ Other (Please specify): \_\_\_\_\_
  - \$ 1,000.00 Total estimated expenses for this event.  
 \$ 500.00 Advertising  
 \$ \_\_\_\_\_ Wages, salaries  
 \$ \_\_\_\_\_ City services (police, fire, street closures)  
 \$ 500.00 Insurance  
 \$ \_\_\_\_\_ Business license fee  
 \$ \_\_\_\_\_ Other (Please specify): \_\_\_\_\_
  - Is the organization a "tax exempt, nonprofit" organization?  Yes  No
  - \$ 1,000.00 Projected amount of revenue the Sponsoring Organization(s) will receive as a result of this event.
  - Specify the organization(s) to receive funding: Capitola-Soquel Chamber of Commerce
- 
- City sponsorship requested?  Yes  No If yes, please describe:  
 \_\_\_\_\_

**OVERALL EVENT DESCRIPTION**

- Will a staging/setup/assembly location be required?  Yes  No
  - If yes, begin day/date: 06/26/11 Start time: 8:00  AM/ PM
  - Location: Capitola Mall Parking Lot
  - Description of the scope of the setup/assembly work (Attach additional pages and drawings as needed): Set-Up Food Vendor Booth, Vendor Booths and Bike Displays
- 
-

• If yes, dismantle day date: 06/26/11 Completion time: 5:00 AM/PM

• List the street(s) requiring closure as a result of this event. Include street names, day, date and time of closing and the time of reopening: \_\_\_\_\_

None \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

City of Capitola to conduct street closures as needed (cost to be specified)

• List street(s) requiring the posting of "No Parking" signs. Indicate days, dates, and times needed and an explanation of necessity for "No Parking" zone: \_\_\_\_\_

NONE \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTE: "No Parking" signs will be posted twenty-four hours in advance of required days, dates and time. Cost for the posting of "No Parking" signs will be specified upon review of the application by City staff.

### OVERALL EVENT DESCRIPTION (continued)

• Attach a diagram (please try to make diagram reasonably to scale), showing the overall layout and setup locations. Using the letters below, indicate the site for these on your diagram.

- A Alcoholic and nonalcoholic concession
- B First-aid facilities
- C Tables and chairs
- D Fencing, barriers and/or barricades
- E Generator locations and/or sources of electricity
- F Canopies or tent locations
- G Booths, exhibits, displays or enclosures
- H Scaffolding, bleachers, platforms, stages, grandstands, related structures
- I Vehicles and/or trailers
- J Trash containers or dumpsters
- K Non-food vendor locations
- L Food concession and/or food preparation areas
- M Portable toilet locations

N Other related event components not covered above (describe separately)

- Please describe how food will be served at the event: \_\_\_\_\_  
Food will be BBQ'd and served from a tent
- Will food be cooked in the event area?  Yes  No
- If yes, specify method:  Gas  Electric  Charcoal  Other (specify): \_\_\_\_\_
- Does the event involve the sale or use of alcoholic beverages?  Yes  No
- If yes, please describe: \_\_\_\_\_
- If alcohol is to be sold, how will the alcohol sales be regulated? n/a

Please attach a copy of your ABC license.

- Will there be items or services sold at the event?  Yes  No
  - If yes, please describe: T-SHIRTS, MOTORCYCLES & PARTS
- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- Do the vendors have City of Capitola business licenses?  Yes  No



**OVERALL EVENT DESCRIPTION (continued)**

Portable and/or permanent toilet facilities:

- Number of portable toilets: 2 (Recommended: 1 for every 250 people)
- Number of ADA-accessible toilets: 1 (Recommended: 10% of total toilets)

(NOTE: Unless the Applicant can substantiate the availability of both accessible and non-accessible toilet facilities in the immediate area of the site, the above is required. Portable toilet facilities must be in place 24 hours in advance, cleaned and sanitized daily during the event, and must be removed by 8:00 a.m. the next business day following the event. Location sites for portable toilets must be pre-approved prior to installation.)

- Number of trash receptacles: 4
- Number of dumpsters with lids: 5 (Recommended 1 per 400 people)
- Number of recycling containers: 4 (Voluntary)
- Describe the plan for cleanup and removal of waste and garbage during and after the event:

The Clean Up Crew from the Committee will clean parking lot and dump trash and recycling into appropriate containers at the Capitola Mall.

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(Note: It is the event organizer’s responsibility to dispose of waste and garbage daily throughout the term of the event, unless otherwise contracted with City staff, which will require a fee. Immediately upon conclusion of the event, the venue must be returned to a clean condition. Street sweeping can be arranged with City crews for an additional fee.)

**PARKING PLAN – SHUTTLE PLAN – MITIGATION OF IMPACT**

- Please provide a detailed description or diagram that indicates the proposed parking plan and/or shuttle plan for the event. Include a description of the parking plan/shuttle plan for the disabled. N/A

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- Describe plan to notify those residents, businesses, churches, etc. that will be impacted by this event.

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The Capitola Mall is self contained and will not affect anyone.

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- Does this event involve a moving route of any kind along streets or sidewalks?  
 Yes    No
- If yes, highlight your proposed route on the enclosed map, indicating the directions of travel, and provide a written narrative to explain your route and its impact.

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- Does this event involve a fixed venue site?    Yes    No
- If yes, highlight the site on the enclosed map, showing all the streets impacted by the event.

## SAFETY - SECURITY

- Is there a professional security organization to handle security for this event?  Yes  No
- If yes, please name security company: Capitola Mall Security
- If no, do you wish to contract police services from the Capitola Police Dept.?  Yes  No (See fee schedule)
- Security company's address: 1855 41st Avenue  
street  

<u>Capitola</u> city	<u>Ca.</u> state	<u>95010</u> zip code
-------------------------	---------------------	--------------------------
- Security Director's name: \_\_\_\_\_
- Security Director's phone number: ( \_\_ ) \_\_\_\_\_
- Security company's state license number: \_\_\_\_\_
- Security company's business license number: \_\_\_\_\_
- Security company's insurance carrier: \_\_\_\_\_ City or privately secured?
- On-site contact person (security supervisor): \_\_\_\_\_
- Any searches prior to entering?  Yes  No
- Bottle and can check?  Yes  No
- Metal detectors?  Yes  No
- How many security guards at each entrance? \_\_\_\_\_

### Parking Lot Patrol (Private Security):

- Security company: CAPITOLA MALL SECURITY
- Contact person (security supervisor): \_\_\_\_\_
- Number of security guards patrolling the parking lot: \_\_\_\_\_

### Lighting:

- If this is an evening event, please state how the event and surrounding areas will be illuminated to ensure the safety of the participants and spectators.  
\_\_\_\_\_  
\_\_\_\_\_

### Medical:

- Indicate what arrangements have been made for providing first-aid staffing:

TONI CASTRO HAS A FIRST-AID KIT

## ENTERTAINMENT – ATTRACTION – RELATED EVENT ACTIVITIES

- Is there any musical entertainment or amplified sound related to your event?  
 Yes    No
- If yes, what kind: Disc Jockey
- Contact person's name: \_\_\_\_\_ Phone number: (\_\_\_\_) \_\_\_\_\_
- Contact person's address: \_\_\_\_\_  
street  
\_\_\_\_\_  
city state zip code
- Number of stages: NONE Number of bands: NONE
- Type of music: \_\_\_\_\_ Sound amplification?  Yes  No
- If yes, start time: \_\_\_\_\_  AM/ PM Finish time: \_\_\_\_\_  AM/ PM
- Have you applied for a sound permit?  Yes  No (Refer to city ordinance 9.12.040)
- Will sound checks be conducted prior to the event?  Yes  No
- If yes, do you wish to have the city provide the checks?  Yes  No
- Describe sound equipment that will be used: \_\_\_\_\_
- Will fireworks, rockets or other pyrotechnics be used?  Yes  No
- If yes, name and phone number of pyrotechnic company: \_\_\_\_\_  
\_\_\_\_\_ (\_\_\_\_) \_\_\_\_\_
- Describe (indicate dates, times and locations for launching and fallout areas):  
\_\_\_\_\_  
\_\_\_\_\_
- Has a permit been issued?  Yes  No
- Will there be any type of open flames used?  Yes  No
- If yes, please describe: \_\_\_\_\_
- Will any signs, banners, decorations or special lighting be used?  Yes  No
- If yes, please describe: Banner  
(Refer to city ordinance chapter 17.57)

## INSURANCE REQUIREMENTS

### INSURANCE

Applicant must provide insurance at the following minimal limits: \$1,000,000 (one million) combined single limit. (Two million for the annual Art and Wine Festival). This Certificate of Insurance must name the City as an additional insured throughout the event duration, including setup and breakdown. The Certificate of Insurance, including limits of insurance, must be received by the Special Events Coordinator by \_\_\_\_\_ to finalize this permit.

### HOLD HARMLESS

The Applicant will, at its sole expense, provide the City with evidence of insurance for general liability and Worker's Compensation benefits for accidents or injuries that occur or are sustained in connection with the special event which is the subject of this permit application and contract. The Applicant agrees on behalf of itself and on behalf of its agents and employees that the Applicant will not make a claim against, sue, attach the property of, or prosecute the City or any of the City's agencies, employees, contractors or agents for injury or damages resulting from negligence or other acts, however caused, which might be asserted against the City in connection with actions taken by the City or the City's employees or agents in connection with this Special Event Permit. In addition, Applicant, on behalf of itself and its agents and employees, as well as its successors and assigns, hereby releases, discharges and holds the City harmless from, and indemnifies the City against, all actions, claims or demands Applicant, or Applicant's employees, agents, successors or assigns, or any third person now has or may hereafter have for personal injury or property damage resulting from the actions of the Applicant, the Applicant's employees or agents, or any other person under the control of the Applicant, taken pursuant to this Special Event Permit whether said actions are characterized as negligent or intentional.

Applicant Signature: \_\_\_\_\_

### ADVANCED CANCELLATION NOTICE REQUIRED

If this event is cancelled, notify the Special Events Coordinator at (831) 475-4242.

I certify that the information contained in the foregoing application is true and correct to the best of my knowledge and belief, that I have read, understand and agree to abide by the rules and regulations governing the special event under Capitola Municipal Code, and that I understand that this applications is made subject to the rules and regulations established by the City Council and/or the City Manager or the City Manager's designee. I agree to comply with all permit conditions and with all other requirements of the City, County, state and federal governments and any other applicable entity that may pertain to the use of the event premises and the conduct of the event. I agree to abide by these rules and further certify that I, on behalf of the organization, am also authorized to commit that organization and, therefore, agree to be financially responsible for any costs and fees that may be incurred by or on behalf of the event to the City of Capitola.

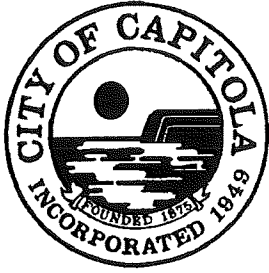
Name of Applicant (print): \_\_\_\_\_

Title: CEO

Signature of Applicant: \_\_\_\_\_

Date: JANUARY 26, 2011

Submit to Capitola PD



City of Capitola  
420 Capitola Avenue  
Capitola, CA 95010  
(831) 475-7300

**APPLICATION FOR LIVE ENTERTAINMENT PERMIT**  
(Application fee of \$31 must be submitted with completed application.)

BUSINESS NAME CAPITOLA-SOQUEL CHAMBER OF COMMERCE

ADDRESS 716-G CAPITOLA AVENUE  
CAPITOLA, CA. 95010

BUSINESS PHONE 475-6522

RESPONSIBLE PARTY TONI CASTRO CEO  
(NAME) (TITLE)

HOME ADDRESS 920 CAPITOLA AVENUE, SPACE #30, CAPITOLA, CA. 95010

HOME PHONE 464-3480 BUSINESS PHONE 475-6522

TYPE OF PERMIT APPLIED FOR (Check One):

- SINGLE EVENT ENTERTAINMENT PERMIT (\$31.00)
- MINOR ENTERTAINMENT PERMIT (\$139.00)
- REGULAR ENTERTAINMENT PERMIT (\$520.00)

NATURE OF ENTERTAINMENT: (Please provide explanation; i.e. live band, disc jockey, etc.)

Disc JOCKEY ONLY WITH SPEAKERS

HOURS OF ENTERTAINMENT: 9:00AM TO 4:00P.M.

DAYS OF ENTERTAINMENT: JUNE 26, 2011

DATE: JANUARY 26, 2011

Toni Castro  
SIGNATURE OF APPLICANT



# CITY OF CAPITOLA

## STREET BANNER PERMIT APPLICATION

DATE: JANUARY 26, 2011

APPLICANT/NONPROFIT CORPORATION: CAPITOLA-SOQUEL CHAMBER OF COMMERCE PHONE: 475-6522

DATE OF EVENT: JUNE 26, 2011

DATE(S) OF DISPLAY: MAY 30TH THRU JUNE 13TH, 2011  
(MAXIMUM: 2 WEEKS PRIOR TO EVENT; REMOVED 2 DAYS AFTER EVENT)

LOCATION OF BANNER:  MONTEREY AVENUE POLES  CAPITOLA AVENUE POLES

DESCRIPTION OR PURPOSE OF BANNER: TO ADVERTISE & PROMOTE EVENT

SIZE OF BANNER: 18' WIDE X 3.5' HIGH - DOUBLE SIDED  
(MAXIMUM: 18' WIDE X 3.5' HIGH)

BANNER TEXT: CAPITOLA VINTAGE MOTORCYCLE SHOW  
JUNE 26, 2011 9AM - 4PM CAPITOLA MALL

BANNER COLORS AND FABRIC: RED, WHITE AND BLUE ON CANVAS

- SUBMIT A GRAPHIC OR PICTURE OF THE BANNER DESIGN
- REFER TO THE ADMINISTRATIVE POLICY 1-17 FOR DETAILED BANNER INFORMATION
- SUBMIT COMPLETED APPLICATION TO THE CITY OF CAPITOLA PUBLIC WORKS DEPARTMENT, 420 CAPITOLA AVENUE, CAPITOLA, CA 95010

I, THE UNERSIGNED, CERTIFY THAT I WILL COMPLY WITH ALL THE PROVISIONS OF ADMINISTRATIVE POLICY 1-17 OF THE CITY OF CAPITOLA.

SIGNATURE OF APPLICANT: [Signature]

PHONE NUMBER: 475-6522

### APPROVALS:

- PUBLIC WORKS: \_\_\_\_\_
- CITY MANAGER: \_\_\_\_\_
- CITY COUNCIL: \_\_\_\_\_

CAPITOLA VINTAGE MOTORCYCLE SHOW

BIKES ON THE BAY

SUNDAY, JUNE 26TH, 2011

CAPITOLA MALL FRONT PARKING LOT

18' WIDE BY 3.5' HIGH

DOUBLE SIDED



Mail Address:  
**CAPITOLA MALL**  
 1855 41st Avenue  
 Capitola, CA 95010  
 Phone: (831) 476-9616  
 Fax: (831) 476-9760

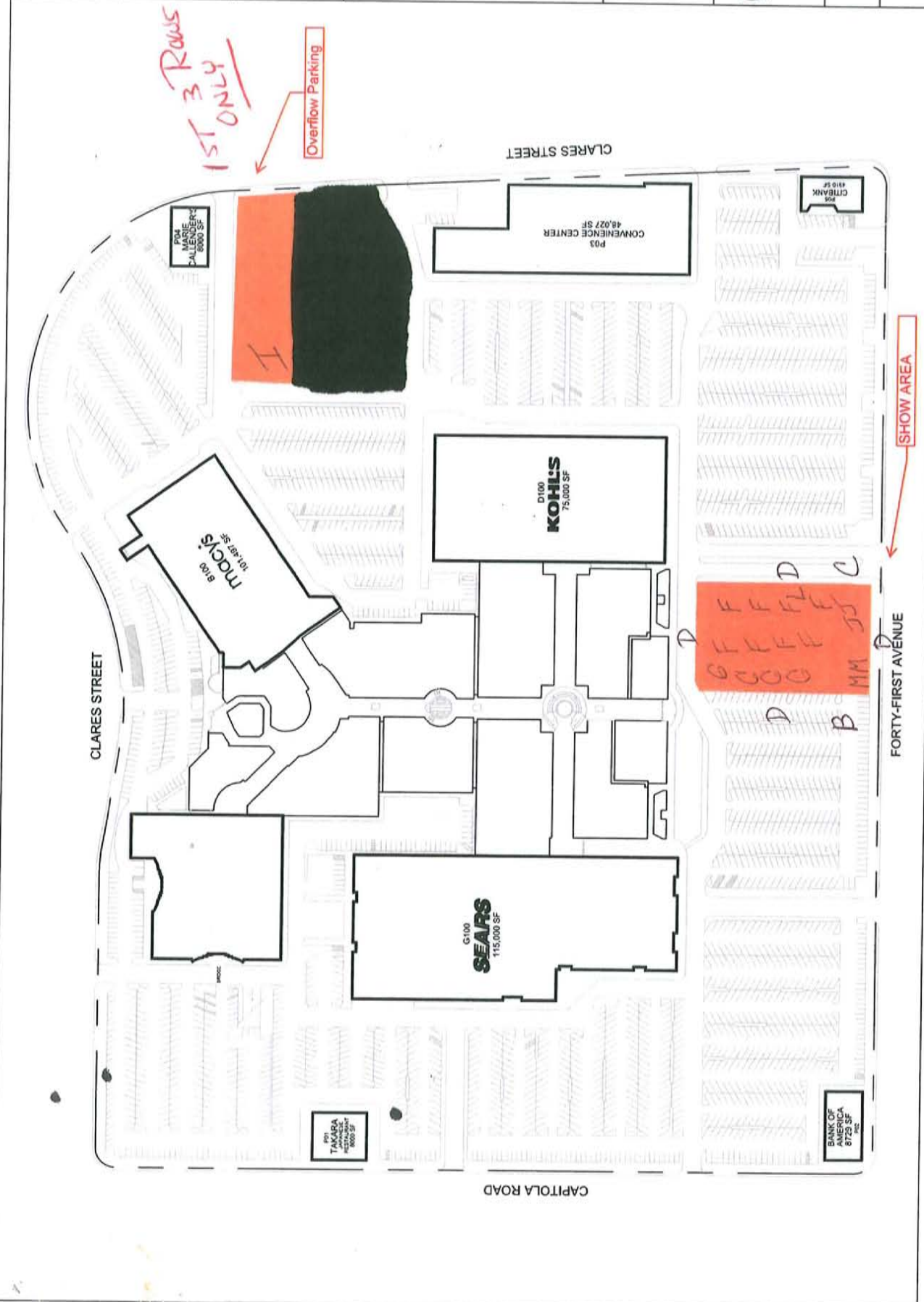
For Leasing  
 Information Contact:  
**Melissa McIntosh**  
 Macerich  
 1855 41st Avenue  
 Capitola, CA 95010  
 Phone: (831) 476-9616  
 Fax: (831) 476-9760

Note:  
 This is a schematic plan only  
 and does not represent the actual  
 layout of the property, and is for  
 informational purposes only.  
 This plan is not to be scaled.

LAST UPDATED: 02-05-09  
 BY: LM

**MACERICH**  
 visit our web site at  
[www.macerich.com](http://www.macerich.com)

**SITE PLAN**





Item #: **3.F.**

## CITY COUNCIL AGENDA REPORT

**MEETING OF FEBRUARY 10, 2011**

FROM: POLICE DEPARTMENT

DATE: FEBRUARY 2, 2011

SUBJECT: APPROVE REQUEST FOR SPECIAL EVENT PERMIT FROM THE CAPITOLA-SOQUEL CHAMBER OF COMMERCE FOR THE 29<sup>TH</sup> ANNUAL ART AND WINE FESTIVAL IN CAPITOLA VILLAGE AND LIVE MUSIC IN ESPLANADE PARK ON SATURDAY, SEPTEMBER 10, AND SUNDAY, SEPTEMBER 11, 2011; AND APPROVE GRANT FOR PERMITS AND PUBLIC WORKS FEES IN THE AMOUNT OF \$2,303.00

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**Recommended Action:** By motion and roll call vote, that the City Council:

- 1) Approve the Special Event Permit, including all other permits, for the 29<sup>th</sup> Annual Capitola Art & Wine Festival to be held Saturday and Sunday, September 10 and 11, 2011, and authorize the Capitola Police Department to issue said permits; and
- 2) Approve Grant in the amount of \$2,303.00 for permits and Public Works fees.

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### **BACKGROUND**

The Capitola Art and Wine Festival has taken place annually for the past 28 years. This year will mark the Festival's 29th anniversary. The impact of this event on City services has remained consistent over the last several years and few additional calls for service have been generated. The Festival Committee is requesting approval for the Festival to occur on September 10 from 10:00 AM to 7:00 PM and September 11 from 10:00 AM to 6:00 PM. During the Festival, a number of entertainment events will take place on the Bandstand.

### **DISCUSSION**

The events of the Festival are held every year, requiring the same levels of extra police presence. The Police Department has standard operations orders in place for the duration of the event. The committee is requesting to hang banners and signage at all booths, balloon bouquets at all Festival entrances, and special lighting at Esplanade Park stage. During the Festival, four parking stalls will be reserved for organizers in the Pacific Cove parking lot. Handicap access parking for the Festival will be temporarily located in four parking spaces along the 300 block of Capitola Avenue. 200 vendors will attend the Festival. The anticipated daily attendance will be approximately 30,000 people.

Three shuttle buses will move people to and from the event. A medical station is manned and provided by Dominican Hospital staff. The Chamber of Commerce will supply liability and workers compensation insurance.

The Special Events Permit also serves as a permit for the stage during the Art and Wine Festival activities live music in Esplanade Park, as well as a banner request with the following conditions:

- Encroachment permit will be issued
- Entertainment permit will be issued
- Amplified sound permit will be issued
- Festival staff has the Bandstand reserved for Saturday and Sunday
- ABC licenses will be obtained
- A Certificate of Insurance indemnifying the City of Capitola will be obtained
- Security for the event will be provided by the Capitola Police Department
- Hours of operation have been clearly established
- No open containers of alcohol in public outside the Festival boundaries
- Adequate portable restrooms and trash containers have been secured for the event
- The Fire Marshal will review and approve the event
- The County Health Inspector will review and approve the event
- Public Works will hang banners as requested
- Abide by all Capitola Municipal Codes

The CEQA Guidelines Section 15323: "Normal Operations of Facilities for Public Gatherings" exemption consists of the normal operations of existing facilities for public gatherings for which the facilities were designed, where there is a past history of the facility being used for the same or similar kind of purpose.

As the proposed project includes the normal use of public facilities for which the facilities were designed, and as there is a past history of the event, the project qualifies for this exemption.

**FISCAL IMPACT**

The fiscal impact of this event to the City of Capitola generally is minimal for Police Department staffing. The Art and Wine Festival Committee has paid for extra police services in the past and has agreed to pay for extra police services this year. These services include the towing of parked vehicles on the morning of the first day of the event and the security of booths in the village during the first night of the event. The projected overtime costs to the Festival Committee are as follows:

<u>Number</u>	<u>Position</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
2	Officers	12	\$115.00	\$2,760.00

Public Works generally supplies equipment and labor services in the form of signs, barricades and cleanup costs. The projected costs to the city from Public Works are as follows:

<u>Number</u>	<u>Position</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
1	Supervisor	5 (overtime)	\$90.00	\$ 450.00
1	Maint. Worker	4 (straight)	\$45.00	\$ 180.00
1	Maint. Worker	2 (overtime)	\$70.00	\$ 140.00
			Materials	<u>\$ 100.00</u>
				\$ 870.00
<b>Total projected event costs to the city:</b>				\$3,630.00
<b>Permits:</b>				<u>\$1,433.00</u>
<b>Total:</b>				\$5,063.00

## Application/ Permit Fee Breakdown:

Entertainment App.	\$ 31.00
Entertainment Permit	\$ 31.00
Banner Permit	\$ 34.00
Amp. Sound Permit	\$ 27.00
Encroachment	\$ 56.00
SEP	\$ 54.00
Bandstand (2 days)	\$1200.00
TOTAL	\$1433.00

The Capitola-Soquel Chamber of Commerce is seeking a grant from the City for projected city costs, including \$870 for Public Works and \$1433 for permit fees, totaling \$2,303. The Chamber has agreed to pay the \$2,760 in additional security costs for Police Department personnel.

**ATTACHMENTS**

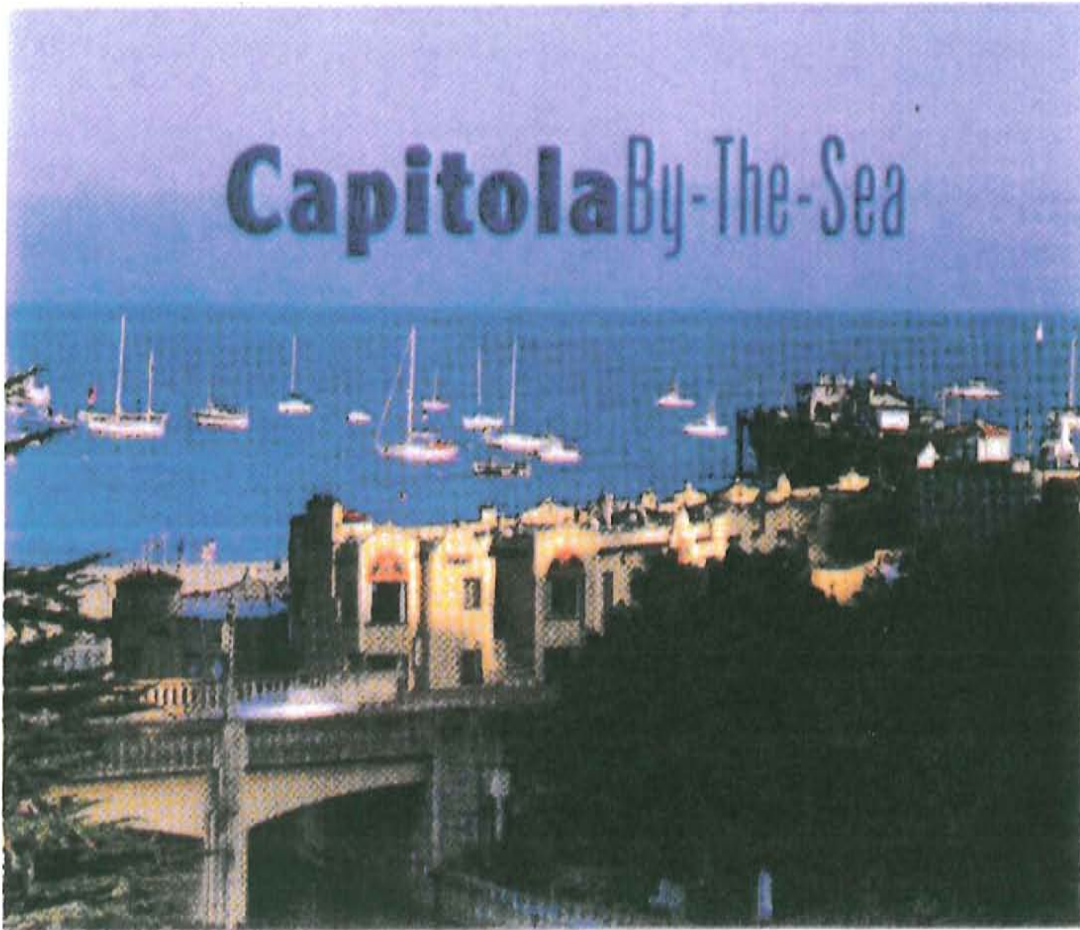
Special Event Permit Application

**Report Prepared By:** Tom Held, Captain

**Approved By:** Mike Card, Chief of Police

**Reviewed and Forwarded  
By City Manager:** \_\_\_\_\_

**GENERAL SPECIAL EVENT  
PERMIT  
APPLICATION**



**CITY OF CAPITOLA**

**CAPITOLA ART & WINE FESTIVAL  
SEPTEMBER 10<sup>TH</sup> & 11<sup>TH</sup> 2011**

## SPONSORING ORGANIZATION AND APPLICANT INFORMATION

- Event Name: Capitola Art & Wine Festival
- Event Description: Show for Artists, Wineries, Food and Entertainment
- Event Purpose: Community Event and Fundraiser
- Sponsor: Capitola-Soquel Chamber of Commerce
- Sponsor's Address: 716-G Capitola Avenue  
Capitola Ca. street 95010  
city state zip code
- Sponsoring Organization's Phone: ( 831 ) 475-6522
- FAX Number: ( 831 ) 475-6530 E-Mail Address: toni@capitolachamber.com
- Contact Person's Name: Toni Castro
- Business Phone: ( 831 ) 475-6522 Cellular Phone: ( 831 ) 359-1803
- FAX Number: ( 831 ) 475-6530 E-Mail Address: toni@capitolachamber.com

Will you be using a professional Special Event Organizer? If yes, please include all foregoing information about the organizer on a separate sheet of paper and attach to your application.

## EVENT INFORMATION

- Type of event:  Run  Festival  Parade  Sale  Motion Picture  Block Party
- Other (specify) \_\_\_\_\_
- Event Location: Capitola Village
- Event Dates: September 10th & 11th, 2011 Anticipated Attendance: 30,000
- Web Site Information: capitolachamber.com E-Mail Address: toni@capitolachamber.com
- Will the public be invited?  Yes  No

Actual hours open to the public or "advertised" event hours:

- Date: 09-10-11 Time: 10:00 AM/PM to 7:00 AM/PM
- Date: 09-11-11 Time: 10:00 AM/PM to 6:00 AM/PM
- Date: \_\_\_\_\_ Time: \_\_\_\_\_ AM/PM to \_\_\_\_\_ AM/PM
- Has this event taken place before?  Yes  No Any changes to this event?  Yes  No
- If yes, what changes? \_\_\_\_\_
- If yes, please attach a copy of your last permit for this event, if available.
- Will this event be promoted, advertised or marketed in any manner?  Yes  No
- Will there be live media coverage during your event?  Yes  No
- If yes, please explain: \_\_\_\_\_

- Are admission, entry or vendor participant fees required?  Yes  No
- If yes, explain: Public admission fees: \$ none per person
  - Participant entry fees: \$ none per person
  - Vendor fees: \$ 250.00 per booth
  - Number of vendors: 200
  - How many vendors are for profit? all
  - How many vendors are nonprofit? none
- \$ \_\_\_\_\_ Total estimated gross receipts, including tickets, product and sponsorship sales from this event. Explain how this amount was computed. Indicate amount per item.
  - \$ \_\_\_\_\_ Admission fees
  - \$ \_\_\_\_\_ Product fees
  - \$ \_\_\_\_\_ Sponsorship
  - \$ \_\_\_\_\_ Participant entry fees
  - \$ \_\_\_\_\_ Other (Please specify): \_\_\_\_\_
- \$ \_\_\_\_\_ Total estimated expenses for this event.
  - \$ \_\_\_\_\_ Advertising
  - \$ \_\_\_\_\_ Wages, salaries
  - \$ \_\_\_\_\_ City services (police, fire, street closures)
  - \$ \_\_\_\_\_ Insurance
  - \$ \_\_\_\_\_ Business license fee
  - \$ \_\_\_\_\_ Other (Please specify): \_\_\_\_\_
- Is the organization a "tax exempt, nonprofit" organization?  Yes  No
- \$ \_\_\_\_\_ Projected amount of revenue the Sponsoring Organization(s) will receive as a result of this event.
- Specify the organization(s) to receive funding: Capitola-Soquel Chamber of Commerce  
Soquel High School Sports & Music Foundations, New Brighton Middle School
- City sponsorship requested?  Yes  No If yes, please describe:  
waiver of all permit fees

**OVERALL EVENT DESCRIPTION**

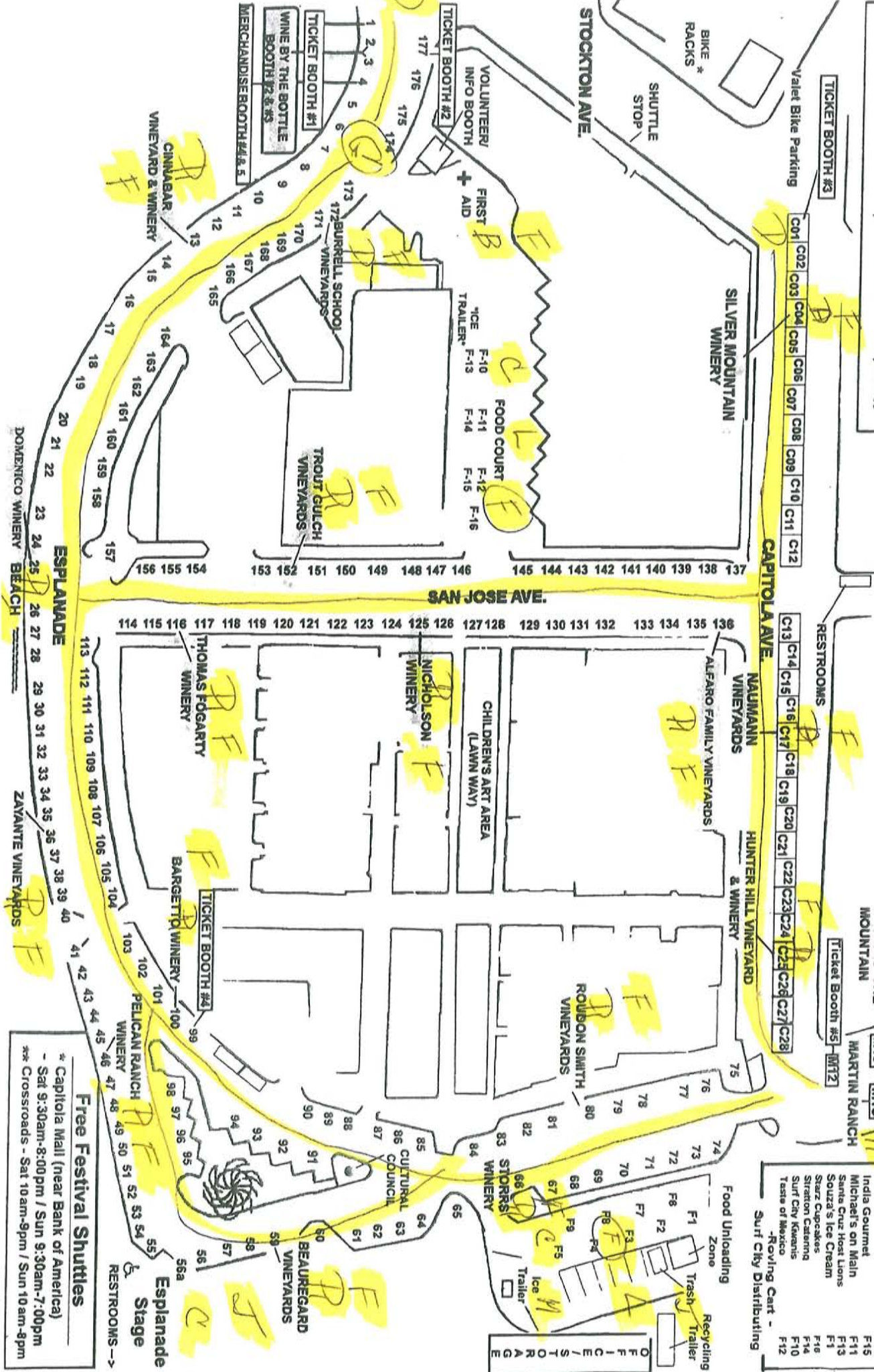
- Will a staging/setup/assembly location be required?  Yes  No
- If yes, begin day/date: September 10th, 2011 Start time: 4:30  AM /  PM
- Location: Esplanade, San Jose Avenue, Capitola Avenue & Monterey Avenue
- Description of the scope of the setup/assembly work (Attach additional pages and drawings as needed): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Key:**

- Bike Racks (\*)
- First Aid (+)
- Poster/T-Shirt (4 & 5)
- Restrooms (Monterey, San Jose, Mercantile, Esplanade)
- Stages (Esplanade Bandstand)

Tickets (1, 99, 177, C01, M12)  
 Volunteer Check In @ the Information Booth  
 Wine-Buy-The-Bottle (2, 3)  
 Wineries-13, 25, 36, 46, 59, 66, 80, 100, 116, 125, 136, 152, 172, C04, C17, C25, M13-15

# Capitola Art & Wine Festival 2011



- R** **urants—**
- F8 Art/cheke Connection
  - F7 Cafe/ Cruz
  - F3 Central Fire Paid Call
  - F2 Chandler Concessions
  - F4 E & J Catering
  - F6 Falafel of Santa Cruz
  - F9 Fresh Choice
  - F5 Fruit FritZ
  - F15 India Gourmet
  - F11 Michael's on Main
  - F13 Santa Cruz Heat Lions
  - F1 Souza's Ice Cream
  - F16 Starz Cupcakes
  - F14 Stration Catering
  - F10 Surf City Keweenaw
  - F12 Tastes of Mexico
- R** **oving Cart —**
- F11 Surf City Distributing

- Food Unloading Zone**
- F1
  - F2
  - F3
  - F4
  - F5
  - F6
  - F7
  - F8
  - F9
  - F10
  - F11
  - F12
  - F13
  - F14
  - F15
  - F16
  - F17
  - F18
  - F19
  - F20
- Trash Trailer  
 Recycling Trailer  
 Ice Trailer

**Free Festival Shuttles**

- \* Capitola Mall (near Bank of America)
- Sat 9:30am-8:00pm / Sun 9:30am-7:00pm
- \*\* Crossroads - Sat 10am-9pm / Sun 10am-8pm

**ESPLANADE**

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177

**STOCKTON AVE.**

**CAPITOLA AVE.**

**SAN JOSE AVE.**

**RESTROOMS ->**

**Esplanade Stage**

**BIKE \* RACKS**

**SHUTTLE STOP**

**Valet Bike Parking**

**TICKET BOOTH #3**

C01 C02 C03 C04 C05 C06 C07 C08 C09 C10 C11 C12

**RESTROOMS**

C13 C14 C15 C16 C17 C18 C19 C20 C21 C22 C23 C24 C25 C26 C27 C28

**Ticket Booth #5 - M12**

**M13 M14 M15**

**WINE BY THE BOTTLE BOOTH #2 & #3**

**WINE BY THE BOTTLE BOOTH #1**

**TICKET BOOTH #1**

**TICKET BOOTH #2**

**TICKET BOOTH #4**

**TICKET BOOTH #4**

**VOLUNTEER/ INFO BOOTH**

**FIRST AID**

**TRAILER**

**FOOD COURT**

F-10 F-11 F-12 F-13 F-14 F-15 F-16

**SILVER MOUNTAIN WINERY**

**TROUT GULCH VINEYARDS**

**172 SAURRELL SCHOOL VINEYARDS**

**171 VINEYARDS**

**170**

**169**

**168**

**167**

**166**

**165**

**164**

**163**

**162**

**161**

**160**

**159**

**158**

**157**

**156**

**155**

**154**

**CINABAR VINEYARD & WINERY**

**15**

**14**

**13**

**12**

**11**

**10**

**9**

**8**

**7**

**6**

**5**

**4**

**3**

**2**

**1**

**ALFARO FAMILY VINEYARDS**

**NAUMANN VINEYARDS**

**HUNTER HILL VINEYARD & WINERY**

**CHILDREN'S ART AREA (LAWN WAY)**

**NICHOLSON WINERY**

**THOMAS FOGARTY WINERY**

**BARRETT WINERY**

**ROBSON SMITH VINEYARDS**

**CULTURAL COUNCIL**

**BEAUREGARD VINEYARDS**

**PELICAN RANCH WINERY**

**DOMENICO WINERY BEACH**

**ZAVANTE VINEYARDS**



- If yes, dismantle day date: September 11th, 2011 Completion time: 8:00 AM/PM

- List the street(s) requiring closure as a result of this event. Include street names, day, date and time of closing and the time of reopening: \_\_\_\_\_

09-10-11 close at 4:00AM re-open on 09-11-11 at 8:00 PM

Streets to be closed: Capitola Avenue from Stockton Avenue to Monterey Avenue  
Esplanade, Monterey Avenue to beginning of Hill and San Jose between Esplanade  
and Capitola Avenue.

City of Capitola to conduct street closures as needed (cost to be specified)

- List street(s) requiring the posting of "No Parking" signs. Indicate days, dates, and times needed and an explanation of necessity for "No Parking" zone: \_\_\_\_\_

Chamber will post signs

CAPITOLA AVENUE FROM STOCKTON AVENUE TO MONTEREY AVENUE  
SAN JOSE AVENUE FROM CAPITOLA AVENUE TO ESPLANADE  
ESPLANADE FROM STOCKTON AVENUE TO MONTEREY AVENUE  
MONTEREY AVENUE FROM ESPLANADE TO MONTEREY HILL  
POSTED "NO PARKING" 4:00 AM TO 6:00 PM  
SAT 09-10-11 SUNDAY 09-11-11

NOTE: "No Parking" signs will be posted twenty-four hours in advance of required days, dates and time. Cost for the posting of "No Parking" signs will be specified upon review of the application by City staff.

### OVERALL EVENT DESCRIPTION (continued)

- Attach a diagram (please try to make diagram reasonably to scale), showing the overall layout and setup locations. Using the letters below, indicate the site for these on your diagram.

- A Alcoholic and nonalcoholic concession
- B First-aid facilities
- C Tables and chairs
- D Fencing, barriers and/or barricades
- E Generator locations and/or sources of electricity
- F Canopies or tent locations
- G Booths, exhibits, displays or enclosures
- H Scaffolding, bleachers, platforms, stages, grandstands, related structures
- I Vehicles and/or trailers
- J Trash containers or dumpsters
- K Non-food vendor locations
- L Food concession and/or food preparation areas
- M Portable toilet locations

N Other related event components not covered above (describe separately)

- Please describe how food will be served at the event: BBQ grilled or prepped  
in authorized Kitchen facilities off-site
- Will food be cooked in the event area?  Yes  No
- If yes, specify method:  Gas  Electric  Charcoal  Other (specify):  
\_\_\_\_\_
- Does the event involve the sale or use of alcoholic beverages?  Yes  No
- If yes, please describe: Wine tasting Booths
- If alcohol is to be sold, how will the alcohol sales be regulated? Festival Staff and volunteers  
will ID.

Please attach a copy of your ABC license.

- Will there be items or services sold at the event?  Yes  No
- If yes, please describe: \_\_\_\_\_  
Artists selling art work, Festival selling T-Shirts, Posters and Festival Merchandise and  
Wine at the Bottle Booth.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- Do the vendors have City of Capitola business licenses?  Yes  No

**OVERALL EVENT DESCRIPTION (continued)**

Portable and/or permanent toilet facilities:

- Number of portable toilets: 20 (Recommended: 1 for every 250 people)
- Number of ADA-accessible toilets: 4 (Recommended: 10% of total toilets)

(NOTE: Unless the Applicant can substantiate the availability of both accessible and non-accessible toilet facilities in the immediate area of the site, the above is required. Portable toilet facilities must be in place 24 hours in advance, cleaned and sanitized daily during the event, and must be removed by 8:00 a.m. the next business day following the event. Location sites for portable toilets must be pre-approved prior to installation.)

- Number of trash receptacles: 20 - following City Plan
- Number of dumpsters with lids: 10 (Recommended 1 per 400 people)
- Number of recycling containers: one large (Voluntary)
- Describe the plan for cleanup and removal of waste and garbage during and after the event:

The Chamber hires a Cleaning Company to clean up the Festival during and after the event.

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(Note: It is the event organizer’s responsibility to dispose of waste and garbage daily throughout the term of the event, unless otherwise contracted with City staff, which will require a fee. Immediately upon conclusion of the event, the venue must be returned to a clean condition. Street sweeping can be arranged with City crews for an additional fee.)

**PARKING PLAN – SHUTTLE PLAN – MITIGATION OF IMPACT**

- Please provide a detailed description or diagram that indicates the proposed parking plan and/or shuttle plan for the event. Include a description of the parking plan/shuttle plan for the disabled.

Three shuttle buses that are ADA accessible thru MV Transportation are provided by the Chamber

SHUTTLES ARE ADA ACCESSIBLE AND PICK UP AT THE CAPITOLA MALL AND DELIVER AT ESPLANADE ENTRANCE PARKING IS AT CAPITOLA MALL

- Describe plan to notify those residents, businesses, churches, etc. that will be impacted by this event.

8 1/2 by 11 flyers - Distributed 2 weeks prior to event and 3 days prior to the event.

- Does this event involve a moving route of any kind along streets or sidewalks?  
 Yes  No
- If yes, highlight your proposed route on the enclosed map, indicating the directions of travel, and provide a written narrative to explain your route and its impact.

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- Does this event involve a fixed venue site?  Yes  No
- If yes, highlight the site on the enclosed map, showing all the streets impacted by the event.

## SAFETY - SECURITY

- Is there a professional security organization to handle security for this event?  Yes  No
- If yes, please name security company: Capitola Police Dept.
- If no, do you wish to contract police services from the Capitola Police Dept.?  Yes  No (See fee schedule)
- Security company's address: 422 Capitola Avenue  

<u>Capitola</u>	<u>street</u>	<u>Ca.</u>	<u>95010</u>
city		state	zip code
- Security Director's name: Captain Tom Held
- Security Director's phone number: ( 831 ) 475-4242
- Security company's state license number: \_\_\_\_\_
- Security company's business license number: \_\_\_\_\_
- Security company's insurance carrier: \_\_\_\_\_ City or privately secured?
- On-site contact person (security supervisor): \_\_\_\_\_
- Any searches prior to entering?  Yes  No
- Bottle and can check?  Yes  No
- Metal detectors?  Yes  No
- How many security guards at each entrance? \_\_\_\_\_

**Parking Lot Patrol (Private Security):**

- Security company: \_\_\_\_\_
- Contact person (security supervisor): \_\_\_\_\_
- Number of security guards patrolling the parking lot: \_\_\_\_\_

**Lighting:**

- If this is an evening event, please state how the event and surrounding areas will be illuminated to ensure the safety of the participants and spectators.  
The Esplanade will have lighting for the Saturday Evening Concert provided by Santa Cruz Sound Company

**Medical:**

- Indicate what arrangements have been made for providing first-aid staffing:  
Dominican Hospital provides nurses and nurse station. The Fire Dept will have 2 medics on duty.

## ENTERTAINMENT – ATTRACTION – RELATED EVENT ACTIVITIES

- Is there any musical entertainment or amplified sound related to your event?  
 Yes    No
- If yes, what kind: various family entertainment
- Contact person's name: Toni Castro Phone number: (831) 475-6522
- Contact person's address: 716-G Capitola Avenue  
street  
Capitola Ca. 95010  
city state zip code
- Number of stages: one Number of bands: three
- Type of music: Rock and Roll Sound amplification?  Yes  No
- If yes, start time: 11:00  AM/ PM Finish time: 6:00  AM/ PM
- Have you applied for a sound permit?  Yes  No (Refer to city ordinance 9.12.040)
- Will sound checks be conducted prior to the event?  Yes  No
- If yes, do you wish to have the city provide the checks?  Yes  No
- Describe sound equipment that will be used: rented from Santa Cruz Sound Co.
- Will fireworks, rockets or other pyrotechnics be used?  Yes  No
- If yes, name and phone number of pyrotechnic company: \_\_\_\_\_  
\_\_\_\_\_ (\_\_\_\_) \_\_\_\_\_
- Describe (indicate dates, times and locations for launching and fallout areas):  
\_\_\_\_\_  
\_\_\_\_\_
- Has a permit been issued?  Yes  No
- Will there be any type of open flames used?  Yes  No
- If yes, please describe: \_\_\_\_\_
- Will any signs, banners, decorations or special lighting be used?  Yes  No
- If yes, please describe: Banner on Monterey Avenue, signs at all booths  
(Refer to city ordinance chapter 17.57)

## INSURANCE REQUIREMENTS

### INSURANCE

Applicant must provide insurance at the following minimal limits: \$1,000,000 (one million) combined single limit. (Two million for the annual Art and Wine Festival). This Certificate of Insurance must name the City as an additional insured throughout the event duration, including setup and breakdown. The Certificate of Insurance, including limits of insurance, must be received by the Special Events Coordinator by \_\_\_\_\_ to finalize this permit.

### HOLD HARMLESS

The Applicant will, at its sole expense, provide the City with evidence of insurance for general liability and Worker's Compensation benefits for accidents or injuries that occur or are sustained in connection with the special event which is the subject of this permit application and contract. The Applicant agrees on behalf of itself and on behalf of its agents and employees that the Applicant will not make a claim against, sue, attach the property of, or prosecute the City or any of the City's agencies, employees, contractors or agents for injury or damages resulting from negligence or other acts, however caused, which might be asserted against the City in connection with actions taken by the City or the City's employees or agents in connection with this Special Event Permit. In addition, Applicant, on behalf of itself and its agents and employees, as well as its successors and assigns, hereby releases, discharges and holds the City harmless from, and indemnifies the City against, all actions, claims or demands Applicant, or Applicant's employees, agents, successors or assigns, or any third person now has or may hereafter have for personal injury or property damage resulting from the actions of the Applicant, the Applicant's employees or agents, or any other person under the control of the Applicant, taken pursuant to this Special Event Permit whether said actions are characterized as negligent or intentional.

Applicant Signature: \_\_\_\_\_

### ADVANCED CANCELLATION NOTICE REQUIRED

If this event is cancelled, notify the Special Events Coordinator at (831) 475-4242.

I certify that the information contained in the foregoing application is true and correct to the best of my knowledge and belief, that I have read, understand and agree to abide by the rules and regulations governing the special event under Capitola Municipal Code, and that I understand that this applications is made subject to the rules and regulations established by the City Council and/or the City Manager or the City Manager's designee. I agree to comply with all permit conditions and with all other requirements of the City, County, state and federal governments and any other applicable entity that may pertain to the use of the event premises and the conduct of the event. I agree to abide by these rules and further certify that I, on behalf of the organization, am also authorized to commit that organization and, therefore, agree to be financially responsible for any costs and fees that may be incurred by or on behalf of the event to the City of Capitola.

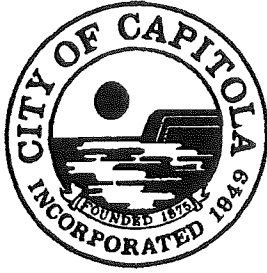
Name of Applicant (print): Capitola-Soquel Chamber of Commerce

Title: CEO

Signature of Applicant: \_\_\_\_\_

Date: JANUARY 26, 2011

Submit to Capitola PD



City of Capitola  
420 Capitola Avenue  
Capitola, CA 95010  
(831) 475-7300

**APPLICATION FOR LIVE ENTERTAINMENT PERMIT**  
(Application fee of \$31 must be submitted with completed application.)

BUSINESS NAME CAPITOLA-SOQUEL CHAMBER OF COMMERCE

ADDRESS 716-G CAPITOLA AVENUE  
CAPITOLA, CA. 95010

BUSINESS PHONE 475-6522

RESPONSIBLE PARTY Toni Castro CEO  
(NAME) (TITLE)

HOME ADDRESS 920 CAPITOLA AVENUE SPACE #30, CAPITOLA, CA. 95010

HOME PHONE 475-6522 BUSINESS PHONE 464-3480

TYPE OF PERMIT APPLIED FOR (Check One):

- SINGLE EVENT ENTERTAINMENT PERMIT (\$31.00)  
 MINOR ENTERTAINMENT PERMIT (\$139.00)  
 REGULAR ENTERTAINMENT PERMIT (\$520.00)

NATURE OF ENTERTAINMENT: (Please provide explanation; i.e. live band, disc jockey, etc.)

THE ART & WINE FESTIVAL MUSIC INCLUDES  
DANCE GROUPS, 3 BANDS, 1 MAGICIAN  
AND THE GREAT MORGANI

HOURS OF ENTERTAINMENT: 11:00 AM TO 7:00 P.M. SAT. SEPT 10, 2011

DAYS OF ENTERTAINMENT: 11:00 AM TO 6:00 P.M SUNDAY, SEPT 11, 2011

DATE: JANUARY 26, 2011

Toni Castro  
SIGNATURE OF APPLICANT





# CITY OF CAPITOLA

## STREET BANNER PERMIT APPLICATION

DATE: JANUARY 26, 2011

APPLICANT/NONPROFIT CORPORATION: CAPITOLA-SOQUEL CHAMBER OF COMMERCE PHONE: 475-6522

DATE OF EVENT: SEPTEMBER 10TH & 11TH 2011

DATE(S) OF DISPLAY: \_\_\_\_\_  
(MAXIMUM: 2 WEEKS PRIOR TO EVENT; REMOVED 2 DAYS AFTER EVENT)

LOCATION OF BANNER:  SEPT 5TH - SEPT 12TH MONTEREY AVENUE POLES  AUGUST 29TH - SEPT 12TH CAPITOLA AVENUE POLES

DESCRIPTION OR PURPOSE OF BANNER: TO PROMOTE AND ADVERTISE EVENT

SIZE OF BANNER: 18' WIDE X 3.5' HIGH - 2 SIDED  
(MAXIMUM: 18' WIDE X 3.5' HIGH)

BANNER TEXT: CAPITOLA ART & WINE FESTIVAL - SEPT 10TH & 11TH 2011

BANNER COLORS AND FABRIC: PURPLE & GREEN

- SUBMIT A GRAPHIC OR PICTURE OF THE BANNER DESIGN
- REFER TO THE ADMINISTRATIVE POLICY 1-17 FOR DETAILED BANNER INFORMATION
- SUBMIT COMPLETED APPLICATION TO THE CITY OF CAPITOLA PUBLIC WORKS DEPARTMENT, 420 CAPITOLA AVENUE, CAPITOLA, CA 95010

I, THE UNERSIGNED, CERTIFY THAT I WILL COMPLY WITH ALL THE PROVISIONS OF ADMINISTRATIVE POLICY 1-17 OF THE CITY OF CAPITOLA.

SIGNATURE OF APPLICANT: [Signature]

PHONE NUMBER: 475-6522

### APPROVALS:

- PUBLIC WORKS: \_\_\_\_\_
- CITY MANAGER: \_\_\_\_\_
- CITY COUNCIL: \_\_\_\_\_

CAPITOLA ART & WINE FESTIVAL

SEPTEMBER 10TH & 11TH 2011

CAPITOLA VILLAGE

2 SIDED ↗

18' WIDE X 3.5' HIGH



Item #: **3.G.**

## **CITY COUNCIL AGENDA REPORT**

**MEETING OF FEBRUARY 10, 2011**

FROM: POLICE DEPARTMENT

DATE: FEBRUARY 3, 2011

SUBJECT: SPECIAL EVENT PERMIT REQUEST BY THE CAPITOLA ART & CULTURAL COMMISSION FOR THE 2011 TWILIGHT CONCERT SERIES IN ESPLANADE PARK AND BANDSTAND DURING ELEVEN SUMMER WEDNESDAY EVENINGS FROM 6 TO 8 P.M. BEGINNING JUNE 22 AND ENDING AUGUST 31, 2011, AND THE HANGING OF A BANNER PRIOR TO EACH CONCERT.

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**Recommended Action:** By motion, that the City Council take the following actions:

- 1) Approve the Special Event Permit for the 2011 Twilight Concert Series and authorize the Capitola Police Department to issue said permit;
- 2) Authorize Public Works to hang the event banner on the Monday preceding each concert.

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### **BACKGROUND**

The Capitola Art & Cultural Commission has sponsored a series of Wednesday evening concerts in the Esplanade Park for over twenty years. The concerts are attended typically by local residents, requiring little in the way of City services.

### **DISCUSSION**

Until the 2003 Twilight Concert series, the number of concerts presented was limited to eight. During 2003 and 2004, Council permitted an increase of two concerts for a total of ten. In 2005, Council granted an increase of one additional concert for a total of eleven. This application for 2011 again asks for a total of eleven concert dates and the use of the Bandstand. The permit application does not vary as to the intent of the Art & Cultural Commission's series of Wednesday evening concerts from 6 p.m. to 8 p.m. as presented in the past. The Concert Series is planned for local residents, which usually generates walk-in participation thus creating negligible impacts. There are usually less than 800 attendees at the concerts. Few calls for Police Department services have been noted.

The Art & Cultural Commission requests the following assistance from Public Works staff:

- Hang event banner announcing the event on Monterey Avenue the Monday preceding the concerts.

- Empty trash receptacles prior to the concerts and provide additional receptacles at entrances to the beach and in Esplanade Park. Empty trash receptacles as needed
- Clean and stock Esplanade Park restrooms prior to and during the concerts as needed.
- Place signs at the entrance to Esplanade Park and the beach with alcohol, smoking, and dog ordinance information.

**FISCAL IMPACT**

Because the concerts are incorporated within the City budget, there is little if any fiscal impact.

**ATTACHMENTS**

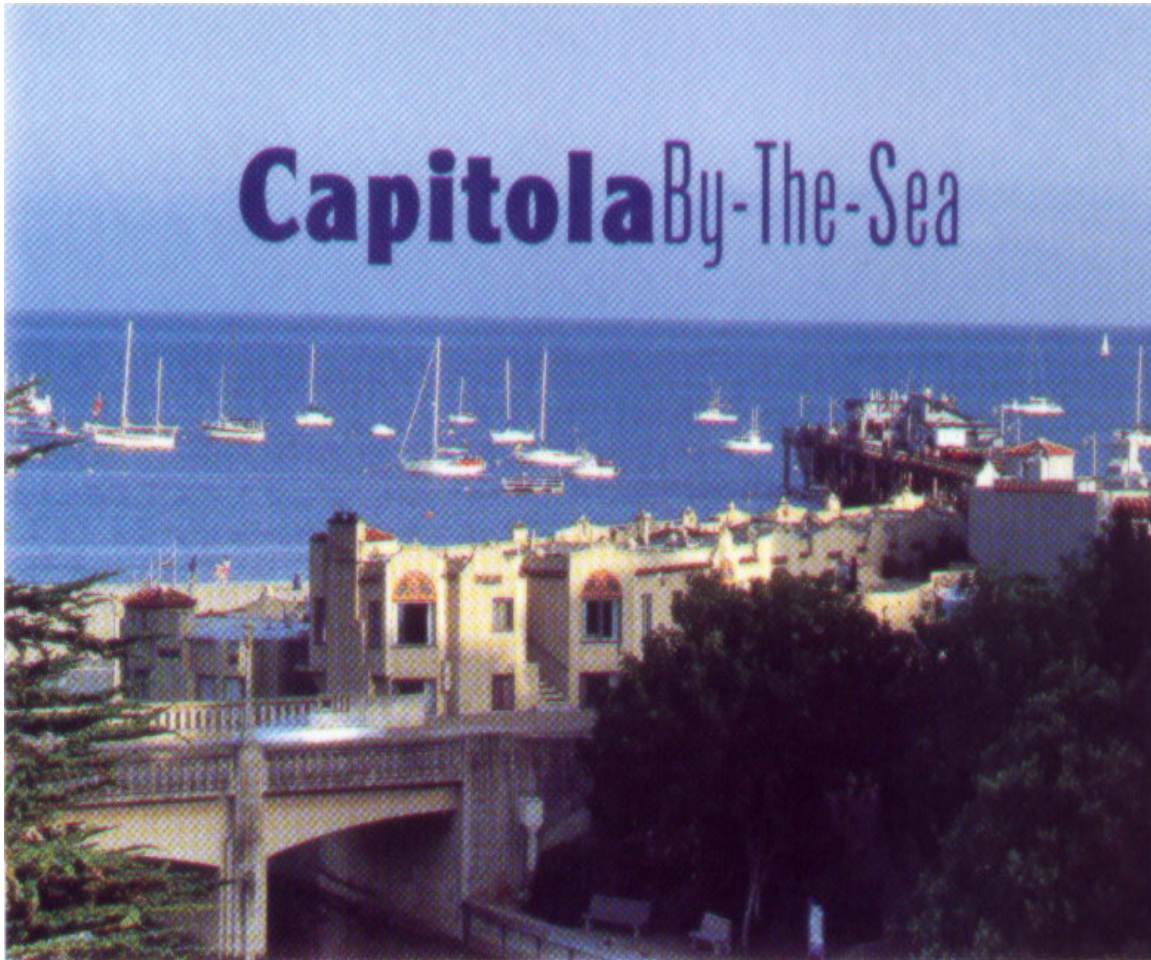
2011 Special Event Permit application

**Report Prepared By:** Captain Tom Held

**Report Approved By:** Mike Card, Chief of Police

**Reviewed and Forwarded  
By City Manager: \_\_\_\_\_**

**SPECIAL EVENT PERMIT  
APPLICATION**



**CITY OF CAPITOLA**

*2011 Twilight Concerts*

## SPONSORING ORGANIZATION AND APPLICANT INFORMATION

- Event Name: *2011 Twilight Concert Series*
- Event Description: *Musical Concerts*
- Event Purpose: *Summer evening entertainment for community and visitors*
- Sponsor: *City of Capitola - Capitola Art & Cultural Commission*
- Sponsor's Address: *420 Capitola Avenue-Capitola, CA 95010*
- Sponsoring Organization's Phone: *831.475-7300 ext. 297*
- FAX Number: *831.479-8879* E-Mail Address:

Will you be using a professional Special Event Organizer? If yes, please include all foregoing information about the organizer on a separate sheet of paper and attach to your application.

## EVENT INFORMATION

- Type of event: Run Festival Parade Sale Motion Picture Block Party
- Other (specify) *musical concerts*
- Event Location: *Esplanade Park, Beach area at park*
- Event Date: *11 Wednesday evenings (June 22, 29-July 6,13,20,27-August 3,10,17,24,31)*
- Anticipated Attendance: *400-1000 Attendance varies depending on the weather, holiday calendar and band performing*
- Web Site Information: [www.ci.capitola.ca.us](http://www.ci.capitola.ca.us)
- Will the public be invited? Yes  No

Actual hours open to the public or "advertised" event hours:

- Date: *11 Wednesdays* Time: *6 pm to 8 pm*
- Date: \_\_\_\_\_ Time: \_\_\_\_\_ AM/PM to \_\_\_\_\_ AM/PM
- Date: \_\_\_\_\_ Time: \_\_\_\_\_ AM/PM to \_\_\_\_\_ AM/PM
- Has this event taken place before? Yes  No
- Any changes to this event? Yes No

**PROMOTION – ADVERTISING – MARKETING - INTERNET**

- If yes, please attach a copy of your last permit for this event, if available.
- Will this event be promoted, advertised or marketed in any manner? Yes  No   
*A post card mailing to each residential address in Capitola announcing the event, Wednesday night dates and names of each band and sponsor, on the city's public access channel & website, event banner hung at the Monterey Avenue banner pole location, local print media-calendar of events, event posters in local business windows*
- Will there be live media coverage during your event? Yes  No
- If yes, please explain
- Are admission, entry or vendor participant fees required? Yes  No
- If yes, explain: Public admission fees: \$ \_\_\_\_\_ per person  
 Participant entry fees: \$ \_\_\_\_\_ per person  
 Vendor fees: \$ \_\_\_\_\_ per booth  
 Number of vendors: \_\_\_\_\_  
 How many vendors are for profit? \_\_\_\_\_  
 How many vendors are nonprofit? \_\_\_\_\_
- **\$13,200.00** Total estimated gross receipts, including tickets, product and sponsorship sales from this event. Explain how this amount was computed. Indicate amount per item.  
 \$ \_\_\_\_\_ Admission fees  
 \$ \_\_\_\_\_ Product fees  
 \$ **13,200.00** Sponsorship (**\$1,200.00 per band concert**)  
 \$ \_\_\_\_\_ Participant entry fees  
 \$ \_\_\_\_\_ Other (Please specify):
- **\$13,200.00** Total estimated expenses for this event.  
 \$  Advertising  
 \$  Wages, salaries  
 \$ \_\_\_\_\_ City services (police, fire, street closures)  
 \$ \_\_\_\_\_ Insurance  
 \$ \_\_\_\_\_ Business license fee  
 \$  Other (Please specify): postcard graphics/  
 postcards/ mailing service & postage/ banner preparation
- Is the organization a "tax exempt, nonprofit" organization? Yes  No

- Projected amount of revenue the Sponsoring Organization(s) will receive as a result of this event. **--0--**  
Specify the organization(s) to receive funding:  
City sponsorship requested? Yes **X** No  
If yes, please describe: **Grant permit fees**

## OVERALL EVENT DESCRIPTION

- Will a staging/setup/assembly location be required? Yes **X** No
- If yes, begin day/date: **11 Wednesdays** Start time: **3:30 – 5:00 pm**
- Location: **Esplanade Park & Bandstand**  
Description of the scope of the setup/assembly work (Attach additional pages and drawings as needed): **1) Sound/mixing board with public address system for sound engineer- parking at rear of park. 2) Each band will be unloading/loading instruments and equipment within the park or at the loading zone.**
- If yes, dismantle day date: **11 Wednesdays** Completion time: **8:00-10:00 pm**  
**packing up of band instruments/equipment, sound board/mixing board and public address system.**  
List the street(s) requiring closure as a result of this event. Include street names, day, date and time of closing and the time of reopening: **None**  
City of Capitola to conduct street closures as needed (cost to be specified)
- List street(s) requiring the posting of “No Parking” signs. Indicate days, dates, and times needed and an explanation of necessity for “No Parking” zone: \_\_\_\_\_  
NOTE: “No Parking” signs will be posted twenty-four hours in advance of required days, dates and time. Cost for the posting of “No Parking” signs will be specified upon review of the application by City staff.
- Attach a diagram (please try to make diagram reasonably to scale), showing the overall layout and setup locations. Using the letters below, indicate the site for these on your diagram.
  - A Alcoholic and nonalcoholic concession
  - B First-aid facilities
  - C Tables and chairs ~ **small table for Arts Commission information**
  - D Fencing, barriers and/or barricades- **blocking of life guard tower**
  - E Generator locations and/or sources of electricity
  - F Canopies or tent locations
  - G Booths, exhibits, displays or enclosures
  - H Scaffolding, bleachers, platforms, stages, grandstands, related structures



- I Vehicles and/or trailers: *Sound engineer and band members parking near dumpster in rear of park*
- J Trash containers or dumpsters-*Extra trash containers required*
- K Non-food vendor locations
- L Food concession and/or food preparation areas
- M Portable toilet locations
- N Other related event components not covered above (describe separately)

**OVERALL EVENT DESCRIPTION (continued)**

- Please describe how food will be served at the event: \_\_\_\_\_
- Will food be cooked in the event area? Yes No **X**
- If yes, specify method: Gas Electric Charcoal Other (specify): \_\_\_\_\_
- Does the event involve the sale or use of alcoholic beverages? Yes No **X**
- If yes, please describe: \_\_\_\_\_
- If alcohol is to be sold, how will the alcohol sales be regulated? \_\_\_\_\_

Please attach a copy of your ABC license.

- Will there be items or services sold at the event? Yes No **X** If yes, please describe:
- Do the vendors have City of Capitola business licenses? Yes No

Portable and/or permanent toilet facilities:

- Number of portable toilets: \_\_\_\_\_ (Recommended: 1 for every 250 people)
- Number of ADA-accessible toilets: \_\_\_\_\_ (Recommended: 10% of total toilets)

(NOTE: Unless the Applicant can substantiate the availability of both accessible and non-accessible toilet facilities in the immediate area of the site, the above is required. Portable toilet facilities must be in place 24 hours in advance, cleaned and sanitized daily during the event, and must be removed by 8:00 a.m. the next business day following the event. Location sites for portable toilets must be pre-approved prior to installation.)

- Number of trash receptacles: \_\_\_\_\_
- Number of dumpsters with lids: \_\_\_\_\_ (Recommended 1 per 400 people)
- Number of recycling containers: \_\_\_\_\_ (Voluntary)

Describe the plan for cleanup and removal of waste and garbage during and after the event: *Announcements at the concert to “clean area, pack trash and/or place trash in receptacles”, 1) Request the Public Works empty the trash receptacles prior to event and*

*the provide additional receptacles at entrances to beach and in park 2) empty as needed during and following event Art & Cultural Commission, Capitola Police Department, Capitola Public Works Department will work together to enforce the Alcohol Ordinance and maintain clean and safe environment for the attendees of the concerts*

(Note: It is the event organizer’s responsibility to dispose of waste and garbage daily throughout the term of the event, unless otherwise contracted with City staff, which will require a fee. Immediately upon conclusion of the event, the venue must be returned to a clean condition. Street sweeping can be arranged with City crews for an additional fee.)

### PARKING PLAN – SHUTTLE PLAN – MITIGATION OF IMPACT

- Please provide a detailed description or diagram that indicates the proposed parking plan and/or shuttle plan for the event. Include a description of the parking plan/shuttle plan for the disabled. *This event is planned for local residents, which usually generates walk-in participation thus creating little to no impact*
- Describe plan to notify those residents, businesses, churches, etc. that will be impacted by this event. *A post card with the dates are mailed to each address in Capitola announcing the event, Wednesday night dates with the band name/sponsor*
- Does this event involve a moving route of any kind along streets or sidewalks?  
Yes    No **X**
- If yes, highlight your proposed route on the enclosed map, indicating the directions of travel, and provide a written narrative to explain your route and its impact.
- Does this event involve a fixed venue site?    Yes: *Esplanade Park, Stage and Beach*    No

### SAFETY - SECURITY

- If yes, highlight the site on the enclosed map, showing all the streets impacted by the event.
- Is there a professional security organization to handle security arrangements for this event?  
Yes    No **X**
  - If yes, please name security company: \_\_\_\_\_
  - If no, do you wish to contract police services from the Capitola Police Dept.?  
Yes    No **X** (See fee schedule)
  - Security company’s address: \_\_\_\_\_  

street

city
state
zip code

- Security Director's name: \_\_\_\_\_
- Security Director's phone number: ( \_\_ ) \_\_\_\_\_
- Security company's state license number: \_\_\_\_\_
- Security company's business license number: \_\_\_\_\_
- Security company's insurance carrier: \_\_\_\_\_ City or privately secured?
- On-site contact person (security supervisor): \_\_\_\_\_
- Any searches prior to entering?       Yes     No
- Bottle and can check?                       Yes     No
- Metal detectors?                                 Yes     No
- How many security guards at each entrance? \_\_\_\_\_

Parking Lot Patrol (Private Security):

- Security company: \_\_\_\_\_
- Contact person (security supervisor): \_\_\_\_\_
- Number of security guards patrolling the parking lot: \_\_\_\_\_

Lighting:

- If this is an evening event, please state how the event and surrounding areas will be illuminated to ensure the safety of the participants and spectators.  
\_\_\_\_\_

Medical:

- Indicate what arrangements have been made for providing first-aid staffing:

## ENTERTAINMENT – ATTRACTION – RELATED EVENT ACTIVITIES

- Is there any musical entertainment or amplified sound related to your event?  
Yes **X** No
- If yes, what kind: ***Sound engineer with a soundboard and instruments amplifiers***
- Contact person's name: Classified Sound Service Jon DuFour
- Phone number: 335-2234                      Contact person's address:
- Number of stages: ***-0-*** Number of bands: ***one band per Wednesday night***
- Type of music: ***variety***    Sound amplification?    Yes **X**    No
- If yes, start time: ***6:00 pm***    Finish time: ***8:00 pm***

- Have you applied for a sound permit? Yes No **X** (Refer to city ordinance 9.12.040)
- Will sound checks be conducted prior to the event? Yes **X** No **Sound checks are held between 4:45 – 5:15**
- If yes, do you wish to have the city provide the checks? Yes No **X**  
Describe sound equipment that will be used: **soundboard/speakers**
- Will fireworks, rockets or other pyrotechnics be used?  Yes No **X**
- If yes, name and phone number of pyrotechnic company: \_\_\_\_\_  
\_\_\_\_\_
- Describe (indicate dates, times and locations for launching and fallout areas):
- Has a permit been issued? Yes No
- Will there be any type of open flames used? Yes No **X**
- If yes, please describe: \_\_\_\_\_
- Will any signs, banners, decorations or special lighting be used? Yes **X** No
- If yes, please describe:
- **Request event banner provided to Public Works Department be hung at the Monterey Avenue banner location prior to the Wednesday night concert (Monday) \*\*Assistance with possible Sponsor banner to be hung in the park**  
(Refer to city ordinance chapter 17.57)
- **Sponsors banners to be displayed the day of the event on the bandstand.**

## INSURANCE REQUIREMENTS

### INSURANCE

Applicant must provide insurance at the following minimal limits: \$1,000,000 (one million) combined single limit. This Certificate of Insurance must name the City as an additional insured throughout the event duration, including setup and breakdown. The Certificate of Insurance, including limits of insurance, must be received by the Special Events Coordinator by \_\_\_\_\_ to finalize this permit.

### HOLD HARMLESS

The Applicant will, at its sole expense, provide the City with evidence of insurance for general liability and Worker's Compensation benefits for accidents or injuries that occur or are sustained in connection with the special event which is the subject of this permit application and contract. The Applicant agrees on behalf of itself and on behalf of its agents and employees that the Applicant will not make a claim against, sue, attach the property of, or prosecute the City or any of the City's agencies, employees, contractors or agents for injury or damages resulting from negligence or other acts, however caused, which might be asserted against the City in connection with actions taken by the City or the City's employees or agents in connection with this Special Event Permit. In addition, Applicant, on behalf of itself and its agents and employees, as well as its successors and assigns, hereby releases, discharges and holds the City harmless from, and indemnifies the City against, all actions, claims or demands Applicant, or Applicant's employees, agents, successors or assigns, or any third person now has or may hereafter have for personal injury or property damage resulting from the actions of the Applicant, the Applicant's employees or agents, or any other person under the control of the Applicant, taken pursuant to this Special Event Permit whether said actions are characterized as negligent or intentional.

Applicant Signature: \_\_\_\_\_

### ADVANCED CANCELLATION NOTICE REQUIRED

If this event is cancelled, notify the Special Events Coordinator at (831) 475-4242 at least 48 hours in advance.

I certify that the information contained in the foregoing application is true and correct to the best of my knowledge and belief, that I have read, understand and agree to abide by the rules and regulations governing the special event under Capitola Municipal Code, and that I understand that this applications is made subject to the rules and regulations established by the City Council and/or the City Manager or the City Manager's designee. I agree to comply with all permit conditions and with all other requirements of the City, County, state and federal governments and any other applicable entity that may pertain to the use of the event premises and the conduct of the event. I agree to abide by these rules and further certify that I, on behalf of the organization, am also authorized to commit that organization and, therefore, agree to be financially responsible for any costs and fees that may be incurred by or on behalf of the event to the City of Capitola.

Name of Applicant (print): Kelly Barreto

Title: Administrative Assistance to the Art and Cultural Commission

**CITY OF CAPITOLA  
SPECIAL EVENTS CHECKLIST AND REVIEW**

C = Completed      N/A = Not Applicable

- Completed Application Package
- All Fees Paid in advance     Minor Event 30 days     General Event 90 days
- Copies of IRS 501(c) Tax Exemption Letter
- Projected Event Gross Project Budget
- Detailed Plans With Times Lines (for set-up exceeding one day)
- Santa Cruz Health Services Agency Food Permit
- Dept. of Alcoholic Beverage Control Daily License
- Diagram of Event Layout and Set-Up Locations
- Notice of Mitigation Measures for Negative Consequences
- Event Traffic Advisory Signs
- Description of Proposed Parking and/or Shuttle Plan
- City Building Permit
- Insurance Certificate

**X    *Banner(s) and/or sign(s)***

Check if Required

Sign if Approved

- Police Department \_\_\_\_\_
- Fire Department \_\_\_\_\_
- Public Works \_\_\_\_\_
- Finance \_\_\_\_\_
- County Health \_\_\_\_\_
- City Manager \_\_\_\_\_

CONDITIONS

1. The project approval consists of a Master Conditional Use Permit for the light industrial buildings located at 100-200 Kennedy Drive
2. Any significant modifications to the size or exterior appearance of the structure must be approved by the Planning Commission.
3. Truck loading and unloading hours shall be limited to 7:30AM – 8PM Monday through Friday, and 8:00AM – 8:00PM Saturday, Sunday, and holidays in order to minimize noise impacts to neighboring residents.
4. All signs shall be consistent with the master sign program. The approved sign program shall permit tenants signage along the north elevation of the new building where the main entrances to the office areas will be located. Each of the five tenant spaces will be permitted one wall sign, with a maximum height of 20" and a maximum length of 8'. Signs are to be of wood or metal construction with vinyl graphics. These sign requirements will also apply to the existing building when new tenants are incorporated and the existing nonconforming signs are removed.
5. All businesses shall obtain a sign permit from the Community Development Department.
6. No roof equipment is to be visible to the general public. Any necessary roof screening is to match the color of the building as closely as possible. Plans for any necessary screening shall be submitted to the Community Development Department prior to, or in conjunction with, building permit submittal.
7. Rosedale Avenue shall be open to vehicular access for the proposed project and Cabrillo Estates Mobile Home Park at all times.
8. The property owner shall maintain a gate, for which they control access, at the location of the previous gate that was removed. The gate shall cross the entire roadway.
9. All lighting shall be focused downward and away from adjacent properties. The Planning Commission shall review lighting upon receipt of a legitimate complaint.
10. All uses shall be conducted wholly within an enclosed building, except for off-street parking and loading facilities and no merchandise shall be displayed outside the building without an individual Conditional Use Permit being issued for the business.
11. All businesses within the center shall obtain a business license and shall comply with all local and state regulations prior to commencing business.
12. Prior to leasing of any space upon the subject property, the holder of the master use permit shall inform all prospective tenants, or tenants renewing or extending leases, of the conditions of the master use permit and of the requirements of 17.60.160 of the Capitola Municipal Code.
13. Prior to leasing of any space upon the subject property, the holder of the master use permit shall submit in writing a description of the prospective tenant, including the name of the business, type business, number of employees and the square footage of the space to be

leased to the Community Development Department. Upon inspection of the property and verification that the landscaping is in good repair and that all the conditions of the master use permit are being met, the tenant use permit ~~shall~~ may be issued by the Community Development Director or designee, or referred to the Planning Commission. Any proposed new use in the original building at 200 Kennedy Drive shall require a conditional use permit approved by the Planning Commission.

14. A tenant use permit shall be revoked in the manner provided in Section 17.60.120 if the tenant is the cause of violation of a condition of the Master Use Permit.
15. Businesses occupying over 12,000 square feet of building shall obtain a standard conditional use permit with approval from the Planning Commission.
16. Manufacturing and industrial processes shall use only gas or electricity as a fuel; provided, however, that equipment using other fuel may be installed for standby purposes only.
17. No owner or invitee shall use or permit any sound system including, but not by way of limitation, loudspeakers, public address, systems, sound amplifiers, radio or broadcast within the project in such a manner that any sounds reproduced, transmitted or produced shall be directed beyond the interior of the building towards the residential areas.
18. No vehicle used regularly on site and under control of a business owner or invitee shall be equipped with back up noise devices audible more than twenty feet from vehicle and owner and invitee shall encourage delivery vehicles outside of their control to approach the facility in such a way to minimize noise.
19. Hours of normal operation on site shall be 7:30AM until 8PM unless a Conditional Use Permit has been obtained, and any activity outside of these hours shall be confined to quiet indoors activity not audible outside of the building. Vehicles coming and going at any non-business hours shall be quiet and conform to normal sound levels.
20. Equipment or machinery regularly used in the production of goods or services on site that produces audible at the property boundaries, including but not limited to sawing, cutting, grinding, shall require a Conditional Use Permit. Air compressors shall be of a quiet type and enclosed inside the building in sound containing enclosures.
21. Approved uses to be permitted by the Master Use Permit are as follows:
  - Administrative, executive and financial offices;
  - Experimental, film or testing laboratories;
  - Manufacture, assembly or packaging of products from previously prepared materials such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, but not including such operations as saw and planing mills, any manufacturing uses involving primary production of wood, metal or chemical products from raw materials;
  - Manufacture of food products, pharmaceuticals and the like, but not including the production of fish or meat products, sauerkraut, vinegar or the like, or the rendering or refining of fats and oils;
  - Manufacture of electric and electronic instruments and devices such as television sets, radios, and television, radio and phonographic equipment;



- Any other research or light manufacturing use which the planning commission finds not to be inconsistent with the purpose of this chapter and which will not impair the present or potential use of adjacent properties;
- Agriculture, horticulture, gardening but not including the raising of rabbits, dogs, fowl or other animals for commercial purposes, or the sale of any products on the premises.
- Retail commercial and service use, including sale and consumption of food and beverage products manufactured on site. Food and wine tasting shall be limited to the quantity to enable a retail customer to develop an appreciation of the food or beverage product. In no case shall food and wine tasting constitute a meal. No restaurant or table service is permitted without a separate conditional use permit, nor will any outdoor seating be allowed; and
- Public and quasi-public uses of an educational or recreational measure, including classes or educational instruction pertaining to products or services on site.

22. Trash enclosures shall be covered, gated and maintained to provide a clean and sanitary area.

23. A new trash enclosure shall be constructed adjacent to the original building at 200 Kennedy Drive prior to any new tenant occupying the space.

24. A landscape plan shall be submitted that enhances the landscaping around the original building at 200 Kennedy Drive. The landscaping shall be installed prior to any new tenant occupying the space.

25. Any outdoor washdown of equipment shall be prohibited.

## FINDINGS

**A. The application, subject to the conditions imposed, will secure the purposes of the Zoning Ordinance, General Plan, and Local Coastal Plan.**

Community Development Department Staff and the Planning Commission have all reviewed the project. The project conforms to the development standards of the IP (Industrial Park) Zoning District. Conditions of approval have been included to carry out the objectives of the Zoning Ordinance and General Plan.

**B. The application will maintain the character and integrity of the neighborhood.**

Planning Department Staff and the Planning Commission have all reviewed the project. The project conforms to the development standards of the IP (Industrial Park) Zoning District and will not negatively impact the surrounding neighborhood. Conditions of approval have been included to ensure that the project maintains the character and integrity of the neighborhood.

**C. This project is categorically exempt under Section 15301 of the California Environmental Quality Act and is not subject to Section 753.5 of Title 14 of the California Code of Regulations.**

## ATTACHMENT 1

Section 15301 of the CEQA Guidelines exempts the operation, leasing, or minor alteration of existing facilities that involve negligible or no expansion of use. No adverse environmental impacts were discovered during review of the proposed project.

**Johnson, Derek**

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**From:** Michael V. Termini [michael@triadelectric.com]  
**Sent:** Friday, January 28, 2011 11:35 AM  
**To:** Johnson, Derek; City Council; Goldstein, Jamie  
**Subject:** appeal of application #10-104

Council, Community Development Director Johnson,

Please accept this e-mail as formal appeal of project #10-104

I believe this particular building is close enough to our residential area to warrant Planning Commission review of each use. This appeal is based on findings related to community compatibility.

Sincerely

Michael Termini  
City councilman



STAFF REPORT

TO: PLANNING COMMISSION

FROM: COMMUNITY DEVELOPMENT DEPARTMENT

DATE: JANUARY 12, 2010 (AGENDA: JANUARY 20, 2011)

SUBJECT: **100-200 KENNEDY DRIVE #10-104 APN: 036-031-01**  
Master Use Permit for an existing industrial property in the IP (Industrial Park) Zoning District.  
Environmental Determination: Categorical Exemption  
Property Owner: John McCoy

APPLICANT'S PROPOSAL

The applicant is requesting approval of a Master Conditional Use Permit for the light industrial buildings located at 100-200 Kennedy Drive in the IP (Industrial Park) zoning district. Approval of the proposed Master Use Permit would be consistent with the General Plan and Zoning Ordinance.

DISCUSSION

The 45,725 square foot site at the end of Kennedy Drive is currently occupied by an older 4,803 square foot building (former Moto Italiano) as well as a newly constructed 7,072 square foot light industrial building with an additional 2,448 square feet of interior mezzanine space. The new building is split into five individual commercial units which range from 1,318 to 1,455 square feet. Being recently developed, the site conforms to current city parking and landscaping requirements. At present, the new building is vacant with the exception of *Pelican Ranch Winery* which recently moved into the building. The wine production use falls under the category of "Manufacture of food products" and is therefore a principally permitted use in the IP zoning. Other principally permitted uses in the IP zoning include:

- A. *Administrative, executive and financial offices;*
- B. *Experimental, film or testing laboratories;*
- C. *Manufacture, assembly or packaging of products from previously prepared materials such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, but not including such operations as saw and planing mills, any manufacturing uses involving primary production of wood, metal or chemical products from raw materials;*
- D. *Manufacture of food products, pharmaceuticals and the like, but not including the production of fish or meat products, sauerkraut, vinegar or the like, or the rendering or refining of fats and oils;*

- E. *Manufacture of electric and electronic instruments and devices such as television sets, radios, and television, radio and phonographic equipment;*
- F. *Any other research or light manufacturing use which the planning commission finds not to be inconsistent with the purpose of this chapter and which will not impair the present or potential use of adjacent properties;*
- G. *Agriculture, horticulture, gardening but not including the raising of rabbits, dogs, fowl or other animals for commercial purposes, or the sale of any products on the premises.*

The proposed Master Conditional Use Permit for the industrial complex would allow not only the principally permitted uses listed in the IP zoning, but also a list of specific uses that would normally require an individual use permit. The applicant is attempting to build a community of food production related companies, similar to the Swift Street Courtyard in Santa Cruz (Kelly's French Bakery, Bonny Doon Winery, etc.) The industrial complex would host a mix of specialty foods, including the potential for tasting rooms and food education classes. With that in mind, he is requesting the following uses be permitted under the Master Conditional Use Permit:

1. Retail commercial and service use, including sale and consumption of food and beverage products manufactured on site; and
2. Public and quasi-public uses of an educational or recreational measure, including classes or educational instruction pertaining to products or services on site.

Per Zoning Code Section 17.60.160, after a Master Use Permit has been issued, tenant use permits that occupy less than 12,000 square feet shall be approved by the Community Development Director upon inspection of the property, and verification that it and its landscaping are in good repair, and that all other conditions of the master use permit are being met. If one of the above-mentioned uses was proposed and of concern to the Director, the Director can require that a Conditional Use Permit be approved by the Planning Commission. In addition, a tenant use permit may be revoked if the tenant is the cause of violation of a condition of the Master Use Permit.

#### Pelican Ranch Winery

A good example of the two uses proposed as part of the Master Use Permit is the recently relocated *Pelican Ranch Winery*. As previously mentioned, the winery has moved into one of the units as a principally permitted food product manufacturer. Approval of the Master Use Permit would allow them to add a wine education and tasting room to the existing wine production use. The principal goal of the family operation is to produce fine wines and also engage information dissemination on topics such as sensory evaluation, oenology, and viticulture. If permitted, their tasting room would be approximately 466 square feet, have 1-2 part time employees, with tastings Friday through Sunday, noon to 5PM.

#### Covenants, Conditions and Restrictions (CC&Rs)

CC&Rs have been recorded as part of the condo conversion that was approved in February 2010. The CC&Rs restrict the permitted uses on the property, as well as provide conditions that the unit owners or lessees must follow in order to reduce impacts not only to each other, but to residences bordering the property. The conditions listed in the CC&Rs have been included as conditions of the Master Use Permit for consistency.

#### Parking

The site provides a total of 43 off-street parking spaces, 23 of which are located toward the front of the building off of Kennedy Drive. The remaining 20 parking spaces are located in the rear of the main building, and are intended for employee usage.

The City of Capitola Parking Ordinance does not provide specific requirements for industrial type uses. Therefore, determination of the appropriate parking is determined by the following code section:

**17.51.210 Uses not specifically mentioned.**

*In the case of any building, structure or premises the use of which is not specifically mentioned in this chapter, the provisions for a use which is so mentioned and to which such use is similar, as determined by the planning commission, shall apply.*

When the site was developed, staff looked at similar uses mentioned in the parking ordinance, and determined that a combination of office, wholesale/warehouse, and retail was likely the most similar uses listed. The older 4,803 square foot building is currently being used for warehouse storage, with a parking requirement of 1 space/5,000 square feet. The new building is vacant with the exception of the previously mentioned *Pelican Ranch Winery*. Taking a somewhat conservative approach, staff looked at the following parking scenario:

<b>Use</b>	<b>Square Footage</b>	<b>Parking Requirement</b>	<b>Number of Spaces</b>
Office	6,096	1 space/ 240 square feet	25 spaces
Retail	2,400	1 space/ 240 square feet	10 spaces
Warehouse	5,827	1 space/ 5000 square feet	1 space
		<b>TOTAL REQUIRED</b>	<b>36 spaces</b>

The above scenario assumes that half of the existing building (2,400 sq. ft.) would be retail, 1,200 would be office, and the remaining 1,200 would be warehouse. It also assumes that the entire mezzanine in the new building would be used as office (2,448 sq. ft.) in addition to the proposed office space (2,448 sq. ft.), with the remaining space being warehouse/manufacturing (4,624 sq. ft.). Based on this scenario, a total of 36 parking spaces would be required. The proposed project provides a total of **43 spaces**.

In addition to looking at this scenario, staff looked at R&D and industrial parking requirements from other local jurisdictions:

<b>City of Santa Cruz</b>	R&D	1 space/ 325 square feet
<b>City of San Jose</b>	R&D	1 space/ 350 square feet
	Industrial	1 space/ 350 square feet
<b>City of Monterey</b>	R&D	1 space/ 500 square feet
	Industrial	1 space/ 500 square feet
<b>Proposed Project</b>	R&D / Industrial	1 space/ 341 square feet

Based on the conservative scenario for the potential uses on the site, as well as comparing the average parking provided per square foot to other city's parking requirements, staff feels that the proposed 43 parking spaces will be sufficient for the uses permitted under the Master Use Permit.

**Environmental Review**

Section 15301 of the CEQA Guidelines exempts the operation, leasing, or minor alteration of existing facilities that involve negligible or no expansion of use. No adverse environmental impacts were discovered during review of the proposed project.

## RECOMMENDATION

Staff recommends that the Planning Commission **approve** application #10-104 based on the following Conditions and Findings for Approval.

## CONDITIONS

1. The project approval consists of a Master Conditional Use Permit for the light industrial buildings located at 100-200 Kennedy Drive
2. Any significant modifications to the size or exterior appearance of the structure must be approved by the Planning Commission.
3. Truck loading and unloading hours shall be limited to 7:30AM – 8PM to minimize noise impacts to neighboring residents.
4. The approved sign program shall permit tenants signage along the north elevation of the new building where the main entrances to the office areas will be located. Each of the five tenant spaces will be permitted one wall sign, with a maximum height of 20" and a maximum length of 8'. Signs are to be of wood or metal construction with vinyl graphics. These sign requirements will also apply to the existing building when new tenants are incorporated and the existing nonconforming signs are removed.
5. All businesses shall obtain a sign permit from the Community Development Department.
6. No roof equipment is to be visible to the general public. Any necessary roof screening is to match the color of the building as closely as possible. Plans for any necessary screening shall be submitted to the Community Development Department prior to, or in conjunction with, building permit submittal.
7. Rosedale Avenue shall be open to vehicular access for the proposed project and Cabrillo Estates Mobile Home Park at all times.
8. The property owner shall maintain a gate, for which they control access, at the location of the previous gate that was removed. The gate shall cross the entire roadway.
9. All lighting shall be focused downward and away from adjacent properties. The Planning Commission shall review lighting upon receipt of a legitimate complaint.
10. All uses shall be conducted wholly within an enclosed building, except for off-street parking and loading facilities and no merchandise shall be displayed outside the building without an individual Conditional Use Permit being issued for the business.
11. All businesses within the center shall obtain a business license prior to operating.
12. Prior to leasing of any space upon the subject property, the holder of the master use permit shall inform all prospective tenants, or tenants renewing or extending leases, of the conditions of the master use permit and of the requirements of 17.60.160 of the Capitola Municipal Code.
13. Prior to leasing of any space upon the subject property, the holder of the master use permit shall submit in writing a description of the prospective tenant, including the name of the business, type business, number of employees and the square footage of the space to be

leased to the Community Development Department. Upon inspection of the property and verification that the landscaping is in good repair and that all the conditions of the master use permit are being met, the tenant use permit shall be issued.

14. A tenant use permit shall be revoked in the manner provided in Section 17.60.120 if the tenant is the cause of violation of a condition of the Master Use Permit.
15. Businesses occupying over 12,000 square feet of building shall obtain a standard conditional use permit with approval from the Planning Commission.
16. Manufacturing and industrial processes shall use only gas or electricity as a fuel; provided, however, that equipment using other fuel may be installed for standby purposes only.
17. No owner or invitee shall use or permit any sound system including, but not by way of limitation, loudspeakers, public address, systems, sound amplifiers, radio or broadcast within the project in such a manner that any sounds reproduced, transmitted or produced shall be directed beyond the interior of the building towards the residential areas.
18. No vehicle used regularly on site and under control of a business owner or invitee shall be equipped with back up noise devices audible more than twenty feet from vehicle and owner and invitee shall encourage delivery vehicles outside of their control to approach the facility in such a way to minimize noise.
19. Hours of normal operation on site shall be 7:30AM until 8PM unless a Conditional Use Permit has been obtained, and any activity outside of these hours shall be confined to quiet indoors activity no audible outside of the building. Vehicles coming and going at any non-business hours shall be quiet and conform to normal sound levels.
20. Equipment or machinery regularly used in the production of goods or services on site that produces audible at the property boundaries, including but not limited to sawing, cutting, grinding, shall require a Conditional Use Permit. Air compressors shall be of a quiet type and enclosed inside the building in sound containing enclosures.
21. Approved uses to be permitted by the Master Use Permit are as follows:
  - Administrative, executive and financial offices;
  - Experimental, film or testing laboratories;
  - Manufacture, assembly or packaging of products from previously prepared materials such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, but not including such operations as saw and planing mills, any manufacturing uses involving primary production of wood, metal or chemical products from raw materials;
  - Manufacture of food products, pharmaceuticals and the like, but not including the production of fish or meat products, sauerkraut, vinegar or the like, or the rendering or refining of fats and oils;
  - Manufacture of electric and electronic instruments and devices such as television sets, radios, and television, radio and phonographic equipment;
  - Any other research or light manufacturing use which the planning commission finds not to be inconsistent with the purpose of this chapter and which will not impair the present or potential use of adjacent properties;
  - Agriculture, horticulture, gardening but not including the raising of rabbits, dogs, fowl or other animals for commercial purposes, or the sale of any products on the premises.



- Retail commercial and service use, including sale and consumption of food and beverage products manufactured on site; and
- Public and quasi-public uses of an educational or recreational measure, including classes or educational instruction pertaining to products or services on site

## FINDINGS

**A. The application, subject to the conditions imposed, will secure the purposes of the Zoning Ordinance, General Plan, and Local Coastal Plan.**

Community Development Department Staff and the Planning Commission have all reviewed the project. The project conforms to the development standards of the IP (Industrial Park) Zoning District. Conditions of approval have been included to carry out the objectives of the Zoning Ordinance and General Plan.

**B. The application will maintain the character and integrity of the neighborhood.**

Planning Department Staff and the Planning Commission have all reviewed the project. The project conforms to the development standards of the IP (Industrial Park) Zoning District and will not negatively impact the surrounding neighborhood. Conditions of approval have been included to ensure that the project maintains the character and integrity of the neighborhood.

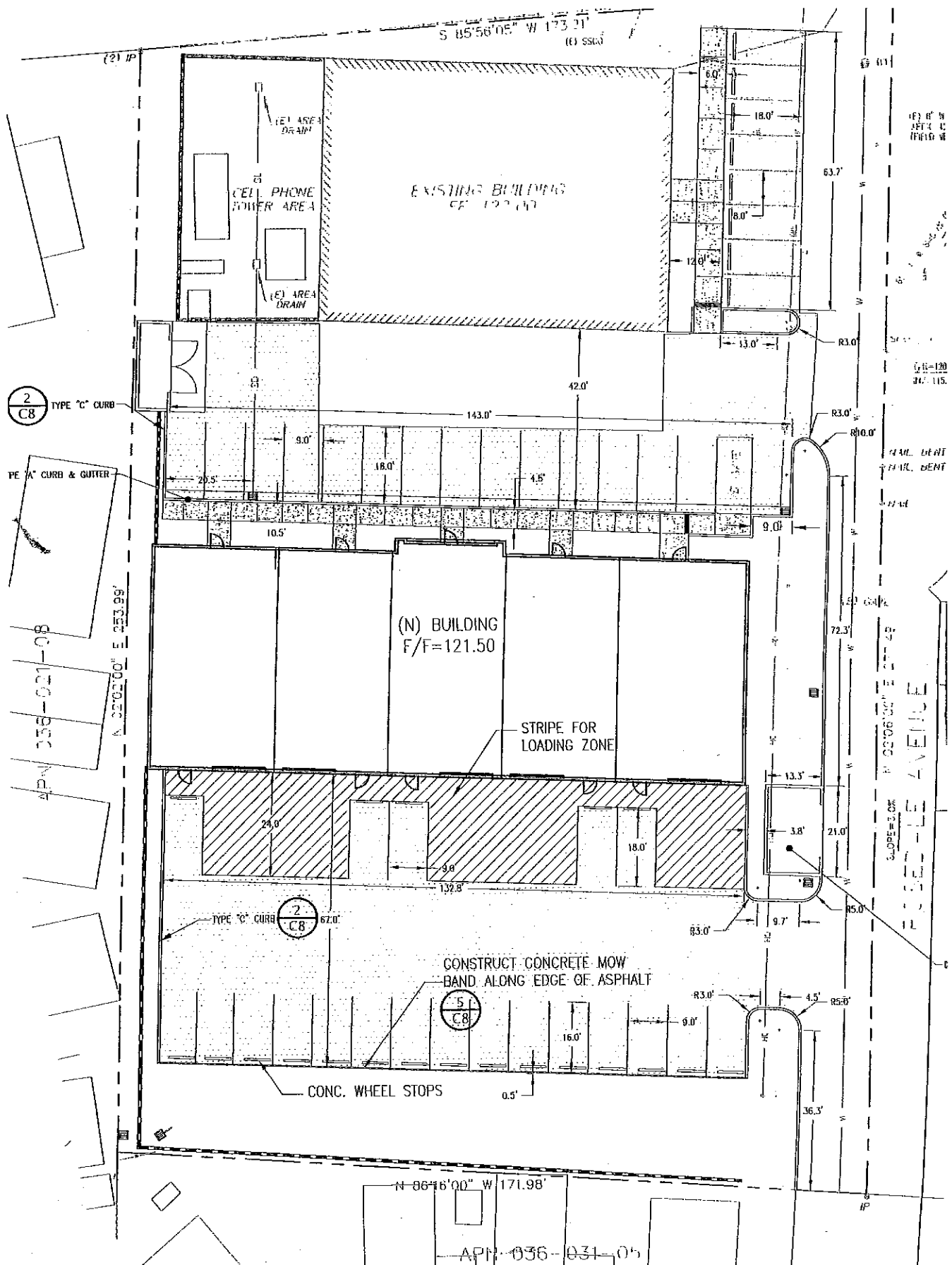
**C. This project is categorically exempt under Section 15301 of the California Environmental Quality Act and is not subject to Section 753.5 of Title 14 of the California Code of Regulations.**

Section 15301 of the CEQA Guidelines exempts the operation, leasing, or minor alteration of existing facilities that involve negligible or no expansion of use. No adverse environmental impacts were discovered during review of the proposed project.

**Report Prepared By:** Ryan Bane  
Senior Planner

Attachment A – Site Plan  
Attachment B – Letter from the applicant, dated December 14, 2010  
Attachment C – Master Use Permit  
Attachment D – Recorded CC&Rs for the property

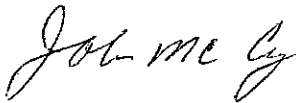
HWY 1



To the City of Capitola:

We are asking for a Master Conditional Use Permit for the entire property instead of one unit at a time so that we can attract the best possible mix of businesses to our community. Once before, we attempted to build a community of food production related companies, but the Permit process caused them to locate elsewhere. We are fortunate that Phil and Peggy Crews of Pelican Ranch Winery have the ability to follow this process to completion this time. We believe that they will be the nucleus of a new movement of businesses to Capitola.

I was recently questioned at the City offices about the use of the old motorcycle building, and I replied that it is now used only for dead storage. When I operated my business from that location, we sold \$20,000.00 motorcycles and other merchandise that generated sales tax income for the City, plus there were the usual business licenses and fees and business interactions with dozens of other firms in the surrounding area. Today, there is no revenue source for anyone except the original low 1994 property tax value. Someday, I would like this property to become a vital part of the Capitola business community again, and I certainly hope that we can allow enough business uses for the beautiful new building units to attract viable small companies.



John McCoy  
Property Owner

MASTER USE PERMIT FOR  
100-200 KENNEDY DRIVE

1. All businesses shall comply with all conditions of approval placed on the industrial complex.
2. Any significant modifications to the size or exterior appearance of the structure must be approved by the Planning Commission.
3. Truck loading and unloading hours shall be limited to 7:30AM – 8PM to minimize noise impacts to neighboring residents.
4. The approved sign program shall permit tenants signage along the north elevation of the new building where the main entrances to the office areas will be located. Each of the five tenant spaces will be permitted one wall sign, with a maximum height of 20" and a maximum length of 8'. Signs are to be of wood or metal construction with vinyl graphics. These sign requirements will also apply to the existing building when new tenants are incorporated and the existing nonconforming signs are removed.
5. All businesses shall obtain a sign permit from the Community Development Department.
6. No roof equipment is to be visible to the general public. Any necessary roof screening is to match the color of the building as closely as possible. Plans for any necessary screening shall be submitted to the Community Development Department prior to, or in conjunction with, building permit submittal.
7. Rosedale Avenue shall be open to vehicular access for the proposed project and Cabrillo Estates Mobile Home Park at all times.
8. The property owner shall maintain a gate, for which they control access, at the location of the previous gate that was removed. The gate shall cross the entire roadway.
9. All lighting shall be focused downward and away from adjacent properties. The Planning Commission shall review lighting upon receipt of a legitimate complaint.
10. All uses shall be conducted wholly within an enclosed building, except for off-street parking and loading facilities and no merchandise shall be displayed outside the building without an individual Conditional Use Permit being issued for the business.
11. All businesses within the center shall obtain a business license prior to operating.
12. Prior to leasing of any space upon the subject property, the holder of the master use permit shall inform all prospective tenants, or tenants renewing or extending leases, of the

conditions of the master use permit and of the requirements of 17.60.160 of the Capitola Municipal Code.

13. Prior to leasing of any space upon the subject property, the holder of the master use permit shall submit in writing a description of the prospective tenant, including the name of the business, type business, number of employees and the square footage of the space to be leased to the Community Development Department. Upon inspection of the property and verification that the landscaping is in good repair and that all the conditions of the master use permit are being met, the tenant use permit shall be issued.
14. A tenant use permit shall be revoked in the manner provided in Section 17.60.120 if the tenant is the cause of violation of a condition of the Master Use Permit.
15. Businesses occupying over 12,000 square feet of building shall obtain a standard conditional use permit with approval from the Planning Commission.
16. Manufacturing and industrial processes shall use only gas or electricity as a fuel; provided, however, that equipment using other fuel may be installed for standby purposes only.
17. No owner or invitee shall use or permit any sound system including, but not by way of limitation, loudspeakers, public address, systems, sound amplifiers, radio or broadcast within the project in such a manner that any sounds reproduced, transmitted or produced shall be directed beyond the interior of the building towards the residential areas.
18. No vehicle used regularly on site and under control of a business owner or invitee shall be equipped with back up noise devices audible more than twenty feet from vehicle and owner and invitee shall encourage delivery vehicles outside of their control to approach the facility in such a way to minimize noise.
19. Hours of normal operation on site shall be 7:30AM until 8PM unless a Conditional Use Permit has been obtained, and any activity outside of these hours shall be confined to quiet indoors activity no audible outside of the building. Vehicles coming and going at any non-business hours shall be quiet and conform to normal sound levels.
20. Equipment or machinery regularly used in the production of goods or services on site that produces audible at the property boundaries, including but not limited to sawing, cutting, grinding, shall require a Conditional Use Permit. Air compressors shall be of a quiet type and enclosed inside the building in sound containing enclosures.
21. Approved uses to be permitted by the Master Use Permit are as follows:
  - Administrative, executive and financial offices;
  - Experimental, film or testing laboratories;
  - Manufacture, assembly or packaging of products from previously prepared materials such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, but not

including such operations as saw and planing mills, any manufacturing uses involving primary production of wood, metal or chemical products from raw materials;

- Manufacture of food products, pharmaceuticals and the like, but not including the production of fish or meat products, sauerkraut, vinegar or the like, or the rendering or refining of fats and oils;
- Manufacture of electric and electronic instruments and devices such as television sets, radios, and television, radio and phonographic equipment;
- Any other research or light manufacturing use which the planning commission finds not to be inconsistent with the purpose of this chapter and which will not impair the present or potential use of adjacent properties;
- Agriculture, horticulture, gardening but not including the raising of rabbits, dogs, fowl or other animals for commercial purposes, or the sale of any products on the premises.
- Retail commercial and service use, including sale and consumption of food and beverage products manufactured on site; and
- Public and quasi-public uses of an educational or recreational measure, including classes or educational instruction pertaining to products or services on site

RECORDING REQUESTED BY:

John McCoy

WHEN RECORDED, MAIL TO:

John McCoy  
PO BOX 970  
Soquel, CA 95073

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(Space Above For Recorder's Use)

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS FOR 100-200 KENNEDY DRIVE  
COMMERCIAL CONDOMINIUMS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS dated for reference purposes as of December \_\_, 2010, is made by John J. McCoy, Trustee of the McCoy Trust, created on February 25, 2008 ("Declarant"). This Declaration is made with reference to the facts set forth in the following Preamble. All capitalized terms set forth in the Preamble and not otherwise defined therein shall have the meaning set forth in Article I below.

**P R E A M B L E**

Declarant is the owner of certain real property situated in the City of Capitola, Santa Cruz County, California, described as follows:

Parcel A and Units 1 through 6, inclusive, of Tract \_\_\_\_, as shown on a Map filed in Book 117, Pages \_\_ to \_\_, of Parcel Maps, in the Office of the County Recorder of said County.

Original APN: 036-031-01

Declarant deems it desirable, for the efficient preservation of the amenities in the Project, to create a "condominium project" within the meaning of Section 1351(f) of the California Civil Code, pursuant to the Davis-Stirling Common Interest Development Act (the "Davis-Stirling Act") to subdivide the above-referenced property as authorized by Section 66427 of the California Government Code into "condominiums" (as defined in Section 783 of the California Civil Code) and to impose mutually beneficial restrictions under a general plan for ownership and use of the Project for the benefit of all Condominiums created therein pursuant to the Davis-Stirling Common Interest Development Act (the "Davis Stirling Act"). The general plan for development of the Project provides for formation of an incorporated association pursuant to the California Nonprofit Mutual Benefit Corporation Law, the Members of which will be the Owners of the Condominiums within the Project, for purposes of exercising the powers assigned

to such Association in the Governing Documents or otherwise authorized by Section 1363 of the California Civil Code (excluding subsection (b) thereof), including the power to (1) own, maintain and administer the Common Area, (2) administer and enforce the Governing Documents, and (3) collect and disburse the Assessments and charges hereinafter created.

Declarant declares that the Project will be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the easements, restrictions, reservations, rights, covenants, conditions and equitable servitudes contained in this Declaration, all of which are for the purpose of enhancing the attractiveness and desirability of the Project, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Project. The easements, restrictions, reservations, rights, covenants, conditions and equitable servitudes set forth herein will (1) run with and burden the Project and will be binding upon all Persons having or acquiring any interest in the Project, their heirs, successors in interest and assignees; (2) inure to the benefit of the Project and any interest therein; (3) inure to the benefit of and be binding upon Declarant and his successors in interest and assignees and each Owner and each Owner's successors in interest and assignees; and (4) may be enforced by Declarant, any Owner, or the Association.

#### **ARTICLE I: DEFINITIONS**

The following terms shall have the meanings set forth below, unless the context clearly indicates otherwise:

1.1 Articles. "Articles" means the Articles of Incorporation of the Association as amended from time to time.

1.2 Assessment. "Assessment" means any Common Assessment, Capital Improvement Assessment, Extraordinary Assessment, Reconstruction Assessment or Compliance Assessment imposed by the Association on all or any one of the Condominiums within the Project pursuant to the terms of this Declaration.

1.3 Assessment, Capital Improvement. "Capital Improvement Assessment" means a charge which the Board levies against the Owners and their Condominiums representing a portion of the cost to the Association for installation or construction of any capital Improvements on Common Area. Capital Improvement Assessments will be levied in the same proportion as Common Assessments. Capital Improvement Assessments are special assessments as described in California Civil Code Section 1366.

1.4 Assessment, Common. "Common Assessment" means a charge levied against the Owners and their Condominiums to be used to satisfy Common Expenses. The Common Assessment is a regular assessment as described in California Civil Code Section 1366.

1.5 Assessment, Compliance. "Compliance Assessment" means a charge against a particular Owner directly attributable to or reimbursable by that Owner equal to the cost incurred by the Association for corrective action performed pursuant to the Governing Documents, plus interest and other charges on such Compliance Assessments as provided for in the Governing



Documents. Compliance Assessments may include collection costs, expenses and reasonable attorneys' fees.

1.6 Assessment, Extraordinary. "Extraordinary Assessment" means a charge levied against Owners and their Condominiums representing any expense incurred or to be incurred in accordance with the Governing Documents which cannot be imposed as a Common Assessment, Capital Improvement Assessment or Reconstruction Assessment. Extraordinary Assessments will be levied in the same proportions as Common Assessments.

1.7 Assessment, Reconstruction. "Reconstruction Assessment" means a charge which the Board may levy against the Owners and their Condominiums representing a portion of the Association's cost to reconstruct any Improvements to or within the Common Area. Reconstruction Assessments will be levied in the same proportion as Common Assessments.

1.8 Association. "Association" means the 100-200 Kennedy Drive Association, a nonprofit mutual benefit corporation, and its successors in interest. The Association is an "association" as defined in Section 1351(a) of the California Civil Code.

1.9 Association Maintenance Funds. "Association Maintenance Funds" means the accounts created for the Association receipts and disbursements pursuant to Article VIII hereof.

1.10 Board of Directors. "Board" or "Board of Directors" means the Board of Directors of the Association. The Board shall be appointed or elected, as applicable, pursuant to the Bylaws.

1.11 Building(s). "Building(s)" means, individually or collectively, any one or both of the commercial buildings located within the Project and all additions, alterations, replacements and modifications thereto and any other commercial buildings constructed within the Project from time to time.

1.12 Budget. "Budget" means a written, itemized estimate of the Association's income and Common Expenses approved by the Board pursuant to the Bylaws.

1.13 Bylaws. "Bylaws" means the Bylaws of the Association as amended from time to time.

1.14 City. "City" means the City of Capitola, Santa Cruz County, California, and its various departments, divisions, employees and representatives.

1.15 Close of Escrow. "Close of Escrow" means the date on which a deed conveying a Condominium is executed and Recorded by Declarant. The term "Close of Escrow" shall not include Recording a deed between Declarant and any affiliate of Declarant or any successor to any rights of the Declarant.

1.16 Common Area. "Common Area" means that certain area within the Project described as "Common Area" on the Condominium Plan. Common Area shall include all structural components of the Buildings as well as Demising Walls constructed to divide contiguous Units under separate ownership, any Common Utility Improvements located within a Unit or any other

portion of the Project. Common Area shall further include easements and reservations for the benefit of the Association over the real property within the Project as set forth in this Declaration. Upon the first Close of Escrow for the sale by Declarant of a Condominium within the Project, the Common Area designated on the Condominium Plan shall be owned by the Owners of all Condominiums within the Project as tenants-in-common. Unless otherwise expressly set forth herein, any references in this Declaration to Common Area are references to the Common Area within the Project as a whole and not to portions thereof.

1.17 Common Expenses. "Common Expenses" means those expenses for which the Association is responsible under this Declaration, including the actual and estimated costs of the following:

- (a) Maintaining, managing, operating, repairing and replacing the Common Area;
- (b) Unpaid Capital Improvement Assessments, Common Assessments, Compliance Assessments, Extraordinary Assessments and Reconstruction Assessments;
- (c) Managing and administering the Association;
- (d) Compensation paid by the Association to the Manager (if any), accountants, attorneys and Association employees;
- (e) The cost of all utilities and mechanical and electrical equipment serving the Common Area as well as any commonly-metered utilities serving the Units or any other utility services provided by the Association, and any other services benefiting the Common Area or the Owners, if the Board elects to provide such services to the Owners;
- (f) Premiums for fire, casualty and liability insurance, worker's compensation insurance, and other insurance to be maintained by the Association pursuant to Article IX hereof;
- (g) Premiums for fidelity bonds for the Board of Directors and Association employees;
- (h) Taxes and assessments paid by the Association;
- (i) Amounts paid by the Association for discharge of any lien or encumbrance levied against the Project;
- (j) Reasonable Reserves; and
- (k) All other expenses incurred by the Association for any reason whatsoever in connection with the Project or services provided to or for the benefit of Owners and occupants of the Project.

1.18 Common Utility Improvements. "Common Utility Improvements" means all gas, water and waste pipes, all sewers, ducts, chutes, conduits, wires and other utility installations located anywhere within the Project which serve the Common Area or multiple Units within the Project,

including utility installations located under the Buildings, within the exterior walls of the Buildings, within utility-bearing Demising Walls separating the Units and within any portions of the Units subject to utility easements in favor of the Association as set forth in Section 6.4.2 below. The Common Utility Improvements shall further include all lines, pipes or conduits serving the Common Area and/or multiple Units within the Project commencing from the point of connection to utility lines within a public right-of-way up to, and excluding, the point at which utility improvements serving only one of the Units connect to such Common Utility Improvements.

1.19 Condominium. "Condominium" means an estate in real property as defined in California Civil Code Section 1351(f). A Condominium consists of a separate ownership interest in fee in a Unit together with an undivided fee simple ownership interest in the Common Area of the Project in which the Unit is located and all easements appurtenant thereto. Subject to the provisions of Section 10.3 below, the undivided fee simple interest in the Common Area is appurtenant to each Unit within the Project and is a fraction having one (1) as its numerator and the number of Units in the Project as its denominator; and shall be held by the Owners of Condominiums in the Project as tenants-in-common. Each undivided interest in the Common Area, fee title to the respective Unit, all easements conveyed therewith and the appurtenant Membership in the Association shall not be separated or separately conveyed, and each such undivided interest, Membership and easements shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit. This restriction on severability of the component interests of the Condominiums shall not extend beyond the period for which the right to partition the Project is suspended in accordance with Section 1359 of the California Civil Code. Any conveyance by an Owner of a Condominium, or any portion thereof, shall be presumed to convey the entire Condominium together with a Membership in the Association.

1.20 Condominium Plan. "Condominium Plan" means the Recorded condominium plan for the Project, as amended from time to time. The Condominium Plan shall consist of (a) a description or survey map of the Project which shall refer to or show monumentation on the ground, (b) a three-dimensional description of the Project, one or more dimensions of which may extend for an indefinite distance upwards or downwards in sufficient detail to identify the Common Area and each Unit within the Project, and (c) a certificate consenting to the Recordation thereof signed and acknowledged by the record owner of fee title to the Project, and by either the trustee or the Mortgagee of each Recorded Mortgage encumbering the Project.

1.21 Declarant. "Declarant" means John J. McCoy, Trustee of the McCoy Trust, created on February 25, 2008, his successors and any Person to whom he assigns any of his rights and powers under this Declaration by express written assignment. Any such assignment may include some or all of the rights of the Declarant and may be subject to such conditions or limitations as Declarant may impose in his sole and absolute discretion.

1.22 Declarant Rights Termination Date. "Declarant Rights Termination Date" means the date when Declarant no longer owns real property in the Project.

1.23 Declaration. “Declaration” means this instrument as amended and restated from time to time.

1.24 Demising Walls. “Demising Walls” means any walls separating Units under common ownership from other Units under separate ownership. Demising Walls shall not be deemed to include internal walls constructed by or on behalf of any Owner located entirely within such Owner’s Unit.

1.25 Design Guidelines. “Design Guidelines” means any architectural or design guidelines which may be adopted by the Declarant and/or the Board from time to time pursuant to Article IV below (the “Condominium Design Guidelines”).

1.26 Exclusive Use Easement. “Exclusive Use Easement” means any portion of the Common Area which is subject to an exclusive use easement granted to the Owner of one or more (but not all) of the Condominium(s) within the Project for the exclusive use of the occupants of such Condominium(s).

1.27 Fiscal Year. “Fiscal Year” means the fiscal accounting and reporting period selected by the Board for the Association.

1.28 Governing Documents. “Governing Documents” means this Declaration, the Articles and Bylaws of the Association and the Rules and Regulations (including the Condominium Design Guidelines, if any).

1.29 Governmental Requirements. “Governmental Requirements” means all applicable laws, rules, regulations, orders, ordinances, subdivision requirements, zoning restrictions, map conditions and all other requirements of the City and any other local governmental agency with jurisdiction over the Project.

1.30 Hazardous Materials Laws. “Hazardous Materials Laws” means all laws, rules, regulations, judgments, orders, permits, licenses, agreements, covenants, restrictions, requirements or the like relating to the environmental condition of the Project or the presence of “Hazardous Materials” (as defined below) in, on, above, under or otherwise affecting the Project including, without limitation, (i) Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), and (iv) Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), Section 311 of the Federal Water Pollution Control Act (33 USC Section 1251 et seq.), Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 USC Section 9601 et seq., Section 401.15 of the Clean Water Act, 40 CFR 116, and Section 302 of the Superfund Amendments and Reauthorizations Act of 1986, 42 USC Section 11002 et seq. As used herein, the term “Hazardous Material” means any hazardous or toxic substance, material or waste which

is or becomes regulated by any local governmental authority, the State of California or the United States Government, and includes, without limitation, petroleum, asbestos, pesticides, polychlorinated biphenyls, solvents, and any other material or substance which is defined as a "Hazardous Waste," "Extremely Hazardous Waste," "Restricted Hazardous Waste," "Hazardous Substance," or "Hazardous Material" under applicable Hazardous Materials Law.

1.31 Improvement. "Improvement" means any improvement constructed or installed above or below ground within the Project, including without limitation all (a) the Buildings, the Demising Walls within the Buildings or any other building or structure located on the Project from time to time and any appurtenance thereto, (b) any directory or monument signs, directional signs, poles, trash enclosures, the paint on all Buildings, exterior lights or exterior light standards located on the exterior of the Buildings, (c) any type of railings, ramps, walls, exterior air conditioning equipment, antennae, awnings, stairways or decks attached or adjacent to any of the Buildings, (d) any utility lines, or other pipes, sewers, ducts, chutes, conduits, wires or other utility installations located anywhere within the Project. The term Improvement shall further include the following (collectively, the "Owner Improvements"): (i) interior walls, dividers, cabinets, cases, bookcases, shelves or storage racks attached to Demising Walls or other structural elements of the Buildings, (ii) wall coverings, window coverings or floor coverings, and (iii) any other fixtures, equipment or other improvements or structures located within any Unit. Finally, the term Improvements shall include any installation, construction, remodeling, replacement, refinishing, or alteration of any of the foregoing.

1.32 Manager. "Manager" means the Person retained by the Association, if any, to perform management functions of the Association as limited by the Governing Documents and the terms of the agreement between the Association and such Person. The Manager may be Declarant or an affiliate of Declarant.

1.33 Member, Membership. "Member" means Declarant and any Person holding a Membership in the Association pursuant to Section 5.1 below. "Membership" shall mean the voting, and other rights and privileges of the Owners of the Condominiums within the Project as Members of the Association, together with the corresponding duties and obligations, as provided in the Governing Documents.

1.34 Mortgage; First Mortgage. "Mortgage" means any mortgage, indenture of mortgage, or deed of trust encumbering the interest, whether fee or leasehold, of an Owner in a Condominium. "First Mortgage" means any such mortgage, indenture of mortgage, or deed of trust which is a first priority lien on such Condominium as well as any other mortgage, indenture of mortgage, or deed of trust which secures a loan guaranteed by the U.S. Small Business Administration.

1.35 Mortgagee; First Mortgagee. "Mortgagee" means a mortgagee, or trustee and beneficiary under a Mortgage, and to the extent applicable, a fee owner or lessor or sublessor of any Condominium which is the subject of a lease under which any Owner becomes a lessee in a so-called "sale and leaseback" or "assignment and subleaseback" transaction. First Mortgagee shall refer to the mortgagee, trustee or beneficiary under any First Mortgage.

1.36 Notice and Hearing. "Notice and Hearing" means written notice and a hearing before the Board as provided in the Bylaws and this Declaration.

1.37 Owner. "Owner" means the Person, including Declarant, who is the record owner of fee simple title to any Condominium within the Project. The term "Owner" may include a seller under an executory contract of sale but excludes Mortgagees. If a Condominium is subject to a lease, the owner of the fee title and not the lessee of the applicable Condominium shall be deemed the Owner regardless of the term of the Lease. If an Owner leases an entire Condominium to a person, such Owner may assign its rights and delegate its obligations under this Declaration as to such Condominium to the lessee under any such lease so long as such Owner provides notice thereof to the Board and remains responsible for its obligations under this Declaration. Whenever an Owner transfers such Owner's entire interest in a Condominium to another Person, the transferring Owner shall be released and discharged from the obligations thereafter accruing under this Declaration, and the new Owner shall be responsible for all such obligations thereafter accruing under this Declaration and shall be bound by this Declaration.

1.38 Permittees. "Permittees" means all Persons from time to time entitled to the use and occupancy of any Unit within the Project (or any portion thereof) under any lease, deed or other arrangement with an Owner and the respective officers, directors, employees, agents, contractors, customers, visitors, invitees, licensees and concessionaires of such Persons.

1.39 Person. "Person" means one or more natural individuals or any entity with the legal right to hold title to real property. When the word "person" is used and is not capitalized, the word only refers to natural persons.

1.40 Project. "Project" means all of the Units and Common Area encumbered by this Declaration from time to time. The Project is a "common interest development" and a "condominium project" as defined in Sections 1351(c) and 1351(f) of the California Civil Code.

1.41 Record, File, Recordation. "Record," "File," or "Recordation" means, with respect to any document, the entry of such document in the Official Records of the Santa Cruz County Recorder.

1.42 Reserves. "Reserves" means those Common Expenses for which Association funds are set aside pursuant to Article VIII of this Declaration for funding the maintenance, repairs and replacement of the major components of the Common Area or to make additional improvements to the Common Area which would not reasonably be expected to recur on an annual or more frequent basis and for payment of deductible amounts for insurance policies which the Association maintains pursuant to Section 9.1 below. The amount of Reserves to be maintained by the Association will be determined annually by the Board pursuant to reserve guidelines established in accordance with prudent property management practices generally applied for a commercial "common interest development." The Board may suspend funding of Reserves as it deems appropriate, including, without limitation, the right to maintain Reserves at less than one hundred percent of the Association's cost to reconstruct the Common Area.

1.43 Rules and Regulations. "Rules and Regulations" means such reasonable, nondiscriminatory rules and regulations consistent with this Declaration for the maintenance, use, and enjoyment of the Common Area and the Condominiums, as may be adopted from time to time by Declarant or the Association. Such Rules and Regulations shall include, without limitation, any Condominium Design Guidelines adopted by Declarant or the Association from time to time. Each Owner shall be obligated to comply with, and the Association is authorized and empowered to enforce, the Rules and Regulations, provided that any such enforcement shall be accomplished in a uniform and nondiscriminatory manner.

1.44 Sign Program. "Sign Program" means (i) the set of design standards and other requirements regulating Signs on the Project, as adopted by the City, and (ii) any other standards, rules or regulations which may be promulgated by Declarant and/or adopted by the Board regulating Signs on the Project.

1.45 Signs. "Signs" means all advertising, placards, signs, names, billboards, insignia, numerals, addresses, and descriptive words of any type affixed, inscribed, constructed, or maintained on the Project or on any Improvement thereon.

1.46 Unit. "Unit" means a separate interest in space as defined in Civil Code Section 1351(f). Each Unit is a separate freehold estate, as separately shown, numbered and designated in the Condominium Plan. The approximate boundaries of each Unit will be shown on the Condominium Plan. In the event that two (2) or more separate but contiguous Units (as shown on the Condominium Plan) are conveyed concurrently to same Owner or Owners, all such contiguous Units shall be referred to herein collectively as a "Unit." Each Unit includes the hardware on entry doors and the glass portions of the windows, doors and other glass surfaces that are constructed at Unit boundaries. In interpreting deeds, the Declaration and the Condominium Plans, the actual boundaries of each Unit shall be deemed to extend to the interior unfinished surfaces of the Demising Walls and/or exterior walls of the Building within which the Unit is located and to the unfinished surfaces of the floors and structural ceilings encompassing the Unit, as constructed or reconstructed in substantial accordance with the original plans for the Building. In the event that any "drop" ceilings or "false" ceilings are installed within a Unit, the Unit shall nonetheless be deemed to extend beyond such drop ceiling to the unfinished surface of the structural ceiling above and to the surface of any structural beams extending below such structural ceiling. The foregoing interpretation shall apply notwithstanding any description expressed in this Declaration or the Condominium Plan and/or grant deed conveying such Unit, regardless of settling or lateral movements of Improvements, and regardless of minor variances between Unit boundaries shown in the Condominium Plan or and/or grant deed conveying such Unit and those of the Improvement.

## ARTICLE II: USE RESTRICTIONS

The Project shall be held, used and enjoyed subject to the following restrictions:

2.1 Permitted Uses. The Condominiums in the Project may be used only for the following uses:

- (a) Administrative, executive and financial offices;

(b) Experimental, film or testing laboratories;

(c) Manufacture, assembly or packaging of products from previously prepared materials such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, but not including such operations as saw and planing mills, any manufacturing uses involving primary production of wood, metal or chemical products from raw materials;

(d) Manufacture of food products, pharmaceuticals and the like, but not including the production of fish or meat products, sauerkraut, vinegar or the like, or the rendering or refining of fats and oils, unless otherwise approved by the City and the Board;

(e) Manufacture of electric and electronic instruments and devices such as television sets, radios, and television, radio and phonographic equipment;

(f) Any other research or light manufacturing use which the planning commission of the City finds not to be inconsistent with the purpose of Chapter 17.36 of the City's Municipal Code and which will not impair the present or potential use of adjacent properties; and

(g) Agriculture, horticulture, gardening but not including the raising of rabbits, dogs, fowl or other animals for commercial purposes, or the sale of any products on the premises.

## 2.2 Other Required Conditions.

(a) All uses shall be conducted wholly within a completely enclosed Building, except for gas pumps, and off-street parking and loading facilities, public and quasi-public uses and public utility service yards.

(b) Manufacturing and industrial processes shall use only gas or electricity as a fuel; provided, however, that equipment using other fuel may be installed for standby purposes only.

(c) Noise. No owner or invitee shall use or permit any sound system including, but not by way of limitation, loudspeakers, public address systems, sound amplifiers, radio or broadcast within the Project in such a manner that any sounds reproduced, transmitted or produced shall be directed beyond the interior of the building towards the residential areas.

(d) No vehicle used regularly on site and under control of Owner or Invitee shall be equipped with back up noise devices audible more than twenty feet from vehicle and Owner and invitee shall encourage delivery vehicles outside of their control to approach the facility in such a way to minimize noise

(e) Hours of normal operation on site shall be 7:30AM until 8PM unless a Conditional Use Permit has been obtained, and any activity outside of these hours shall be confined to quiet indoors activity not audible outside of the building. Vehicles coming and going at any non-business hours shall be quiet and conform to normal sound levels.



(f) Equipment or machinery regularly used in the production of goods or services on site that produces audible at the property boundaries, including but not limited to sawing, cutting, grinding, shall require a Conditional Use Permit. Air compressors shall be of a quiet type and enclosed inside the building in sound containing enclosures.

2.3 Nuisances. No noxious or offensive activities shall be carried on upon any part of the Project, which may be, or may become, a nuisance to the Owners, or which shall in any way interfere with the quiet enjoyment of any other Owner's Condominium, or which shall in any way increase the rate of insurance for the Common Area or any other Condominium within the Project. Each Owner shall comply with all applicable governmental noise abatement ordinances. Every use shall be operated so that (a) it does not emit any obnoxious or dangerous amount of heat, glare, radiation or fumes outside of the Unit in which the use is being conducted, and (b) so that ground vibration inherently and recurrently generated by such use is not perceptible, without instruments, at any point outside of the Unit in which the use is being conducted, and (c) so that such use does not result in the emission of any electro-mechanical or electro-magnetic disturbance radiation that would interfere with uses or activities conducted on any other portion of the Project. No materials or wastes shall be permitted within a Unit in such form or manner as to permit transfer thereof outside of such Unit by natural causes or forces and all materials or wastes which might cause fumes or dust or which might constitute a fire hazard or which might be edible by, or otherwise attractive to animals or insects shall be stored only within the Unit. Except as to common trash bins or other such facilities as authorized and maintained by the Association, there shall be no storage of trash or other materials of any kind in any portion of the Common Area. Any such prohibited storage may be removed by the Association at the expense of the responsible Owner. As set forth in Chapter 10.52 of the City's Municipal Code, there shall be no storage of abandoned, wrecked, dismantled or inoperative vehicles or parts thereof on any portion of the Common Area, including operable vehicles not in daily use.

2.4 Signs. All Signs displayed anywhere within the Project must comply with (a) all applicable Governmental Requirements governing the type of advertising permitted of the Owner by all licensing authorities with jurisdiction over the Project or the applicable Owner, (b) any Condominium Design Guidelines or Sign Program which may be adopted for the Project from time to time. Without limiting the foregoing, no Signs may be installed hung, flown or maintained on or over the Common Area (including, without limitation, from or adjacent to any exterior walkways or railings within the Common Area) or shown or displayed from or visible from the outside of any Unit other than (i) the monument signage installed by Declarant, (ii) Signs which state that a Condominium is for rent or sale (provided such Signs otherwise comply with the Sign Program and any applicable Condominium Design Guidelines, (iii) Signs that may be required by a legal proceeding or (iv) any other Sign otherwise approved by Declarant or, following the Declarant Rights Termination Date, the Board in their sole discretion. The Association may summarily cause all unauthorized Signs to be removed or destroyed.

2.5 Further Subdivision. Except as otherwise provided in this Declaration, no Owner other than Declarant may physically or legally subdivide a Condominium in any manner. This provision does not limit the right of an Owner to (a) transfer or sell any Condominium to more than one Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or community property; (b) sell such Owner's Condominium; or (c) rent or lease such Owner's

Condominium by a written lease or rental agreement subject to this Declaration. Except as provided in this Declaration, there shall be no judicial partition of the Common Area, or any part thereof, for the term of this Declaration, nor may Declarant, any Owner or any other Person acquiring any interest in any Condominium in the Project seek any such judicial partition.

2.6 Leasing. An Owner may rent all or any portion of such Owner's Condominium provided that the Condominium is rented pursuant to a lease or rental agreement which is (a) in writing and (b) subject to all of the provisions of this Declaration. In the event that any Permittee occupying any Condominium or portion thereof pursuant to a lease thereof fails to comply with the provisions of this Declaration, such non-compliance shall constitute a breach of the lease as well as a violation of this Declaration.

### **ARTICLE III: ASSOCIATION**

3.1 General Duties and Powers. The Association has the duties and powers set forth in the Governing Documents and also has the general and implied powers of a nonprofit public benefit corporation generally to do all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers set forth in the Governing Documents. All of the Association's powers shall be exercised by its Board of Directors except those powers reserved in specific provisions of the Governing Documents to the Members.

3.2 Specific Duties and Powers. In addition to its general powers and duties, the Association, after it is formed, shall have the following specific powers and duties:

3.2.1 The Common Area. The power and duty to accept, maintain, repair and otherwise manage the Common Area in accordance with the Governing Documents. The Association may install or remove capital Improvements on or within the Common Area. The Association may reconstruct, replace or refinish any Improvement on or within the Common Area.

3.2.2 Utilities. The power and duty to obtain, for the benefit of the Project, all commonly metered water, gas and electric services necessary to serve the Common Area, and the power, but not the duty, to install, operate, maintain and repair any utility system and communications and information transmission facilities serving any of the Owners or their Permittees and to charge the costs of operation of these systems to the Owners based on their relative use of these utility systems.

3.2.3 Trash; Janitorial Services. The power and duty to provide trash collection services from the common trash enclosures within the Common Area, and the power but not the duty to provide for janitorial services to the Units within the Project.

3.2.4 Granting Rights. The power and duty to grant exclusive or nonexclusive easements, licenses, rights of way or fee interests in portions of the Common Area, to the extent any such grant is reasonably required for (a) any necessary utilities, sewer facilities and storm drain systems to serve the Common Area or the Units, (b) purposes of conformity with the as-built

location of Improvements installed or authorized by Declarant, or (c) other purposes consistent with the intended use of the Project as a condominium project, along with the power, but not the duty, to grant easements or licenses or other rights over the Common Area for (i) Exclusive Use Easements, (ii) roof-mounted antenna, HVAC or other mechanical equipment, or (iii) communications and information transmission facilities, in each case as requested by the Owner of any Condominium but subject to such reasonable rules, regulations, insurance or indemnification requirements as the Board may impose in its sole discretion.

3.2.5 Employ Personnel. The power, but not the duty, to employ a Manager and any other Persons necessary for the effective operation and maintenance of the Common Area, including legal, management and accounting services.

3.2.6 Insurance. The power and duty to maintain liability, fire, worker's compensation and other insurance with respect to the Project and the directors, officers and agents of the Association and the power, but not the duty, to maintain fidelity bonds for the Board and the Association, all in accordance with Article IX.

3.2.7 Right of Entry. The power, but not the duty, to enter into any Unit for the purpose of exercising the Association's rights and performing the Association's duties under this Declaration and for inspecting any portion of the Project in connection therewith. The power, but not the duty, after Notice and Hearing, to enter upon any Condominium without being liable to any Owner except for reasonably avoidable damage caused by such entry, in order to (a) enforce by peaceful means the provisions hereof, or (b) maintain or repair any Condominium or any Improvement thereon, if for any reason the responsible Owner fails to perform such maintenance or repair as required by the Governing Documents. The cost of such enforcement, maintenance and repair shall be a Compliance Assessment enforceable as set forth herein. The Owner shall promptly pay all amounts due for such work, and the costs and expenses of collection (including attorney fees) may be added, at the option of the Board, to the amounts specially assessed against such Owner. If an emergency occurs, such entry upon a Condominium by or on behalf of the Board shall be permitted without Notice and Hearing.

3.2.8 Rules and Regulations. The power, but not the duty, to establish and modify the Rules and Regulations (including, without limitation, Condominium Design Guidelines), subject to the following:

(a) Areas of Regulation. Rules and Regulations may concern, without limitation, use of the Common Area, Signs, minimum maintenance standards, and any other matter within the Association's jurisdiction; provided, however, that such Rules and Regulations shall be consistent with the Governing Documents.

(b) Limits on Regulation. The Rules and Regulations must fairly apply to all Owners. The Rules and Regulations shall not regulate the content of political signs; however, they may regulate the time, place and manner of posting of such signs. The Owners may display religious and holiday Signs, symbols and decorations within their Units of the kinds normally displayed in commercial offices, except the Association may adopt time, place and manner restrictions with respect to any such displays visible outside of the Unit in which they are located or otherwise as

necessary to comply with insurance requirements. No modification to the Rules and Regulations may require an Owner to dispose of personal property that was located on or within such Owner's Condominium prior to the adoption of such modification if such personal property was in compliance with all Rules and Regulations previously in force; however, this exemption shall apply only during the period of such Owner's ownership of the Condominium and shall not apply to (i) subsequent Owners who take title thereto after the modification is adopted, (ii) clarifications to the Rules and Regulations or (iii) violations of any Hazardous Materials Laws or other applicable Governmental Requirements.

(c) Declarant Rights. Nothing herein shall limit Declarant's right to unilaterally impose Rules and Regulations (including, without limitation, Condominium Design Guidelines) on the Project prior to the Declarant Rights Termination Date provided that such Rules and Regulations otherwise comply with the provisions of this Section 3.2.8.

(d) Effective Date. All changes to the Rules and Regulations will become effective fifteen (15) days after they are either (i) posted in a conspicuous place in the Project or (ii) sent to the Owners via first class mail or by any system or technology designed to record and communicate messages.

(e) No Liability. Neither Declarant nor the Association shall be liable in damages to any Owner, or to any other Person subject to or affected by this Declaration, on account of the establishment, amendment, restatement, deletion, and/or waiver of any Rules or Regulations in accordance with this Section 3.2.8.

3.2.9 Borrowings. The power, but not the duty, to borrow money for purposes authorized by the Governing Documents and in connection therewith, to pledge or assign any personal property of the Association (including, without limitation, the Association's right to impose Assessments pursuant to this Declaration) as security for any such borrowing.

3.2.10 Contracts. The power, but not the duty, to enter into contracts for purposes authorized by the Governing Documents, including but not limited to contracts with Owners or other Persons to provide services or to maintain and repair Improvements within the Project and elsewhere which the Association is not otherwise required to provide or maintain pursuant to the Governing Documents; provided, however, that any such contract shall provide for reimbursement to the Association for the costs of providing such services or maintenance. The Association may also contract with third-party providers including, without limitation, Declarant and its affiliates to provide required services to its Members.

### 3.2.11 Indemnification.

(a) For the Association Representatives. To the fullest extent authorized by California law, the Association shall have the power and the duty to indemnify Board members, the Association officers, and all other Association committee members for all damages and pay all expenses incurred by, and satisfy any judgment or fine levied against, any Person as a result of any action or threatened action against such Person brought because of performance of acts or omissions that are within what the Person in good faith believed to be the scope of the Person's

Association duties (“Official Acts”). Board members, the Association officers and all Association committee members are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section 3.2.11(a). The entitlement to indemnification hereunder inures to the benefit of the personal representatives and successors-in-interest of any Person entitled to such indemnification.

(b) For Other Agents of the Association. The Association has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for any damages and pay all expenses incurred by, and satisfy any judgment or fine levied against, any Person as a result of any action or threatened action against such Person because of an Official Act as authorized by California law.

(c) Provided by Contract. The Association also has the power, but not the duty, to contract with any Person to provide indemnification beyond the scope of indemnification authorized by law on such terms and subject to such conditions as the Board may impose.

3.2.12 Communications Facilities. The power, but not the duty, to install, operate, hold, own, manage, and maintain communications and information transmission facilities for the purpose of promoting and facilitating communications services between and among the occupants of Units in the Project, as well as the power, but not the duty, to contract for the installation, operation or management of communications and information transmission facilities for the common benefit of all of the Units and Owners in the Project, and to assign or license the communications and information transmission facilities to third parties.

3.2.13 Special Events on Common Area. The power, but not the duty, to grant permission to an Owner or Owners for the short term exclusive use of the Common Area for periodic special events and to charge any such Owner or Owners a reasonable fee for the short term exclusive use of any portion of the Common Area for such special event, provided that the use of the Common Area by other Owners for the conduct of their business from their Units is not materially and adversely affected by the special event.

3.3 Permitted Functions. The Association is formed exclusively for those social welfare purposes and activities which are specifically and directly related to (a) the duties and powers enumerated in this Article III, (b) maintaining, operating and using the Common Area, including the Improvements located therein, (c) collecting assessments to finance the maintenance and use of the Common Area, and (d) administering and enforcing the Governing Documents (collectively, the “Permitted Functions”). Permitted Functions do not include those activities prohibited by Section 3.4 below. The funds and resources of the Association shall be used exclusively for the direct costs of Permitted Functions. This Section does not preclude the use of the Common Area by Declarant for promotional special events and other purposes as authorized by the Governing Documents.

3.4 Prohibited Activities. The Association is prohibited from taking any action which is inconsistent with, or which would abrogate, any right or exemption in Article XVII. Without limiting the foregoing, the Association shall not (i) participate in federal, state or local political

activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Project (e.g., endorsement or support of (A) legislative or administrative actions by a local governmental authority, (B) candidates for elected or appointed office, or (C) ballot proposals); or (ii) conduct, sponsor, participate in or expend funds or resources for any activity, campaign or event, including any social or political campaign, event or activity which is not directly and exclusively pertaining to the authorized activities of the Association.

### 3.5 Standard of Care; Non-liability.

#### 3.5.1 Scope of Powers and Standard of Care.

(a) General Scope of Powers. Rights and powers conferred on the Board, or any committees or representatives of the Association by the Governing Documents are not duties charged upon those Persons unless the rights and powers are explicitly identified as including duties in the Governing Documents or in law. Unless a duty to act is imposed on the Board or any committees or representatives of the Association by the Governing Documents or law, the Board, and the committees have the right to decide to act or not act. Any decision to not act is not a waiver of the right to act in the future. Moreover, if it is determined that an action or decision does not meet the standards set forth in Sections 3.5.1(b) or 3.5.1(c) below, as applicable, provided that such action or decision is not shown to be willful or malicious, the action or decision may be reversed without further liability to the party making the decision or taking such action.

(b) Business Affairs. This Section 3.5.1(b) applies to Board member actions in connection with management, personnel, maintenance and operations, insurance, contracts and finances and committee member actions. Each Board member shall perform the duties of a Board member in good faith, in a manner such Board member believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. When performing duties, a Board member is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

(i) One or more officers or employees of the Association whom the Board member believes to be reliable and competent in the matters presented;

(ii) Counsel, professional property managers, independent accountants or other Persons as to matters which the Board member believes to be within such Person's professional or expert competence;

(iii) A committee of the Board upon which the Board member does not serve, as to matters within its designated authority, which committee the member believes to merit confidence, so long as, in any such case, the member acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

This Section 3.5.1(b) is intended to be a restatement of the business judgment rule established in applicable law as it applies to the Association. All changes to the business judgment rule applicable to the Association shall be interpreted to change this Section 3.5.1(b).

(c) The Association Governance. This Section 3.5.1(c) applies to Board actions and committee decisions in connection with interpretation and enforcement of the Governing Documents, architectural and landscaping control, regulation of uses within the Project, rule making and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

3.5.2 Non-liability. No Person is liable to any other Person, other than the Association or a party claiming in the name of the Association, for injuries or damage resulting from such Person's Official Acts, except to the extent that injuries or damage result from the Person's willful or malicious misconduct. No Person is liable to the Association, or to any party claiming in the name of the Association, for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's willful or malicious misconduct. The Association is not liable for damage to property in the Project unless caused by the gross negligence or willful and malicious misconduct of the Association or its agents.

#### **ARTICLE IV: DESIGN CONTROL**

4.1 Alteration of Common Area. Except as expressly set forth in this Article IV, no improvement or work which alters or adversely affects the Common Area shall be made or done by any Person other than Declarant or the Association. Notwithstanding the foregoing, but subject to compliance with the provisions of all applicable Governmental Requirements and this Article IV, each Owner may modify the Owner's Unit and the route over the Common Area leading to the front entrance of the Owner's Unit, at the Owner's sole expense, to facilitate access to the Owner's Unit by persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such persons in accordance with California Civil Code Section 1360 or any other applicable law.

4.2 Owner Improvements. No Owner shall permit or cause any portion of the Owner Improvements visible to another Unit or the exterior of the Building to be altered, installed, constructed, reconstructed, replaced, assembled, maintained, relocated, removed or demolished (each, a "Owner Alteration") unless such Owner Alteration conforms to all applicable Governmental Requirements, the Sign Program, as well as any Condominium Design Guidelines which may be adopted by Declarant or the Board from time to time pursuant to Section 4.5.1 below. Following the Close of Escrow for the sale of each Condominium by Declarant, each Owner shall submit to Declarant for review and approval all plans and specifications for any Owner Alterations to the Unit. Declarant's written approval of any such plans and specifications for initial Owner Alterations shall satisfy the approval requirements of this Article IV. Following Declarant's approval of such plans and specifications, all such initial Owner Alterations shall be constructed in a timely, lien-free manner in compliance with Section 4.8, Section 4.9, and Section 4.10 below. Subject to the foregoing, the following Owner Alterations shall further require the approval of the Approving Authority (as defined in Section 4.5.2 below):

(a) Any Owner Alterations affecting the exterior of any Building within the Project or which would otherwise be visible from outside of the Owner's Unit;

(b) Any Owner Alterations which would pierce, modify or otherwise impact any Demising Walls or Roof within the Project;

(c) Any Owner Alterations that would impact in any manner the operation of utilities serving the Common Area or any other Unit, or any common water or sewer lines or fire or life safety systems which serve more than one (1) Unit within the Project, or any conduits, drains, pipes or lines necessary for the operation thereof;

(d) Any Owner Alterations which would materially increase the load on any utility services provided by the Association;

(e) Any Owner Alterations that would cause an increase in the cost of insurance to be carried by the Association or the Owner of any other Unit within the Project; and

(f) Any other Owner Alteration which would materially, adversely impact the use and occupancy of any other Owner's Unit within the Project (other than temporary, minor impacts resulting from construction activity related to the performance of such Owner Alteration).

4.3 Identical Replacements. Notwithstanding the foregoing, neither Declarant nor the Board shall unreasonably withhold consent to any replacement of an Improvement within a Unit for which submittals were previously approved as set forth above, provided that the replacement Improvement is substantially identical to the Improvement previously so approved.

4.4 Exemption. Notwithstanding any other provision of the Governing Documents, Declarant and any Person to whom Declarant may assign its rights and obligations hereunder pursuant to Section 17.8 need not obtain Board approval with respect to construction or development activities within the Project prior to initial completion thereof.

#### 4.5 Approval Standards.

4.5.1 Condominium Design Guidelines; Preapproval. Declarant and, following the Declarant Rights Termination Date, the Board may, in its reasonable discretion, adopt Condominium Design Guidelines setting forth architectural standards for Owner Alterations to be constructed by or on behalf of any Owner within the Project. Such Condominium Design Guidelines may include, without limitation, reasonable restrictions on the conduct of construction activity within the Project so as to minimize damage to Common Area and/or other Units and any other adverse impacts on the use and occupancy of other Units within the Project. The Declarant and the Board may, either through the Condominium Design Guidelines or through separate action, pre-approve certain types or classes of Owner Alterations which otherwise comply with the Condominium Design Guidelines if, in the exercise of their reasonable judgment, preapproval of such types or classes of Owner Alterations is appropriate in carrying out the purposes of the Governing Documents.



4.5.2 Architectural Approval Authority. Prior to the Declarant Rights Termination Date, Declarant shall be the "Approving Authority" for purposes of exercising all approval, inspection and enforcement rights set forth in this Article IV. Notwithstanding the foregoing, Declarant may delegate its rights as Approving Authority to the Board at any time before the Declarant Rights Termination Date. Upon any such delegation, but in any event from and after the Declarant Rights Termination Date, the Board shall be the Approving Authority for purposes of this Article IV; provided, however, that the Board may appoint a committee of Members of the Association and delegate to such committee its authority hereunder. The Board shall further have the power, but not the duty, to retain Declarant or any other Persons to advise the Approving Authority in connection with the review, approval and/or inspection of any Owner Alterations pursuant to this Article IV.

4.5.3 Basis of Approval. The Approving Authority may disapprove any submittals which are not in harmony or conformity with (a) other existing or proposed Improvements within the Project, (b) this Declaration, (c) requirements of the City, (d) the Condominium Design Guidelines and (e) any other master utility or general aesthetic or architectural plans and criteria for the Project. Without limiting the generality of the foregoing, the Approving Authority may evaluate such matters as the effect of design and use of the Owner Alterations on other Units within the Project and Improvements located or operations conducted thereon.

4.5.4 Exculpation. Neither the Approving Authority nor any Person retained by the Approving Authority in connection with the review and approval of Owner Alterations pursuant to this Article IV, shall be liable in damages to anyone making submittals as provided herein, or to any Owner, or other Person subject to or affected by this Declaration, on account of (a) the approval or disapproval of any submittal; (b) any construction, performance or nonperformance by an Owner of any work on or within any Unit, whether or not pursuant to approved submittals; (c) any mistake in judgment, negligence, action or omission in the Approving Authority's exercise of its rights, powers and duties hereunder; or (d) the enforcement of or failure to enforce any of the Governing Documents. Every Person who makes submittals for approval of a Owner Alteration agrees by reason of such submittal, and every Owner of a Unit within the Project, by acquiring title to any Condominium or an interest therein affected by such Owner Alteration, agrees not to bring any suit or action against Declarant, the Association or the Approving Authority or any Person retained by any of the foregoing in connection herewith seeking to recover any such damages. Approval of any submittal by the Approving Authority shall not constitute the assumption of any responsibility by, or impose any liability upon, Declarant, the Association or the Approving Authority with respect to the accuracy or sufficiency of the submittal.

#### 4.6 Review and Approval Process.

4.6.1 Architectural Review Fee. As a condition of its review of submittals, the Approving Authority may charge a reasonable architectural review fee to be paid at or before the time preliminary plans and specifications are submitted for approval to cover overhead and other costs of reviewing the submittals.

4.6.2 Initial Submittals. In order to obtain approval of any Owner Alteration, each Owner shall be required to deliver the following submittals to the Approving Authority:

(a) Two (2) sets of basic conceptual drawings;

(b) Two (2) sets of schematic plans and preliminary specifications, consistent with the basic conceptual drawings previously approved by the Approving Authority, including, but not limited to, site plans showing in reasonable detail the proposed type of use, size, gross floor area, shape, height, location, material and color scheme of each proposed Improvement, all utilities and service connections, and all exterior lighting and Signs related thereto (if any); and

(c) Before commencement of any Owner Alterations, two (2) sets of final working drawings and specifications, based on approved basic design concepts and schematic plans and preliminary specifications, including, but not limited to, color and material palette and signage.

4.6.3 Partial Submittals; Preparation of Submittals. Partial submittals may be made and approved, but construction or assembly of any Owner Alterations may not proceed beyond the scope of the approval received. All plans and specifications submitted shall be prepared by an architect or engineer licensed to practice in California, and signed by the Owner or by an agent authorized by the Owner in writing.

4.6.4 Waiver of Submittal Requirements. The Approving Authority may waive the requirement for any submittal identified in this Section 4.6 in the sole discretion thereof.

4.7 Approval; Deemed Approval. If the Approving Authority approves a submittal, it shall endorse its approval on one set of submitted documents and return the set to the Person from whom the documents were received. The Approving Authority shall be conclusively deemed to have given its approval to a submittal unless within thirty (30) calendar days after such submittal has been received, it delivers written notice specifying in reasonable detail each item which has been disapproved or in connection with which additional information is required. Approval of any proposals, plans and specifications or drawings for any Owner Alterations by the Approving Authority shall not waive any right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval.

4.8 Contractor Requirements. The Approving Authority shall have the right, but not the duty, to require as a condition to approval of any Proposed Alteration that the contractors or subcontractors to be engaged by the responsible Owner to perform any construction, installation or other services required in connection with the Proposed Alteration (collectively, the "Work") provide to the Association, prior to commencing Work within the Project, proof of any workers' compensation insurance coverage required by law as well as commercial general liability insurance coverage against any claims or liabilities arising from the performance of the Work or other activities of such contractor or subcontractor on the Project in connection therewith in an amount satisfactory to the Association in its reasonable discretion. The Association shall further have the right to require all such contractors and subcontractors to deliver certificates of insurance for the foregoing commercial general liability insurance naming the Association as an additional insured thereunder. Without limiting the foregoing, the Association shall have the

right, but not the duty, to disapprove any contractors or subcontractors engaged by an Owner to perform Work within the Project to the extent that the failure to perform such Work in a good and workmanlike-manner could have a material, adverse effect on the Common Area.

4.9 Commencement and Completion of Improvements. Unless otherwise specified by the Approving Authority in its approval of a submittal, each Owner shall have a period of six (6) months after the date of such approval within which to commence work on such Owner Alteration in accordance with the approval. Each Owner shall give the Approving Authority at least fifteen (15) days' prior written notice of the commencement of any work of Owner Alteration. Approval of a submittal shall expire six (6) months after the date such approval is given. If an Owner fails to commence the work covered by such submittal in accordance with the approved document or documents within such period, any previous approvals for such work shall be invalid, and the Owner shall be obligated to make a new submittal prior to commencing construction of such Owner Alteration. After construction of an Owner Alteration is commenced by an Owner, such Owner shall diligently pursue such work to completion.

4.9.1 Inspection of Work. Declarant or the Board, as applicable, or their duly authorized representative may inspect any work for which its approval is required under this Article IV ("Work"). The right to inspect includes the right to require any Owner to take such action as may be necessary to remedy any noncompliance with applicable approvals of the Work or with the requirements of the Governing Documents ("Noncompliance").

(a) Time Limit. The right of Declarant or the Board to inspect the Work and notify the responsible Owner of any Noncompliance pursuant to this Section 4.9.1 shall terminate sixty (60) days after the Board has received written notice from the Owner that the Work has been completed and the Work has, in fact, been completed.

(b) Remedy. If an Owner fails to remedy any Noncompliance within sixty (60) days from the date of notification of noncompliance, the Board may Record a notice of Noncompliance (if allowed by law) and commence an alternate dispute resolution procedure or a lawsuit for damages or injunctive relief, as appropriate, to remedy the Noncompliance.

4.9.2 Certificate of Compliance. Following completion of the Work, the performing Owner shall, upon request by the Approving Authority, supply a certification from a licensed or registered architect that the Work as designed by such architect has been completed in accordance with the final working drawings and specifications previously approved by the Approving Authority.

4.9.3 Presumption of Compliance. Upon expiration of one (1) year after the Recording date of a valid notice of completion with respect to such Work, the Work shall, in favor of purchasers and Mortgagees in good faith and for value without knowledge of any noncompliance and noncompletion, be deemed to be in compliance and completed in accordance with all provisions of this Article IV, unless either (i) an actual notice of noncompliance or noncompletion is executed and Recorded by Declarant or the Board, or (ii) legal proceedings are instituted by Declarant or the Board to enforce compliance or completion. Notwithstanding the foregoing, nothing in this Section 4.9 shall be deemed to constitute a representation or warranty

by Declarant or the Board for the benefit of any such purchasers and/or Mortgagees that the Work complies with applicable Governmental Requirements or the requirements of any Master Restrictions or any Design Guidelines promulgated pursuant thereto.

4.10 Removal of Liens. No Owner shall permit any mechanics, or materialmen, or other similar liens to be created or maintained against any Unit upon which labor or material has been performed or furnished in connection with the construction of an Owner Alteration. An Owner may post a bond and contest any such lien at the Owner's sole expense.

## **ARTICLE V: OWNERS' MEMBERSHIP AND VOTING RIGHTS**

5.1 Membership. Every Owner of a Condominium within the Project shall, upon Close of Escrow for its acquisition of such Condominium, automatically become a Member of the Association and shall remain a Member thereof until ownership ceases. Memberships in the Association are not assignable, except to the Person to which title to the Condominium has been transferred. Every membership in the Association is appurtenant to and may not be separated from the fee ownership of such Condominium. Ownership of a Condominium is the sole qualification for membership in the Association.

5.2 Transfer. The Membership in the Association held by any Owner of a Condominium may not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Owner's Condominium, and then only to the purchaser or Mortgagee thereof. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. The Association shall have the right to rely on evidence of Record title to a Condominium for purposes of determining the Person entitled to exercise the Membership rights appurtenant to ownership of such Condominium; provided however, that any Owner who has sold a Condominium to a contract purchaser under an agreement to purchase may delegate the Owner's Membership rights to the contract purchaser. Any such delegation to a contract purchaser prior to transfer of Record title to the applicable Condominium must be in writing and must be delivered to the Association before the contract purchaser may vote. The contract seller shall remain liable for all charges and Assessments attributable to the contract seller's Condominium which accrue before such title is transferred. The Association may levy a reasonable Membership transfer fee against any Condominium being transferred to reimburse the Association for the administrative cost of transferring the associated Membership to the new Owner thereof on the records of the Association.

5.3 Voting Rights. The Association shall have one (1) class of voting membership.

5.4 Vote Distribution Among Members. All voting rights shall be subject to the Governing Documents. When more than one Person holds an interest or interests in any Condominium (each, a "co-owner"), all such co-owners shall be Members and may attend any meetings of the Association, but only one such co-owner shall be entitled to exercise the votes to which the Condominium is entitled). Such co-owners may all designate in writing one of their number to vote. Fractional votes shall not be allowed, and the votes for each Condominium shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if such designation has been revoked, the votes for such Condominium shall be exercised as the majority in interests of

the co-owners thereof mutually agree. Unless the Board receives a written objection from a co-owner, it shall be presumed that the voting co-owner is acting with the consent of the other co-owners. No votes shall be cast for any Condominium where the co-owners present in person or by proxy owning the majority of interests therein cannot agree to said votes or other action. The nonvoting co-owner or co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Condominium and shall be entitled to all other benefits of ownership. Voting results are deemed valid and final when more than fifty percent of the condo owners representing four or more of the six units agree on any voting matter.

5.5 Actions Subject to Declarant's Veto. Through the Declarant Rights Termination Date, Declarant shall have the right to veto the following actions authorized by this Declaration:

5.5.1 Change in Design. Any change in the general, overall architectural and landscaping design of the Project or the Common Area.

5.5.2 Rules and Regulations. The adoption of Rules and Regulations; and any modification of the Rules and Regulations.

5.5.3 Amendments. Any proposed amendments to this Declaration.

## ARTICLE VI: EASEMENTS

### 6.1 Owners' Easements.

6.1.1 Use and Enjoyment of Common Area. Declarant hereby establishes and reserves, for the benefit of every Owner, his tenants and guests, a nonexclusive easement for access, ingress, egress, use and enjoyment of, in and to the Common Area in connection with the use and enjoyment of each Condominium in the Project. This easement is appurtenant to and passes with title to every Condominium in the Project. This easement is subject to all other rights and easements set forth in the Governing Documents, including without limitation, the following:

- (a) The Association's exercise of its powers granted hereunder;
- (b) The establishment of such Rules and Regulations pertaining to the use of the Common Area as may be adopted from time to time by Declarant and/or the Board pursuant to the provisions of this Declaration;
- (c) The Association's right to grant, consent to or join in the grant or conveyance of easements, licenses or rights-of-way in, on or over the Common Area for purposes consistent with the intended use of the Project;
- (d) The rights and reservations of Declarant established in Article XVII of this Declaration;
- (e) The Association's right to add to, repair, replace, maintain, refinish or remove any Improvement on the Common Area and to consent to or otherwise cause the construction of

additional Improvements on the Common Area, in each case for the benefit of the Owners or for other purposes consistent with the intended use of the Project as a business condominium project;

(f) The Association's right to reasonably restrict access to maintenance facilities and other areas of the Common Area, including without limitation, the right to restrict access to portions of the Common Area for purposes of establishing Exclusive Use Easements for the exclusive use of the Owner or Permittees of any Condominium within the Project; provided however, that no such Exclusive Use Easement shall interfere with the rights of other Owners to access their Units;

(g) Easements as shown on any Recorded subdivision map or Recorded parcel map of the Project, and any other easements now or hereafter recorded against the Common Area;

(h) The easements reserved in the other Sections of this Article VI or any easements, licenses, rights-of-way or interests that may be granted by Declarant pursuant to Section 17.2 below; and

(i) The Association's right to restrict or prohibit the conduct of auction or sale of any type on any portion of the Common Area except with the express prior approval of the Board which may be withheld in the Board's sole discretion.

6.1.2 Delegation of Use. Any Owner entitled to the right and easement of use and enjoyment of the Common Area may delegate those rights and easements to such Owner's tenants, contract purchasers or subtenants who occupy all or any portion of such Owner's Unit, subject to reasonable regulation by the Board.

6.1.3 Owner Utility Easements. Declarant hereby establishes and reserves for the benefit of the Owners of each Unit within the Project easements over the Common Area and each Unit for purposes of installing, repairing and maintaining utility improvements for water, heating, ventilating and air conditioning, and telecommunications systems which serve such Owners' Units; provided, however, that such utility improvements, and any wires, conduits, or other facilities or equipment related thereto, must be encased within continuous conduit and may not be installed within any portion of the other Owner's Unit other than (a) that portion of such Unit which is not more than [fill in the blank] inches from the bottom of the structural ceiling of such Unit or (b) in the event that a "drop" or "false" ceiling has been installed in such Unit, that portion of the Unit which is above the drop ceiling. Any entry by an Owner or its Permittees into any other Owner's Unit pursuant to this Section 6.1.3 shall further be subject to the following provisions:

(a) Prior Notice. Any entry into a Unit by any other Owner pursuant to the easements reserved in this Section 6.1.3 may be made only upon at least three (3) business days advance written notice (the "Entry Notice") to the Owner of the Unit to be entered. Upon receipt of such Entry Notice, the Owner of the Unit to be entered shall have the right to designate an alternative date and time for such entry either during or after normal business hours, provided that the designated date shall in no event be later than five (5) business days after delivery of the

applicable Entry Notice. In the event that the Owner or Permittee of the Unit to be entered fails to designate an alternative date and time for such entry within three (3) business days after delivery of the Entry Notice, the party desiring to enter such Unit may enter the Unit at the date and time designated in the Entry Notice. Notwithstanding the foregoing, prior notice shall not be required for any emergency entry necessary to prevent material damage to the Unit to be entered or any other Unit within the Project or any personal property located therein.

(b) Owner's Right to be Present. Without limiting the foregoing, the Owner of the Unit to be entered shall have the right to be present, or to have a designated representative present, during any entry into such Owner's Unit pursuant to this Section 6.1.3. In the event that the Owner of the Unit fails to have a representative present at the date and time designated in the Entry Notice (or such alternative date and time as may be designated by the Owner of the Unit to be entered pursuant to the preceding paragraph), then such Owner shall be deemed to have waived its right to have a representative present during such entry.

(c) Insurance Requirements; Conduct During Entry. Any entry into an Owner's Unit by any other Owner pursuant to the rights and easements reserved in this Section 6.1.3 shall be conducted in a manner so as to minimize any damage to such Unit or disruption of the operations conducted within such Unit in accordance with this Declaration. All contractors or other persons entering any Owner's Unit pursuant to the easement granted pursuant to this Section 6.1.3 shall maintain in effect general commercial liability insurance providing coverage against claims which arise out of or result from the exercise of such easement. Such policies shall name the Owner of the Unit to be entered as an additional insured and shall have a single per occurrence limit of not less than One Million and No/100 Dollars (\$1,000,000.00), with an aggregate limit not less than Two Million and No/100 Dollars (\$2,000,000.00). The Unit to be entered shall, following completion of the work to be performed by the entering party, be left in substantially the same condition as existed immediately preceding such entry and the Owner of the Unit for whose benefit such entry occurred shall be solely responsible for repairing any damage to the Unit caused by such entry

## 6.2 Declarant's Easements.

6.2.1 Telecommunications Easement. Declarant reserves for itself and for the benefit of the Association, non-exclusive blanket easements (collectively, "Telecommunications Easements") over the Project for access and for purposes of constructing, installing, locating, altering, operating, maintaining, inspecting, upgrading, removing and enhancing telecommunications facilities inside the Project building only, except for unit number one. Such easements shall be freely transferable by Declarant to any other Person and their successors and assigns; provided, however, that the holders of the Telecommunications Easements may not exercise the rights reserved hereunder in any manner which will unreasonably interfere with the reasonable use and enjoyment of the Project by any Owner. If the exercise of any Telecommunications Easement results in damage to the Project, then the easement holder who caused the damage shall, within a reasonable period of time, repair such damage.

6.2.2 Access Easement Over the Common Area. Declarant reserves for its benefit and for the benefit of Declarant's agents, employees, contractors, customers and invitees a nonexclusive

easement over the Common Area for access, ingress, egress, use and enjoyment in connection with the promotion and marketing of the Project, including, without limitation, the sale, leasing or financing of Condominiums or all or any portion of the Improvements located thereon; provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners established by this Declaration. Without limiting the generality of the foregoing, Declarant may erect and maintain Signs and permit prospective purchasers, lessees and lenders to enter upon the Common Area as Declarant deems reasonably necessary in connection with the promotion or marketing of the Project.

6.2.3 Construction License Over the Common Area. Declarant reserves for its benefit and for the benefit of Declarant's agents, employees and contractors a construction license over portions of the Common Area as reasonably required for purposes of (a) complying with any applicable Governmental Requirements or (b) otherwise exercising any of the rights set forth in Article XVII below; provided however, that the license reserved pursuant to this Section 6.2.3 shall not be exercised in such a manner as to interfere with the rights of other Owners to access their Units, and the license granted hereunder shall terminate upon the Declarant Rights Termination Date.

6.2.4 Inspection, Maintenance, and Repair. Declarant reserves for its benefit and for the benefit of Declarant's agents, employees and contractors nonexclusive easements for access over the Project to perform necessary inspection, maintenance and repair of any Improvement constructed by Declarant, as contemplated in Section 14.4.2 below or as otherwise deemed necessary and proper by Declarant.

6.3 Association Maintenance and Repair. Declarant reserves for the benefit of the Association and all Association agents, officers and employees, nonexclusive easements over the Units for purposes of access, inspection and maintenance as necessary to fulfill the obligations and perform the duties of the Association pursuant to the Governing Documents. Without limiting the foregoing, Declarant further reserves for the benefit of the Association and all Association agents, officers and employees, nonexclusive easements over each of the Units for purposes of satisfying any maintenance obligations of the Owner of such Unit pursuant to Section 7.2 below or otherwise enforcing, by peaceful means, the provisions of this Declaration should the Owner of such Unit fail, after Notice and a Hearing, to perform such maintenance or remedy any other noncompliance with this Declaration.

6.4 Miscellaneous Easements. Declarant reserves and accepts the following easements for the benefit of the Association, the Common Area, the Units and Owners:

6.4.1 Easements For Public Service Use. Declarant reserves easements over the Project for public services, including but not limited to, the right of law enforcement and fire protection personnel to enter upon any part of the Project for the purpose of carrying out their official duties; provided however, that nothing in this Section 6.4.1 shall be deemed to be a gift or dedication of any portion of the Project to the general public or for any public purpose. It is the intention of Declarant that the use of the Project be limited to the purposes expressed in this Declaration under the ownership and control of the Owners. The right of the public to make use of the Project is by permission, and subject to control, of the Owners.



6.4.2 Utilities and Communication Service. Nonexclusive easements over all Units and the Common Area, as necessary for installation, maintenance and repair of utility (including water and drainage) and communication services to the Project or any portion thereof; including but not limited to, the right of any public utility or mutual water district of ingress and egress over the Common Area for purposes of servicing utilities within the Project, reading and maintaining meters, and using and maintaining fire hydrants located in the Project. The easements established or reserved pursuant to this Section 6.4.2 and the preceding Section 6.4.1 shall remain in effect and shall not be modified until the holder of the beneficial rights to any such easement approves the termination or modification, as applicable, of such easement.

6.4.3 Encroachments. Reciprocal easements for encroachment and maintenance in the event that any Improvement within a Unit encroaches upon the Common Area or another Unit, or if any Demising Walls or any other portion of the Common Area encroaches upon any Unit, in each case as a result of (a) minor variances in original construction or reconstruction thereof approved pursuant to Article IV of this Declaration, or (b) the repair, shifting, settlement or movement of any Improvement within the Project following completion of the construction or reconstruction thereof.

6.4.4 Easements on Maps. Easements as shown on any Recorded subdivision map or Recorded parcel map of the Project.

6.5 Exclusive Use Easement for Unit 1. The area shown on the Condominium Plan as "Exclusive Use Easement – 1975.68 Sq. Ft." is for the exclusive use of the Owner and occupants of Unit 1. The Association shall have no obligation to maintain, manage, operate, repair or replace this Exclusive Use Easement or any Improvements located thereon. Notwithstanding any other provision in this Declaration, the Owner of Unit 1 shall have the right to maintain the existing cellular telephone towers located within this Exclusive Use Easement and to install additional cellular telephone towers, subject to compliance with all Governmental Requirements.

## **ARTICLE VII: MAINTENANCE OBLIGATIONS**

7.1 Maintenance of Common Area. The Association's obligation to maintain the Common Area within the Project shall commence on the date of the first Close of Escrow for a Condominium within the Project to a Person other than Declarant or any of its affiliates. At such time, the Association shall provide for the operation and maintenance of the Common Area. The Association may, but shall be under no obligation to, take such security measures as it deems reasonably appropriate to keep the Common Area reasonably secure. Any security measures provided by Association shall be subject to the Security and Privacy Disclaimer set forth in Section 16.13 of this Declaration. The Association shall have the right from time to time to select a professional Manager (which may be Declarant or a party affiliated with Declarant) to operate and maintain the Common Area.

7.1.1 Association Maintenance Standards. The Association shall maintain the Common Area in a clean, safe, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget for the Association. The Association shall

maintain the air conditioning compressors and other roof mounted equipment at the sole cost of the individual Owners benefited thereby. The Board shall determine, in its sole discretion, the level and frequency of maintenance of the Common Area. Each Owner shall immediately notify the Association of any dangerous, defective or other condition within any portion of the Common Area which could cause injury to person or property within such Owner's Unit or any portion of the Common Area adjacent thereto.

7.1.2 Changes to Common Area. Except as otherwise specifically provided in this Declaration, the Association shall be entitled to make any change in the alignment, location, nature, size, extent or configuration of the Improvements in the Common Area existing from time to time as the Association, in its sole and absolute discretion, shall deem desirable and in the best interests of all Persons using the Common Area.

7.1.3 Common Area Inspections. The Board shall periodically cause inspections of the Common Area to determine the condition of the Common Area ("Condition Inspections") at least once every three (3) years. The Board shall employ, consistent with reasonable cost management, such experts, contractors and consultants as are necessary to perform the inspections and make the reports required by this Section. Condition Inspections shall, at a minimum, (a) determine whether the Common Area is being maintained adequately in accordance with the maintenance standards established in Section 7.1.1 above, (b) identify the condition of the Common Area, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair thereof, and (c) recommend preventive actions which may be taken to reduce potential maintenance costs to be incurred in the future. Without limiting the foregoing, the Board shall regularly consult with the Manager (if applicable) or such other experts, contractors or consultants as the Board may deem appropriate to determine whether the maintenance standards established in Section 7.1.1 above are being followed, and if not followed, what corrective steps need to be taken to assure proper inspections and maintenance of the Project.

7.2 Maintenance Obligations of Owners. Each Owner, at its sole cost and expense, subject to the provisions of this Declaration, shall maintain, repair, replace and restore all Improvements located within each Owner's Unit in a neat, sanitary and attractive condition and otherwise in accordance with all Governmental Requirements and any Rules and Regulations and, if applicable, shall repair, replace and restore all Owner Improvements or personal property located within such Owner's Unit. The Association shall maintain the air conditioning compressors and other roof mounted equipment at the sole cost of the individual Owners benefited thereby. If any Owner shall permit any Owner Maintenance Item or other portion of such Owner's Condominium, the maintenance of which is the responsibility of such Owner, to fall into disrepair or to become unsafe, unsightly or unattractive, or shall otherwise fail to maintain any portion of such Owner's Unit in accordance with this Declaration, the Association shall have the right to seek any remedies at law or in equity which it may have. In addition, the Association shall have the right, but not the duty, after Notice and Hearing, to enter upon such Owner's Condominium to make such repairs or to perform such maintenance and to charge the cost thereof to the Owner. Said cost shall be a Compliance Assessment enforceable as set forth in this Declaration.

7.2.1 Trash Disposal. Each Owner shall be solely responsible for ensuring that all trash generated by the Owner and any Permittee of such Owner's Unit is either stored within such Unit in a clean, sanitary and safe manner or placed in trash receptacles located within the Common Area as designated by the Board. The Association shall provide trash removal services from such common trash receptacles as often as the Board deems reasonably necessary, but in no event less than once per week. Notwithstanding the foregoing, in no event shall the Owner of any Unit or any Permittee thereof deposit any trash or other materials within such trash receptacles except in strict compliance with all applicable Hazardous Materials Laws and other Governmental Requirements, and each Owner shall indemnify the Association for any violation thereof by such Owner or its Permittee as more particularly set forth in Section 7.4 below. In no event may any Owner or its Permittee deposit any trash or other materials into the trash receptacles within the Common Area which is generated from any source or use other than the use and occupancy of such Owner's Unit.

7.3 Disputes Regarding Maintenance Obligations. If a dispute arises between Owners or between an Owner and the Association regarding any maintenance obligation, the Board, in its reasonable discretion, shall determine who is responsible for the maintenance obligation and that decision shall be binding on the Association and all Owners.

7.4 Environmental Compliance. Each Owner shall comply, and shall ensure that all of its Permittees comply, with all laws, rules, regulations, judgments, orders, permits, licenses, agreements, covenants, restrictions, requirements or the like relating to the environmental condition of the Project or the presence of Hazardous Materials in, on, above, under or otherwise affecting the Project including, without limitation, the statutes referenced in Section 1.30 above. Furthermore, each Owner shall, subject to Section 12.2 below, protect, indemnify, defend, and hold Declarant, each other Owner and the Association, and each of their respective members, managers, partners, directors, officers, employees, shareholder, agents, lenders, successors and assigns harmless from and against all claims, expenses, liabilities, loss, damage, and costs, including reasonable attorney fees, arising as a result (directly or indirectly) of or in connection with any violation of Hazardous Materials Laws occurring within such Owner's Unit or, to the extent arising from actions of such Owner or any Permittee thereof, within the Common Area.

7.5 Utilities and Communications and Information Transmission Facilities. The Association shall provide all utilities serving the Common Area; provided, however, that the Association shall have no obligation to pay the cost of any electricity, gas, telecommunications or other utilities provided to the Units for use of the Owners and Permittees thereof, and all such utilities shall be separately metered and billed to the Owner or Permittee of the applicable Unit. The water serving the restroom and the Units will generally be served by a common meter. In the event that the Association provides commonly-metered utilities to the Units and subsequently determines, in its sole discretion, that the use of such commonly-metered utilities by the occupants of a given Unit within the Project materially exceeds the use of such commonly-metered utilities by other Units within the Project, the Association may (a) require the Owner of such Condominium to cause such utilities to be separately metered to the Owner's Unit, at the Owner's sole expense or (b) impose an additional charge on the Owner of such Unit to offset the cost of such excess usage. Each Owner shall maintain and repair, or cause to be maintained and repaired at the Owner's expense, all utility lines, sewer laterals, drainage systems] and permitted

communications and information transmission facilities which exclusively serve the Owner's Unit. All utility lines and permitted communications and information transmission facilities installed by any Owners which serve one or more (but not all) of the Units within the Project but which are not maintained and repaired by the local governmental agency or utility company providing such services shall be jointly maintained by the Owners of the Units served by such facilities or utility and communications services.

## **ARTICLE VIII: OBLIGATION TO SHARE COSTS**

### **8.1 Creation of Assessment Obligation.**

8.1.1 Personal Obligation. Declarant hereby covenants to pay for each Condominium owned by Declarant, and each Owner subsequently acquiring title to any Condominium within the Project is deemed to covenant to pay to the Association (a) Common Assessments, (b) Capital Improvement Assessments, (c) Compliance Assessments, (d) Extraordinary Assessments, and (e) Reconstruction Assessments. Except as provided in this Section, all Assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, are a charge and can become a lien upon the Condominium against which such Assessment is made and are also the personal obligation of the Person who was the Owner of the Condominium at the time when the Assessments fell due.

8.1.2 Waiver of Use. No Owner may become exempt from personal liability for Assessments levied by the Association, nor may an Owner release the Owner's Condominium from the liens and charges hereof, by waiving the use and enjoyment of the Common Area or any facilities therein or by abandoning such Owner's Condominium.

8.2 Maintenance Funds of the Association. The Board shall budget, establish and maintain certain accounts (the "Maintenance Funds") into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the Association's performance of its functions. The Maintenance Funds may be established as trust accounts at a banking or savings institution and may be combined so long as reserve funds are not combined with operating funds and the funds are treated as separate funds for accounting purposes. The Association's Maintenance Funds shall include:

8.2.1 General Operating Fund. A General Operating Fund for current Common Expenses of the Association;

8.2.2 General Reserve Fund. A General Reserve Fund for the deposit of Reserves attributable to Improvements included within the Common Area; and

8.2.3 Miscellaneous Maintenance Funds. Any other Association Maintenance Funds which the Board may deem necessary.

The Board may determine that funds remaining in the General Operating Fund at the end of the Fiscal Year be either (i) transferred to the General Reserve Fund, or (ii) retained and used to reduce the Common Assessments otherwise payable into such Maintenance Fund for the

following Fiscal Year. On dissolution of the Association incident to the abandonment or termination of the Project as a condominium development, any amounts remaining in any of the Maintenance Funds shall be distributed to or for the benefit of the Owners in the same proportions as such money was collected from the Owners.

**8.3 Purpose of Assessments.** Assessments and any other amounts deposited into the Maintenance Funds shall be used exclusively to (a) promote the Owners' health, recreation and welfare, (b) operate, improve and maintain the Common Area, and (c) discharge other Association obligations under the Governing Documents. Disbursements from the Maintenance Funds shall be limited to specific purposes as follows:

**8.3.1 General Operations.** Disbursements from the General Operating Fund shall be made for payments of Common Expenses, for the common benefit of all Owners.

**8.3.2 General Reserves.** Disbursements from the General Reserve Fund shall be made solely for funding Reserve expenditures.

**8.4 Assessment Components and Rates.** Each annual Common Assessment is an aggregate of separate assessments for each of the Maintenance Funds, reflecting an itemization of the amounts of prospective deposits into the General Operating and Reserve Funds, and any other Maintenance Fund established by the Association. The assessment rate for each condominium within the project shall be sixteen and two-thirds percent (16.67%) of any Common Assessment.

**8.5 Establishing Common Assessments.** Common Assessments shall be initially levied against the Condominiums and their Owners according to the initial Budget of the Association approved by the Board prior to commencement of Common Assessments. Thereafter, Common Assessments shall be adjusted in accordance with each revised Budget subsequently approved by the Board. The Board shall fix the amount of the Common Assessment against each Condominium at least thirty (30) days in advance of each Fiscal Year. If the Board determines that Common Expenses may be properly paid by collection of a Common Assessment in an amount less than the maximum authorized Common Assessment, the Board may levy a Common Assessment which is less than the maximum authorized amount. If the Board determines that the Common Assessment being collected is or will become inadequate to pay all Common Expenses, the Board shall immediately determine the approximate amount of the inadequacy and levy a supplemental Common Assessment. Written notice of any change in the amount of any Common Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail to every Owner subject thereto not less than thirty (30) nor more than ninety (90) days before the first installment of such increased Assessment becomes due.

**8.6 Special Assessments.** The Board may levy, in any Fiscal Year, a Capital Improvement Assessment, Reconstruction Assessment or Extraordinary Assessment (each, a "Special Assessment" for purposes of this Section 8.6) only for purposes authorized in this Declaration.

8.7 Commencement of Common Assessments. Common Assessments shall commence as to the Condominiums as of the date on which the Association's obligation to maintain the Common Area commences pursuant to Section 7.1 above.

8.8 Collection of Common Assessments. Each Owner shall pay all Assessments payable hereunder in installments at such frequency and in such amounts and by such methods as may be established by the Board pursuant to this Article VIII. The Association shall, upon demand and for a reasonable charge, furnish a statement setting forth whether the Assessments on a specified Condominium have been paid. A properly completed statement as to the status of Assessments against a Condominium is binding upon the Association as of the date of its issuance. The Association may use any method of collecting Assessments allowed by law including charging credit cards or electronic transfers. At the Association's discretion, the additional cost of any method of collection can be collected from the Owner electing the method of collection and does not have to be divided equally among all Owners.

Each installment of Common Assessments may be paid by the Member to the Association in one check or payment or in separate checks or payments attributable to specified Association Maintenance Funds. If any payment of a Common Assessment installment is less than the amount assessed and the payment does not specify the Maintenance Fund or Funds into which it should be deposited, the payment received by the Association from that Owner shall be credited in order of priority first to the General Operating Fund until that portion of the Common Assessment has been satisfied, then to the General Reserve Fund until that portion of the Common Assessment has been satisfied, then to any other Maintenance Funds established by the Association.

8.9 Exempt Property. The following property is exempt from assessments imposed pursuant to this Declaration: (a) all portions of the Project dedicated to and accepted by a local government agency; and (b) the Common Area.

## ARTICLE IX: INSURANCE

### 9.1 Association Insurance.

9.1.1 Casualty Insurance. Association shall maintain standard form fire insurance with such extended coverage endorsements as are commonly written in California, written by insurance companies with a Best's rating of at least A, VIII, covering all Improvements on the Common Area, in an amount not less than one hundred percent (100%) of the actual replacement cost thereof, without deduction for depreciation (excluding foundation and excavation cost); provided, however, that (a) the Association shall have the power, but not the duty, to obtain insurance for damage to the Common Area due to earthquakes or floods, in such amounts and with such coverage as the Board shall deem appropriate in its sole discretion and (b) the Association shall have no obligation to maintain fire and casualty insurance for any Improvements installed by any Owner within such Owner's Unit.

9.1.2 Liability Insurance. Association shall maintain commercial general liability insurance naming the Owners as additional insureds, providing coverage against claims and

liability for bodily injury, death and property damage arising out of activities of the Association or the Owners with respect to the Common Area, written by insurance companies with a Best's rating of at least A, VIII, with limits of liability of at least Two Million Dollars (\$2,000,000) combined single limit or such greater amount as may be required pursuant to Section 1365.9 of the California Civil Code. The insurance shall include contractually assumed liability endorsements. The liability limits of the liability insurance to be maintained by the Association pursuant to this Section 9.1.2 may be increased by the Association, based on relevant factors including, without limitation, inflation, increased liability awards, and the advice of professional insurance advisors.

9.1.3 Other Insurance. Such other insurance covering risks customarily insured by associations managing condominium projects similar to the Project in construction, location and use. Such additional insurance shall include general liability insurance and director's and officer's errors and omissions insurance in the minimum amounts established in Section 1365.7 of the California Civil Code. Notwithstanding the foregoing, the Association has the power, but not the duty, to obtain insurance for the Common Area for loss due to earthquake and flood, in such limits and with such coverage as the Board determines is appropriate in its sole discretion.

9.1.4 Beneficiaries. The insurance policies to be maintained by the Association pursuant to this Section 9.1 (collectively, the "Association Insurance Policies") shall be maintained for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear as named insured, subject, however, to loss payment requirements established in this Declaration.

9.1.5 Notice of Expiration Requirements. If available, each of the Association Insurance Policies must contain a provision that the policy may not be canceled, terminated, materially modified or allowed to expire by its terms, without at least ten (10) days prior written notice to the Board and Declarant, and to each Owner and Mortgagee, insurer and guarantor of a First Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity insurance shall provide that it may not be canceled or substantially modified without at least ten (10) days prior written notice to any insurance trustee named pursuant to Section 9.1.8 below and to each Mortgagee who has filed a written request with the carrier for such notice.

9.1.6 Insurance Premiums. Premiums for Association Insurance Policies are Common Expenses; provided, however, that any deductible amounts or self-insurance retention component of claims covered by such Association Insurance Policies shall be payable from the Association's Reserve Fund.

9.1.7 Annual Insurance Review. The Board shall review the Association's insurance policies at least annually to determine the appropriate amount of coverage under the casualty and fire insurance referred to in this Section 9.1. If economically feasible, the Board may, at its sole discretion, obtain a current appraisal of the full replacement value of the Improvements within the Project (other than Owner Improvements) except for foundations and footings, without deduction for depreciation, from a qualified independent insurance appraiser, as it deems appropriate.

9.1.8 Trustee for Policies. The Association is trustee of the interests of all named insureds under the Association Insurance Policies. Unless an insurance policy provides for a different procedure for the filing of claims, all claims made under any such Association Insurance Policy must be sent to the insurance carrier or agent by certified mail and be clearly identified as a claim. The Association shall keep a record of all claims made. All insurance proceeds under any such Association Insurance Policies must be paid to the Board as trustees. The Board has the authority to negotiate loss settlements with insurance carriers on any claims submitted under the Association Insurance Policies. Any two (2) officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds. A representative chosen by the Board may be named as an insured, including a trustee with whom the Association may enter into an insurance trust agreement and any successor to such trustee, who shall have exclusive authority to negotiate losses under any Association Insurance Policy and to perform such other functions necessary to accomplish this purpose. Except as otherwise specifically provided in this Declaration, the Board has the exclusive right to bind the Association and the Owners in respect to all matters affecting the Association Insurance Policies, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance. Duplicate originals or certificates of all policies of fire and casualty insurance kept by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Owners and Mortgagees who requested them in writing.

9.2 Owners' Insurance Obligations. Each Owner shall maintain the following insurance coverages (the "Owner Insurance Policies"):

9.2.1 Casualty Insurance. Each Owner shall maintain, at its sole cost and expense, standard form fire and casualty insurance with extended coverage endorsements as written in California, written by insurance companies with a Best's rating of at least A, VIII, covering the Improvements within such Owner's Unit, which insurance shall be in an amount as near as possible to one hundred percent (100%) of the actual replacement cost thereof, without deduction for depreciation.

9.2.2 Liability Insurance. Each Owner shall maintain, at its sole cost and expense, commercial general liability insurance (occurrence form) written by insurance companies with a Best's rating of at least A, VIII, with limits of liability not less than Two Million Dollars (\$2,000,000) combined single limit, insuring against (i) any and all activities within any said Owner's Unit, and (ii) liability for the activities and business operations of such Owner and its Permittees within the Project. The insurance shall include contractually assumed liability endorsements. The policy shall be primary and not in excess of, or contributory with, other insurance carried by the Declarant and the Association pursuant to this Declaration. Such insurance may provide for reasonable and customary deductible amounts. The liability limits of the Owner's liability insurance required pursuant to this Section 9.2.2 may be periodically increased by the Association, based on relevant factors including, without limitation, inflation, increased liability awards, and the advice of professional insurance advisors.



9.2.3 Worker's Compensation. Each Owner shall maintain, and shall require its Permittees to maintain, Worker's Compensation and Employer's Liability Insurance, as required by law.

9.2.4 Additional Owner Insurance Requirements.

(a) All Owner Insurance Policies shall be written as primary policies, not contributing with, and not in excess of coverage which the Association may carry. Such insurance may provide for reasonable and customary deductible amounts. If on account of the failure of Owner to comply with the provisions of this Section 9.2, the Association is adjudged a coinsurer by its insurance carrier, then, in addition to all other remedies available to the Association, any loss or damage the Association shall sustain by reason thereof shall be borne by such Owner and shall be immediately paid by such Owner upon receipt of a bill therefor and evidence of such loss. Coverage afforded under the Owner Insurance Policies or any other insurance maintained by Owner or its Permittees, whether or not required pursuant to this Article IX, may not adversely affect or diminish any coverage under any of the Association Insurance Policies. If any loss intended to be covered by any Association Insurance Policy occurs and the proceeds payable under such Association Insurance Policy are reduced due to coverage afforded by any policies so maintained by any Owner or its Permittees, such Owner shall assign the proceeds payable thereunder to the Association, to the extent of such reduction, for application to the liabilities incurred by the Association which would otherwise have been covered by proceeds payable under the applicable Association Insurance Policies.

(b) Each Owner shall deliver certificates of insurance evidencing the coverage required under this Section 9.2 to the Association not later than thirty (30) days after taking title to a Condominium within the Project, and thereafter at least 30 days prior to expiration of each Owner Insurance Policy. Such certificates shall name the Association, Declarant and the Manager as additional insureds and shall expressly provide that the interest of the same therein shall not be affected by any breach by Owner of any policy provision for which such certificates evidence coverage. Further, all certificates shall expressly provide that not less than 30 days prior written notice shall be given to the Association in the event of material alteration to or cancellation of the coverages evidenced by such certificates. Duplicate copies of all Owner Insurance Policies shall be deposited with the Association on request.

(c) Any insurance required to be carried by an Owner pursuant to this Article IX may be carried by an Owner's or its Permittees under a blanket policy or under policies maintained by the Owner or Permittees with respect to other property owned or operated by the Owner or Permittees or their affiliates, provided that Declarant and Association are not deprived of any insurance benefits hereunder. Nothing in this Declaration shall be deemed to preclude any Owner from carrying any additional insurance as such Owner may deem necessary or appropriate.

9.3 Required Waivers. All Owner Insurance Policies shall include a waiver of subrogation claims against the Association, Declarant and, if applicable, Manager. All Association Insurance Policies shall provide for a waiver of subrogation of claims against each Owner and such Owner's Permittees. In addition to the foregoing, as to any claims arising under the Association Insurance Policies and/or Owner Insurance Policies, the Association and the Owners hereby

waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by such Persons. Without limiting the foregoing, any Association Insurance Policies and Owner Insurance Policies insuring against physical damage must provide, if reasonably possible, for waiver of:

- (a) any defense based on coinsurance;
- (b) any right of setoff, counterclaim, apportionment, proration or contribution due to other insurance not carried by the Association and/or Owner, as applicable, in violation of this Article IX;
- (c) any invalidity, other adverse effect or defense due to any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act or omission of any named insured or the respective agents, contractors and employees of any insured;
- (d) any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured;
- (e) notice of the assignment by any Owner of his interest in the insurance by virtue of a conveyance of any Condominium;
- (f) any right to require any assignment of any Mortgage to the insurer;
- (g) any denial of an Owner's claim because of negligent acts by the Association or other Owners; and
- (h) prejudice of the insurance by any acts or omissions of Owners or Permittees thereof that are not under the control of the Association or the insured Owner, as applicable.

#### **ARTICLE X: DAMAGE TO IMPROVEMENTS**

10.1 Damage to Common Area. Each Owner is liable to the Association for damage to the Common Area sustained due to the negligence or willful misconduct of an Owner or any Persons for whom such Owner may be responsible which is not fully reimbursed to the Association by proceeds from the Association Insurance Policies and/or Owner-Maintained Policies, including without limitation any deductible amounts under any insurance policies against which the Association files a claim for such damage. The Association may, after Notice and Hearing, (a) determine whether any claim shall be made upon any Association Insurance Policies and/or Owner-Maintained Policies and (b) levy as a Special Assessment against the responsible Owner a charge equal to (i) any deductible paid in connection with such claim, (ii) the increase (if any) in the insurance premium directly attributable to the damage caused by such Owner or the Persons for whom such Owner may be liable as described herein and (iii) any other costs or expenses incurred by the Association which are not reimbursed by proceeds from Association

Insurance Policies and/or Owner-Maintained Policies. If a Condominium is jointly owned, the liability of its Owners is joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary.

## 10.2 Restoration of Common Area.

10.2.1 Association's Obligation to Restore. If all or any portion of the Common Area is damaged or destroyed (including without limitation, any portion of the Buildings or the Demising Walls or Common Utility Improvements located therein), the Association shall cause such Improvements to be restored to their former condition as promptly as practical on the terms set forth in this Article X. The Board shall prepare or obtain the documents necessary for commencing such reconstruction as promptly as practical. The Project shall be reconstructed or rebuilt substantially in accordance with the Condominium Plans and the "as-built" plans for the Buildings and other Improvements within the Common Area, unless changes thereto have been approved by at least sixty-seven percent (67%) of the Owners.

10.2.2 Funding of Restoration Costs. The Association shall use the proceeds of its insurance and/or any Special Assessments payable to the Association pursuant to Section 10.1 above, to fund all costs incurred by the Association in performing reconstruction or repair of the Project pursuant to this Article X (the "Reconstruction Costs"). In the event that such insurance proceeds and/or Special Assessments are not sufficient to fund the full amount of the Reconstruction Costs, the Board shall levy a Reconstruction Assessment to provide the additional funds necessary for such reconstruction. Notwithstanding the foregoing, any Reconstruction Assessment exceeding ten percent (10%) of the amount of Annual Assessment otherwise payable by the Owners within the Fiscal Year in which the Reconstruction Assessment is to be levied, or more than thirty percent (30%) of the Annual Assessments otherwise payable over the period in which the Reconstruction Assessment will be levied if spread over more than one (1) Fiscal Year (collectively, the "Reconstruction Assessment Limit"), must be approved by Owners holding at least sixty-seven percent (67%) of the voting power of the Association.

10.2.3 Disapproval of Restoration. In the event that (a) the Board fails to affirmatively approve restoration and repair of the Project and impose any Reconstruction Assessment necessary to fund the full amount of the Reconstruction Costs, if any, in connection therewith, or (b) the Owners fail to approve any Reconstruction Assessment requiring Owner approval pursuant to Section 10.2.1 above, in each case within six (6) months after the date on which the destruction occurred, then the Board shall proceed as provided in Section 10.3 below.

10.2.4 Additional Limitations on Restoration Obligation. Notwithstanding the foregoing, subject to the approval of Owners holding at least sixty-seven percent (67%) of the voting power of the Association, the Association need not perform any repair or reconstruction which is not required by applicable Governmental Requirements.

10.3 Sale of Property and Right to Partition. No Owner shall have the right to partition of his interest in the Condominium and there shall be no judicial partition of the Project, or any part thereof, except as provided in Section 1359(b) of the California Civil Code. For purposes of Subsection 4 of Section 1359(b), partition may occur only if the following conditions are

satisfied: (a) within six (6) months after the date on which destruction occurred, the Board shall have failed to approve the repair and/or restoration of the Project and/or the Owners shall have failed to approve any Reconstruction Assessment requiring Owner approval, in each case as contemplated in Section 10.2.3 above, or (b) within twelve (12) months after the date on which destruction occurred, restoration or repair has not actually commenced for any reason other than causes beyond the reasonable control of the Association. In such event, the Association shall prepare, execute and Record, as promptly as practical, a certificate stating that a majority of the Board may properly exercise an irrevocable power of attorney to sell the Project for the benefit of the Owners and execute such other documents and instruments as may be necessary for the Association to consummate the sale of the Project at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed. Such certificate shall be conclusive evidence of such authority for any Person relying thereon in good faith. The net proceeds of such sale and the proceeds of any insurance carried by the Association shall be divided proportionately among the Owners, such proportions to be determined in accordance with the relative appraised fair market valuation of the Condominiums as of a date immediately before such destruction (or condemnation), expressed as percentages, and computed by dividing such appraised valuation of each Condominium by the total of such appraised valuations of all Condominiums in the Project. The Board is authorized to hire one (1) or more appraisers for such purpose and the cost of such appraisals shall be a Common Expense of the Association. However, the balance then due on any valid Mortgage of Record shall be first paid in order of priority before the distribution of any proceeds to an Owner whose Condominium is so encumbered. Nothing in this Declaration prevents partition of a co-tenancy in any Condominium. Except as provided above, each Owner and the successors of each Owner, whether by deed, gift, devise, or by operation of law, for their own benefit and for the Condominiums and for the benefit of all other Owners, specifically waive and abandon all rights, interests and causes of action for a judicial partition of the tenancy in common ownership of the Project and do further covenant that no action for such judicial partition shall be instituted, prosecuted, or reduced to judgment.

10.4 Owner's Restoration Obligations. Each Owner shall be solely responsible for the restoration and repair of any damages to Owner Improvements located within such Owner's Unit. Without limiting the foregoing, each Owner shall be obligated to repair and restore, as soon as commercially reasonable, any damage to Owner Improvements which is visible from outside such Owner's Unit or which would otherwise impact the Building, any structural components thereof or the cost of insurance on the Common Area or any other Unit within the affected Building. In the event that the Owner is obligated to restore any Owner Improvements pursuant to the preceding sentence, such repair and restoration shall be commenced as soon as commercially reasonable. All debris and rubble from the damage or destruction shall be promptly removed by such Owner from the Owner's Unit and shall not be stored or maintained for any period of time within the exterior areas of the Common Area. No damage or destruction shall relieve the Owner of the affected Unit from the obligation to pay Assessments pursuant to this Declaration. All restoration and repair to be performed by any Owner, whether voluntary or mandatory shall be performed in accordance with the following requirements.

(a) All work shall be performed in a good and workmanlike manner and shall conform to applicable Governmental Requirements, the Master Restrictions, the Building Design Guidelines

and all other provisions of this Declaration (including, without limitation, the provisions of Article IV hereof).

(b) All such work shall be completed with due diligence and at the sole cost and expense of the Owner performing it.

10.5 Notice to Owners and Listed Mortgagees. The Board, immediately on having knowledge of any material damage or destruction to the Common Area, shall promptly notify all Owners and Mortgagees, insurers and guarantors of first Mortgages on Condominiums in the Project who have filed a written request for such notice with the Board.

## ARTICLE XI: EMINENT DOMAIN

The term "taking" as used in this Article means condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. For purposes of this Article XI, (i) "Remaining Units" shall be defined as those Units within the Project which are either (a) not affected by the taking or (b) only partially taken but capable of being restored to at least ninety-five percent (95%) of their floor area and to substantially their same condition as before the taking, and (ii) a "Minor Taking" shall be defined as a taking of any portion of the Project which can be restored in a manner such that operation of the Project and the Remaining Units located therein will not, after such restoration, be substantially and adversely affected.

11.1 Project Condemnation. If there is a taking of all or any portion the Project such that the continued ownership, operation and use of the Project in accordance with this Declaration is substantially and adversely affected, then the Board shall proceed with the sale of that portion of the Project which was not taken and distribute the net proceeds of such sale to the Owners of the Remaining Units after deducting any incidental fees and expenses, in the same proportion and manner as provided in Section 10.3 above unless Owners of the Remaining Units holding at least one-third (1/3) of the voting power in the Association allocated to the Remaining Units approve, by affirmative vote within one hundred twenty (120) days after the effective date of the taking (a) continuation of the Project, (b) the repair, restoration and replacement (to the extent feasible) of the Common Area and the Remaining Units and (c) imposition of any Reconstruction Assessment necessary to fund such repair and restoration in the event that the "Available Restoration Funds" (as defined below) would be insufficient to fund the full cost of restoring the Common Area. "Available Restoration Funds" shall be defined as the sum of (i) the total amount of the condemnation proceeds payable to the Association upon such takings plus (ii) any amounts the Owners of the Remaining Units wish to contribute to restoration of the Common Area.

11.2 Taking of a Condominium. Upon the taking of any Condominium within the Project, or any portion thereof (other than a taking of the undivided interest in the Common Area appurtenant to such Condominium), any portion of such Owner's Unit which is not taken shall, following demolition thereof, become part of the Common Area, and the Owners of such taken Units, by acceptance of the award allotted to them in the condemnation proceedings, shall be deemed to have relinquished (a) to the other Owners in the Project, on the basis of their relative

ownership of the Common Area therein, such Owners' undivided interest in the Common Area, and (b) to the Association, the remaining portions of the taken Units (if any). Each Owner relinquishing his interests pursuant to this Section 11.2 shall, at the Board's request and at the Association's expense, execute and acknowledge such deeds and other instruments which the Board deems necessary or convenient to evidence such relinquishment. Each Owner of a taken Unit shall not be liable for Assessments under this Declaration which accrue on or after the date such Owner accepts his condemnation award. Without limiting the foregoing, for purposes of any vote of the Members required pursuant to this Article XI, the Membership in the Association appurtenant to the ownership of any Condominium within the Project which is the subject of a taking shall be deemed terminated upon the effective date of such taking as contemplated in this Section 11.2 and the Owner of any Unit so taken shall have no further voting rights in the Association.

### 11.3 Minor Takings.

11.3.1 Mandatory Restoration Following Minor Taking. The Association shall be obligated to repair and restore the affected portions of the Common Area following a Minor Taking provided that payment of all Reconstruction Costs to be incurred by the Association in performing such repair and restoration, as reasonably estimated by the Association, will not, after application of the Available Restoration Funds, require imposition of a Reconstruction Assessment exceeding the Reconstruction Assessment Limit. In such event, the Association shall promptly undertake such restoration of the affected portions of the Common Area and, if necessary, the Board shall levy a Reconstruction Assessment equal to the amount of Restoration Costs exceeding the Available Restoration Funds (the "Excess Restoration Costs") as necessary to fund such repair and restoration. Notwithstanding the foregoing, nothing in this Section 11.3.1 shall obligate the Association to restore any Owner Improvements or personal property located within the Remaining Units.

11.3.2 Optional Restoration Following Minor Taking. In the event that the Excess Restoration Costs to be incurred by the Association as a result of a Minor Taking would exceed the Reconstruction Assessment Limit, then the Board shall call a Special Meeting of the Members of the Association for purposes of approving or disapproving imposition of a Reconstruction Assessment in excess of the Reconstruction Assessment Limit. Unless the required Reconstruction Assessment is approved by a majority of votes cast by the Owners of the Remaining Units at such Special Meeting (but further provided that at least fifty percent (50%) of the voting power of the Association allocated to the Remaining Units is represented, either in person or by proxy, at such Special Meeting), the Association shall have no obligation to restore any portion of the Common Area affected by such taking. Furthermore, should the continued ownership, operation and use of the Project in accordance with this Declaration be substantially and adversely affected in the absence of such restoration, the Project shall be sold pursuant to Section 11.1 above. Upon approval of the required Reconstruction Assessment, the Board shall contract for such restoration and levy a Reconstruction Assessment which shall be added to the Available Restoration Funds and applied to restoration of the Common Area.

11.4 Condemnation Awards. Subject to Section 10.1 above, the Board shall represent the Owners in any proceedings, negotiations, settlements, or agreements regarding takings. All

condemnation awards shall be payable to the Association for the benefit of the Owners and their Mortgagees, and shall be distributed to such Owners and Mortgagees as provided in this Section 11.4.

11.4.1 Award for Taking of Condominium. Any award in condemnation for the taking of a Condominium shall be paid to the Owner of the Condominium so taken.

11.4.2 Award for Taking of Common Area. Any award in condemnation for the taking of all or any portion of the Common Area shall be paid to the Association and shall be applied to the Restoration Costs to be incurred by the Association in restoring the Common Area following such taking. If the Restoration Costs are less than the amount of the condemnation awards payable upon such taking, then that portion of the condemnation awards which exceeds the Restoration Costs shall be paid to the Owners of the Remaining Units in proportion to the decrease in the fair market value of each of their Condominiums resulting from such taking. Notwithstanding the foregoing, in the event that, following a taking of the Project as described in Section 11.1 above, the Owners of the Remaining Units do not elect to continue the Project pursuant thereto, then any award in condemnation for such taking shall be distributed to the Owners of the Remaining Units after deducting any incidental fees and expenses, in the same proportion and manner as provided in Section 10.3.

11.4.3 Awards Not Compensatory For Value Of Real Property. Any portion of an award in condemnation which does not directly compensate Owners for takings of real property (e.g., awards for takings of personal property, relocation expenses, moving expenses, or other allowances of a similar nature intended to facilitate relocation) shall be paid to the Owners whose personal property is taken, or whose relocation is intended to be facilitated.

11.4.4 Payments to Mortgagees. Notwithstanding anything to the contrary set forth in this Article XI, before the distribution to the Owners of any portion of any award in condemnation payable to the Association, the Association is hereby authorized to first apply any such distribution to the balance then due on any Mortgagees encumbering such Owners' Condominiums, in order of priority.

11.5 Notice to Owners and Mortgagees. The Board, on learning of any taking affecting a Unit or a material portion of the Common Area, or any threat thereof, shall promptly notify all Owners and those Mortgagees, insurers and guarantors of Mortgagees on Condominiums in the Project who have filed a written request for such notice with the Association.

## **ARTICLE XII: INDEMNITY**

12.1 Owner Indemnity. In addition to any other indemnity obligations set forth elsewhere in this Declaration, each Owner (the "Indemnifying Owner") shall, subject to Section 12.2 below, protect, indemnify, defend, and hold Declarant, Declarant's affiliates, each other Owner and the Association, and each of their respective members, managers, partners, directors, officers, employees, shareholder, agents, lenders, successors and assigns harmless from and against all claims, expenses, liabilities, loss, damage, and costs, including reasonable attorney fees, arising (directly or indirectly) as a result of or in connection with (i) any accident, injury, loss, or

damage, to any Person or loss or damage to the Project occurring on or within (or resulting from acts committed on or within) the Indemnifying Owner's Condominium, (ii) use of such Owner's Condominium, or the conduct of any business or work or things done, permitted or suffered in or about the Indemnifying Owner's Condominium or (iii) use of any other portion of the Project, or the conduct of any business or work or things done, permitted or suffered in or about any other portion of the Project by the Indemnifying Owner or its Permittees and (iv) the Indemnifying Owner's breach of this Declaration.

12.2 General Provisions. Notwithstanding anything to the contrary in this Article XII, (a) no Person shall be entitled to indemnification for any damage arising from their gross negligence or willful misconduct or the gross negligence or willful misconduct of their Permittees and (b) the Association, the Declarant and each Owner, for itself and its Permittees, waives any right of recovery against the other Owners and their Permittees for any loss, damage, or injury to the extent the loss, damage or injury is actually covered by insurance.

### **ARTICLE XIII: RIGHTS OF MORTGAGEES**

13.1 General Protections. No amendment or violation of the Declaration, no lien created under Article XIV and no enforcement of the Governing Documents shall defeat or render invalid the rights of the Mortgagee under any First Mortgage encumbering one (1) or more Condominiums made in good faith and for value. However, after the foreclosure of any such Mortgage, such Condominium will remain subject to this Declaration. For purposes of the Governing Documents, "first Mortgage" means a Mortgage with first priority over other Mortgages on such Condominium, and "first Mortgagee" means the Mortgagee of a first Mortgage.

13.2 Payments of Delinquent Amounts. First Mortgagees may, jointly or singly, pay taxes, assessments or other charges which are in default and which may or have become a charge against any Common Area and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

#### 13.3 Additional Rights.

13.3.1 Notices. Each First Mortgagee, insurer or guarantor of a First Mortgage encumbering any Condominium within the Project, on filing a written request for notification with the Board, is entitled to written notice from the Association of: (a) any condemnation or casualty loss which affects either a material portion of the Project or the Condominium securing the First Mortgage; (b) any delinquency of sixty (60) days or more in the performance of any obligation under the Governing Documents, including the payment of Assessments or charges owed by the Owner(s) of the Condominium securing the First Mortgage, which notice each Owner consents to and authorizes; (c) a lapse, cancellation, or material modification of any Association Insurance Policy; (d) any abandonment of that portion of the Project within which the Condominium securing the Mortgage may be located and/or termination of the Association; and (e) any proposed action of the Association which, pursuant to the terms of this Declaration,



requires consent by a specified percentage of First Mortgagees who have submitted a written request to the Association for notice of such proposed action.

13.3.2 Amendments. The provisions of this Article XIII and any other provision of this Declaration specified in Section 16.7.4 below may not be amended except with the consent of the required percentage of first Mortgagees as more particularly set forth therein.

## ARTICLE XIV: ENFORCEMENT

14.1 Enforcement of the Governing Documents. All disputes arising under the Governing Documents, other than those described in Section 14.2, Section 14.3, or regulated by or otherwise subject to Civil Code Section 1375, shall be resolved as follows:

14.1.1 Violations Identified by the Association. If the Board determines that there is a violation of the Governing Documents, or that an Improvement which is the maintenance responsibility of an Owner needs maintenance, repair, restoration, or painting, then the Board, in addition to any other remedies set forth in this Declaration, may give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation. If an Owner does not perform such corrective action required by the Board within the allotted time, the Board, after Notice and Hearing, may remedy the violation and charge the cost to the Owner as a Compliance Assessment. The Board may collect any such delinquent Compliance Assessments pursuant to the procedures established in Section 14.2 below.

14.1.2 Violations Identified by an Owner. If an Owner alleges that another Owner or other Person is violating the Governing Documents other than nonpayment of an Assessment, the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to alternative dispute resolution, as required by Section 1369.520 of the California Civil Code, or litigation for relief.

14.1.3 Legal Proceedings. Failure to comply with the Governing Documents by an Owner, or any other Person, is grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of a lien, or any combination thereof. However, the procedures established in the California Civil Code and in Sections 14.1.1 and 14.1.2 must first be followed, if they are applicable.

14.1.4 Limitation on Expenditures. Except as expressly set forth in this Section 14.1.4, the Association may not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of the Members holding the majority of the voting power of the Association (excluding, if applicable, any Owner who would be a defendant in such proceedings), and, if applicable, complies with the requirements of Section 1369.520 of the California Civil Code. Such approval is not necessary if the legal proceedings are initiated (a) to enforce the use restrictions contained in Article II, (b) to enforce the design control provisions contained in Article IV, (c) to collect any unpaid assessments levied pursuant to the Governing Documents, (d) for a claim, the total value of which is less than

five hundred thousand dollars (\$500,000), or (v) as a cross-complaint in litigation to which the Association is already a party. If the Association decides to use or transfer reserve funds or borrow funds to pay for any litigation, the Association must notify its Members of the decision by mail. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Members have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly.

14.1.5 Additional Remedies. The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, the Board may assess against a Person for the failure of such Person to comply with the Governing Documents. Such fines or penalties may only be assessed after Notice and Hearing. After Notice and Hearing, the Board may direct the officers of the Association to Record a notice of noncompliance (if allowed by law) against the Condominium owned by the Owner responsible for a violation of any provision of this Declaration. The notice shall include a legal description of the Condominium and shall specify the provision of the Declaration that was violated, the violation committed, and the steps as may be required to remedy the noncompliance. Once the noncompliance is remedied or the non-complying Owner has taken such other steps as reasonably required by the Board, the Board shall direct the officers of the Association to Record a notice that the noncompliance has been remedied.

14.1.6 No Waiver. Failure to enforce any provision of the Governing Documents does not waive the right to enforce that provision, or any other provision.

14.1.7 Right to Enforce. The Board or any Owner may enforce the Governing Documents subject to Section 1369.520 of the California Civil Code. Each remedy provided for in the Governing Documents is cumulative and not exclusive or exhaustive. The City also has the right, but not the obligation, to enforce the provisions of this Declaration. The Association shall reimburse the City for all costs reasonably incurred by the City in enforcing the provisions of this Declaration. The City shall be a third party beneficiary to this Declaration.

#### 14.2 Nonpayment of Assessments Delinquency.

14.2.1 Delinquency. Any installment of an Assessment is delinquent if not paid within fifteen (15) days after the due date established by the Board. Any Assessment installment not paid within thirty (30) days after the due date, plus all reasonable costs of collection, including attorneys' fees, and late charges bears interest at the maximum legal rate commencing thirty (30) days from the date the Assessment becomes due and continuing until paid. The Board may also require the delinquent Owner to pay a late charge in accordance with California Civil Code Section 1366(e)(2). The Association need not accept any tender of a partial payment of an amount due and acceptance of any such tender does not waive the Association's right to demand and receive full payment.

14.2.2 Remedies. The Association may bring an action at law against the Owner personally obligated to pay amounts due or may foreclose its lien against the Condominium of

such Owner. A suit to recover a money judgment for unpaid Assessments may be brought without foreclosing or waiving any lien securing the same, but this provision or any suit to recover a money judgment does not affirm the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorney fees as fixed by the court. In the event that the Association elects to enforce an Owner's obligation to pay Assessments by Recordation of a lien against such Owner's Condominium, the provisions of this Section 14.2.2 shall govern.

(a) Priority of Assessment Lien. Any Assessment Lien recorded pursuant to this Declaration shall be prior and superior to all other liens, except (A) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (B) the lien or charge of any First Mortgage of Record made in good faith and for value and Recorded before the date on which the "Notice of Delinquent Assessment" (described in this Section) was Recorded against the respective Condominium. Sale or transfer of any Condominium shall not affect the Assessment Lien, except that the sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure of a First Mortgage extinguishes the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer relieves such Condominium from liens for any Assessments becoming due after the sale or transfer. No Person who obtains title to a Condominium pursuant to a judicial or nonjudicial foreclosure of the First Mortgage is liable for the share of the Common Expenses or Assessments chargeable to such Condominium which became due prior to the acquisition of title to the Condominium by such Person. Such unpaid share of Common Expenses or assessments is a Common Expense collectible from all of the Owners including such Person.

(b) Creation of Lien.

(i) Before the Association may place a lien upon an Owner's Condominium to collect a past due Assessment, the Association shall send written notice ("Notice of Intent to Lien"), at least thirty (30) days prior to Recording of such lien, to the Owner by certified mail. The Notice of Intent to Lien must contain the following information: (1) the fee and penalty procedure of the Association, (2) an itemized statement of the charges owed by the Owner (including the principal owed, any late charges, any interest, and the method of calculation of such interest or late charge and any attorney fees incurred by the Association as a result of such delinquency), (3) the collection practices used by the Association, (4) a statement that the Association may recover reasonable costs of collecting past due Assessments, (5) a statement that the Owner has the right to inspect the Association's records, pursuant to California Corporations Code Section 8333, (6) the following statement in 14-point boldface type or all capital letters: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION," (7) a statement that the Owner shall not be liable to pay the charges, interest and costs of collection if it is determined the Assessment was paid on time to the Association, and (8) a statement that the Owner has the right to request a meeting with the Board, as provided by Civil Code Section 1367.1(c).

(ii) An Owner may dispute the Notice of Intent to Lien by submitting to the Board a written explanation of the reasons for the Owner's dispute. The Board shall respond in writing to

the Owner within fifteen (15) days of the date of the postmark of the explanation, if the explanation is mailed within fifteen (15) days of the postmark of the Notice of Intent to Lien.

(iii) An Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed in Section 14.2.2(a) above. The Association shall provide the Owner with the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the Notice of Intent to Lien, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more members to meet with the Owner.

(iv) At any time thirty (30) days or more after mailing of the above-referenced Notice of Intent to Lien, the Association may Record a "Notice of Delinquent Assessment" against the Condominium of the delinquent Owner. Such Notice of Delinquent Assessment must be signed by an authorized Association officer or agent and must recite (i) the legal description of the Condominium, (ii) the record Owner thereof, (iii) the amount claimed (which may at the Association's option include interest and late charges plus reasonable attorneys' fees and expenses), (iv) the Association's name and address, and (v) in order for the lien to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment must be mailed to the delinquent Owner, by certified or registered mail, postage prepaid, as set forth in Section 2924b of the California Civil Code, no later than ten (10) days after Recordation. Recordation of the Notice of Delinquent Assessment creates a lien on the Condominium of the delinquent Owner as provided in Section 1367 of the California Civil Code. The lien shall continue until the full amount claimed therein is paid or otherwise satisfied. No action may be brought to enforce any Assessment Lien unless at least thirty (30) days has expired following Recordation of the related Notice of Delinquent Assessment. Assessments described in Section 1367(c) of the California Civil Code and Section 2792.26(c) of Title 10 of the California Code of Regulations may not become a lien against an Owner's Condominium enforceable by the sale thereof under Sections 2924, 2924b and 2924c of the California Civil Code.

(c) Foreclosure Sale. Provided that (a) at least thirty (30) days have elapsed since the date on which the Notice of Delinquent Assessment was Recorded and (b) at least ten (10) days have elapsed since a copy of the Notice of Delinquent Assessment was mailed to the Owner affected thereby, the Board, its attorneys or other Persons authorized by the Board may conduct a sale to foreclose an Association lien in accordance with the provisions of Sections 2924, 2924a, 2924b, 2924c and 2924f of the California Civil Code, or in accordance with any similar statute hereafter enacted applicable to the exercise of powers of sale in Mortgages, or in any other manner permitted by law. The Association, through duly authorized agents, may bid on the Condominium at foreclosure sale, and acquire and hold, lease, encumber and convey the Condominium. Upon completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Condominium, and the defaulting Owner shall be required to pay the reasonable rental value of the Condominium during any period of continued occupancy by the defaulting Owner or any Persons claiming under the defaulting Owner.

(d) Receivers. In addition to foreclosure and other remedies of the Association, each Owner, by acceptance of a deed to such Owner's Condominium, conveys to the Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Condominium subject to the right, power and authority of the Association to collect and apply such rents, issues and profits to any delinquent assessments owed by such Owner, reserving to the Owner the right, prior to any default by the Owner in the payment of assessments, to collect and retain such rents, issues and profits as they become due and payable. Upon default, the Association may, upon the expiration of thirty (30) days following delivery to the Owner of a Notice of Delinquent Assessment, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured by the lien described herein, (a) enter in or upon and take possession of the Condominium or (b) in the Association's name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and (c) apply the same, less allowable expenses of operation, to any delinquencies of the Owner hereunder, and in such order as the Association may determine. The entering upon and taking possession of the Condominium, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(e) Release of Lien. Upon the timely curing of any default for which the Association Recorded a Notice of Delinquent Assessment, the Association's officers shall, within twenty-one (21) days of payment of the full amount claimed in the Notice of Delinquent Assessment, Record an appropriate Release of Lien. The Board may require payment by the defaulting Owner of a reasonable fee, to be determined by the Board, to cover the cost of preparing and Recording such release. A certificate executed and acknowledged by any two (2) members of the Board stating the indebtedness secured by the lien upon any Condominium created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all Persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, to be determined by the Board.

14.3 Alternative Dispute Resolution of Assessment Disputes. Disputes between an Owner and the Association regarding the Assessments imposed by the Association may be submitted to alternative dispute resolution in accordance with Civil Code Section 1369.520 if such Owner pays in full (a) the amount of the Assessment in dispute, (b) any late charges, (c) any interest, and (d) all fees and costs associated with the preparation and filing of a Notice of Delinquent Assessment (including mailing costs and attorneys fees not to exceed the maximum amount allowed by law) and states by written notice to the Association that such amount is paid under protest, and the written notice is mailed by certified mail not more than thirty (30) days after the Recording of a Notice of Delinquent Assessment. Upon receipt of such written notice, the Association shall inform the Owner in writing that the dispute may be resolved through alternative dispute resolution as set forth in Civil Code Section 1369.520. The right of any Owner to utilize alternative dispute resolution under this Section may not be exercised more than two times in any calendar year, and not more than three times within any five (5) consecutive calendar years. Nothing within this Section shall preclude any Owner and the Association, upon mutual agreement, from entering into alternative dispute resolution in a different manner than set forth herein. An Owner may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Association in the total amount paid under items (a) through

(d) above, if it is determined that the Assessment levied by the Association was not correctly levied.

14.4 Declarant Disputes. For purposes of this Section 14.4, "Declarant Disputes" shall mean any dispute between any Owner and Declarant or any director, officer, partner, shareholder, member, employee, representative, contractor, subcontractor, design professional or agent of Declarant (collectively, the "Declarant Parties"), or between any Declarant Party and the Association, regarding the design, construction or installation of any Improvements in the Project constructed by or on behalf of Declarant, including without limitation, any dispute relating to any construction performed by or on behalf of Declarant prior to the recordation hereof. Notwithstanding the foregoing, Declarant Disputes shall not include (a) any disputes where the amount in controversy is less than Five Thousand Dollars (\$5,000) nor (b) any action taken by the Association against Declarant to collect delinquent Assessments.

14.4.1 Notice. Any Owner or the Association asserting a Declarant Dispute (the "Claimant") against any Declarant Party shall give written notice of the Declarant Dispute by personal or mail service as authorized by Code of Civil Procedure Sections 415.10, 415.20, 415.21, 415.30 or 415.40 describing the nature of the Declarant Dispute and any proposed remedy (the "Dispute Notice") to Declarant and the Declarant Party against whom such Declarant Dispute is asserted (the "Respondent").

14.4.2 Right to Inspect and Correct. Beginning on the date the Dispute Notice is delivered to the Respondent and continuing until the Declarant Dispute is resolved, the Respondent and its representatives have the right to (a) meet with the Claimant at a reasonable time and place to discuss the Declarant Dispute, (b) enter the Project to inspect any areas that are subject to the Declarant Dispute, and (c) conduct inspections and testing (including destructive or invasive testing) in a manner deemed appropriate by the Respondent. If Respondent elects to take any corrective action, Respondent and its representatives shall be provided full access to the Project to take and complete the corrective action. Respondent, with the consent of Declarant, has the right to select the corrective action Respondent believes is appropriate but is not obligated to take any corrective action. The right to inspect and correct granted in this Section is in addition to the rights granted in Civil Code Section 1375 (the "Calderon Act"). The procedures established in the Calderon Act may be implemented, before, during or after the procedure in this Section is implemented.

14.4.3 Mediation. If the Declarant Dispute is not resolved within sixty (60) days after Respondent's receipt of the Dispute Notice (or in the event that Respondent has commenced corrective action pursuant to Section 14.4.2 above, ninety (90) days after receipt of the Declarant Dispute Notice), Declarant or Respondent may require that the parties submit the Declarant Dispute to mediation. Failure of Declarant or Respondent to submit the Declarant Dispute to mediation within the foregoing period shall constitute a waiver of such party's right to submit the Declarant Dispute to mediation. Upon submission of the Declarant Dispute to mediation, such Declarant Dispute shall be mediated pursuant to (i) the JAMS mediation procedures in existence when the Declarant Dispute Notice is delivered, or (ii) mediation procedures of any other entity offering mediation services that is mutually acceptable to Claimant and Respondent. The provisions of California Evidence Code Sections 1115 through 1128 shall be applicable to the

mediation process. Use and disclosure of statements, evidence and communications offered or made in the course of the mediation shall be governed by these Sections, including the Sections which preclude use of material in future proceedings and the Sections which provide for confidentiality of material. Each party shall bear its own attorneys' fees and costs incurred in connection with the mediation. All other expenses of the mediation including the fees charged by the mediator and the cost of any proof or expert advice requested by the mediator, shall be borne by the Respondent unless the parties agree otherwise.

14.4.4 Judicial Reference. If a Declarant Dispute remains unresolved after completion of mediation entered into by the parties pursuant to the preceding Section, the Claimant may file a lawsuit. All lawsuits regarding Declarant Disputes must be resolved by general judicial reference pursuant to California Code of Civil Procedure Sections 638 and 641 through 645.1, as modified by this Section 14.4.4:

(a) The referee shall be a retired judge who served on the Superior Court of the State of California in Santa Cruz County, California with substantial experience in the type of matter in dispute and without any relationship to the parties or interest in the Project, unless the parties agree otherwise. Claimant and Respondent shall meet to select the referee no later than thirty (30) days after service of the initial complaint on the Respondent. Any dispute regarding selecting the referee shall be resolved by the court in which the complaint is filed.

(b) The general referee shall have the authority to try all issues of fact and law and to report a statement of decision to the court. The referee shall be the only trier of fact and law in the reference proceeding, and shall have no authority to further refer any issues of fact or law to any other person unless (i) all parties to the judicial reference proceeding consent, or (ii) the referee determines that a conflict of interest or similar situation has arisen which would make it inappropriate for the referee to act as the trier of fact or law concerning an issue or matter. In the second alternative, an alternative judicial referee shall be selected solely for resolving or rendering a decision concerning the issue or matter involved in the conflict.

(c) The parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange of the following: (i) witness lists, (ii) expert witness designations, (iii) expert witness reports, (iv) exhibits, (v) reports of testing or inspections, and (vi) briefs. Any other discovery authorized in the California Code of Civil Procedure shall be permitted by the referee upon a showing of good cause or based on the consent of both parties to the judicial reference proceeding.

(d) The referee shall have the power to hear and dispose of motions, including motions relating to discovery, provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary judgment and/or adjudication motions, in the same manner as a trial court judge. The referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies whether or not the issue adjudicated could dispose of an entire cause of action or defense. The referee may rule on all post-hearing motions in the same manner as a trial judge.

(e) The referee may grant all legal and equitable remedies and award damages in the judicial reference proceeding. The referee's statement of decision shall contain an explanation of the factual and legal basis for the decision pursuant to California Code of Civil Procedure Section 632. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the Declarant Dispute had been tried by the court. The decision of the referee shall be subject to appeal in the same manner as if the Declarant Dispute had been tried by the Court.

(f) Each party shall bear its own attorney's fees and costs incurred in connection with the judicial reference proceeding. All other fees and costs incurred in connection with the judicial reference proceeding, including the cost of a stenographic record of the proceedings, shall be advanced equally by the Claimant and all Respondents against whom the Declarant Dispute has been asserted. However, the referee shall have the power to reallocate such fees and costs among the parties in the referee's final ruling. This provision does not modify any provision of any contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between the Declarant and such Declarant Party.

14.4.5 Statute of Limitations. Nothing in this Section 14.4 shall be deemed to toll, stay, reduce or extend any applicable statute of limitations; provided, however, that either party may commence a legal action which in the good faith determination of that party is necessary to preserve that party's rights under any applicable statute of limitations so long as no further steps in processing the action are taken except those authorized in this Section 14.4.

14.4.6 Agreement to Dispute Resolution; Waivers of Jury Trial; Amendment.  
DECLARANT, THE ASSOCIATION AND EACH OWNER AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS SECTION 14.4 TO RESOLVE ALL DISPUTES AND WAIVE THEIR RIGHTS TO RESOLVE DISPUTES IN ANY OTHER MANNER. DECLARANT, THE ASSOCIATION, AND EACH OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 14.4, THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES TRIED BEFORE A JURY. THIS SECTION 14.4 MAY NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT.

14.4.7 Calderon Act. Section 14.4 governs only the resolution of Disputes with Declarant Parties. Unless the subject matter of a dispute expressly involves an action for damages against Declarant and/or any Declarant Parties, such dispute shall not be governed by the provisions of the Calderon Act. Each party in a dispute with Declarant Parties shall bear its own attorney fees and costs, and the prevailing party shall not be entitled to an award of attorney fees and costs, except to the extent provided under the Calderon Act.

## **ARTICLE XV: REAL PROPERTY TAXES AND ASSESSMENTS**

15.1 Real Property Taxes and Assessments. Each Owner shall pay, or cause to be paid, when due, all real estate or personal property taxes and assessments which may be levied, assessed, or charged by any public authority against the Owner's Condominium or any other part thereof or



any Owner Improvements installed therein. If an Owner shall claim that any property tax or assessment (including the rate thereof or the assessed valuation of the property) is excessive or illegal, the Owner shall have the right, at its own cost and expense, to contest the same by appropriate proceedings. Nothing contained in this Article shall require an Owner to pay any real property tax or assessment as long as (a) no other Owner's Condominium or the Common Area would be immediately affected by such failure to pay; and (b) the amount or validity thereof shall be contested in good faith. If the failure to pay such real property tax or assessment affects another Owner's Condominium or the Common Area, the other Owner or the Association may demand that the nonpaying Owner post an appropriate bond to secure payment of the delinquent taxes pending resolution of the proceedings to contest the tax. If such a bond is not posted within ten (10) days after receipt of such demand by the nonpaying Owner, the Association shall have the right, but not the obligation, to pay such tax and shall have a lien on the nonpaying Owner's Condominium for the amount so paid until reimbursed. Any such lien shall be subject and junior to, and shall in no way impair or defeat, a lien or charge of any Mortgagee.

**15.2 Unsegregated Real Property Taxes.** In the event that real estate taxes on any of the Condominiums within the Project are not separately assessed as of the Close of Escrow for the sale of such Condominium by Declarant, each Owner shall take such action as may be reasonably necessary to obtain separate real estate tax assessment of such Condominium. To the extent not assessed to or paid by the Owners, the Association shall pay all real and personal property taxes and assessments levied on the Project. If all Condominiums in the Project are taxed under a tax bill covering all of the Project, then each Owner shall pay his share of any installment due under the tax bill to the Association at least ten (10) days before the delinquency date. The Association shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date. The Association shall allocate taxes among the Owners and their Condominiums in the Project, based on the percentage of Assessments allocable to each such Condominium pursuant to Section 8.4 above. The Association shall, at least forty-five (45) days before the delinquency date of any tax installment, deliver to each Owner a copy of the tax bill, along with a written notice setting forth the Owner's obligation to pay his share of the tax installment and the potential additional charges to the Owner for failure to comply. The Association shall pay the taxes on behalf of any Owner who does not pay his share. The Association shall impose a Special Assessment on the Condominium of any delinquent Owner in an amount equal to any sum advanced by the Association pursuant to this Section 15.2, plus interest at the rate of ten percent (10%) per annum and any amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the tax bill, which late charge results from the failure of the delinquent Owner to make timely payment of his share of the taxes.

## **ARTICLE XVI: MISCELLANEOUS**

**16.1 Notices.** Except as otherwise provided in this Declaration, notice to be given to an Owner or Mortgagee must be in writing and may be delivered to the Owner or Mortgagee, or designated representative of such party, as applicable, personally or by any system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means, at the address provided by such Owner and/or Mortgagee to the Association. If an Owner does not furnish an address, notice may be sent to the street address of an Owner's Unit.

Delivery of such notice to one (1) or more co-owners of a Condominium, to any general partner of a partnership owning the Condominium, or to a manager or member of a limited liability company owning a Condominium, constitutes delivery to all Co-owners, the partnership or the limited liability company. Delivery of such notice to any officer or agent for the service of process on a corporation constitutes delivery to the corporation. Alternatively, notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner or Mortgagee at the most recent address furnished by such Owner or Mortgagee to the Declarant or the Association, as applicable. Such notice is deemed delivered three (3) business days after the time of such mailing, except for notice of any meeting of Members or of the Board, in which case the notice provisions of the Bylaws control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as may be fixed from time to time and circulated to all Owners or sent by any system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means to such address or telephone number as the Board may establish. All notices to Declarant shall be sent to:

John McCoy  
PO BOX 970  
Soquel, CA 95073

Each Owner and Declarant may change its address by written notice to each other given in the manner hereinabove stated.

## 16.2 Interpretation.

16.2.1 General Rules. This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development, ownership and operation of a condominium project and for the ownership and maintenance of the Common Area located therein. Any violation of this Declaration is a nuisance. The Governing Documents shall be interpreted so as to be consistent with law. The Governing Documents shall be construed and governed by the laws of the State of California. The Article and Section headings have been inserted for convenience only, and may not be considered or referred to in resolving questions of interpretation or construction. As used herein, the singular includes the plural and the plural the singular. The masculine, feminine and neuter each include the other, unless the context dictates otherwise. Except as otherwise expressly provided herein, any reference in this Declaration to time for performance of obligations or to elapsed time means consecutive calendar days, months, or years, as applicable. All references made in this Declaration to statutes are to those statutes as amended or restated and to subsequently enacted replacement statutes.

16.2.2 Priorities and Inconsistencies. If there are conflicts or inconsistencies between this Declaration and any Articles, Bylaws, Rules and Regulations or Condominium Plan, then this Declaration shall prevail.

16.2.3 Severability. The provisions of this Declaration are independent and severable. A determination of invalidity or partial invalidity or unenforceability of any one provision of this

Declaration by a court of competent jurisdiction or any other means does not affect the validity or enforceability of any other provisions of this Declaration.

16.3 Effect of Declaration; Binding Covenants Running With the Land; Equitable Servitudes. Every Person who owns, occupies or acquires any right, title, estate or interest in any Condominium within the Project hereby consents and agrees, and shall be conclusively deemed to have consented and agreed, to every easement, restriction, reservation, right, covenant, condition and equitable servitude contained herein, whether or not any reference to the Governing Documents is contained in the instrument by which such Person acquired its interest in such Condominium within the Project. Each and all of the restrictions, covenants, and easements of this Declaration (i) shall constitute equitable servitudes which shall apply to and be binding on the Owners and all Persons having or hereafter acquiring any interest in any portion of the Project and each and all of their respective successors, assigns, Mortgagees, and Permittees; and (ii) are imposed pursuant to a general plan for the improvement and use of the Project and are designed for the mutual benefit of the Owners. The covenants contained in this Declaration shall constitute covenants running with the land in the Project; shall be binding upon, and shall inure to the benefit of, the Project and any portion thereof or interest therein; and shall be binding upon, and shall inure to the benefit of, Declarant, all Owners, and any Person having or acquiring any portion of the Project or any interest therein and their successive owners and assigns. Notwithstanding the foregoing, except as otherwise expressly provided herein, the rights or privileges conferred upon the Owners by this Declaration shall not inure to the benefit of any Permittee or other Person who is not an Owner, nor shall any non-Owner be deemed to be a third party beneficiary of any of the provisions contained herein.

16.4 Recordation. This Declaration shall be Recorded in the Office of the County Recorder of Santa Cruz County, California and shall be effective upon such Recordation.

16.5 Estoppel Certificate. Each Owner, Declarant and the Association shall, upon the written request of Declarant (for so long as Declarant is an Owner) or any other Owner, issue to the requesting party, or to any prospective Mortgagee or purchaser of such requesting party's Condominium, an estoppel certificate stating (i) whether the Declarant, Owner or the Association (as applicable) to whom the request has been directed knows of any default under this Declaration relating to or materially affecting the requesting Owner's Condominium and, if there are known defaults, specifying the nature thereof, (ii) whether, to the best knowledge of the Declarant, such Owner or the Association (as applicable), this Declaration has been modified or amended in any respect and, if there are known amendments, specifying the nature thereof, and (iii) whether, to the best knowledge of the Declarant, such Owner or the Association (as applicable), this Declaration is, at that time, in full force and effect.

16.6 Duration. This Declaration and each term, easement, covenant, restriction and undertaking contained herein will remain in effect for a term of ninety-nine (99) years from the date of Recordation hereof and will automatically be renewed for successive ten (10) year periods thereafter, unless Members holding at least sixty-seven percent (67%) of the voting power of the Association vote not to automatically renew the term of this Declaration following initial expiration thereof.

16.7 Amendment. Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered.

16.7.1 Unilateral Amendment Before First Close of Escrow. Notwithstanding any other provisions of this Section 16.7.1, at any time before the first Close of Escrow of a Condominium to an Owner other than Declarant, Declarant may amend or terminate this Declaration by Recording a written instrument which effects the amendment and is signed and acknowledged by Declarant.

16.7.2 Member Approval. Except as otherwise expressly provided in this Declaration, all amendments to this Declaration can be adopted by Members holding at least a majority of the voting power of the Association; provided however that the specified percentage of the Association's voting power necessary to amend a specific provision of this Declaration may not be less than the percentage of affirmative votes prescribed for any action to be taken under the provision that is the subject of the proposed amendment.

16.7.3 Mortgagee Approval. In addition to the required notice and consent of Members and Declarant, the following amendments to the Governing Documents must be approved by fifty-one percent (51%) of the First Mortgagees who have requested notice of proposed actions: (a) an amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to First Mortgagees, insurers and guarantors of First Mortgages in this Declaration; (b) an amendment which would or could result in a First Mortgage being canceled by forfeiture; (c) an amendment relating to the insurance provisions or to the application of insurance proceeds or to the disposition of any money received in any taking under condemnation proceedings; (d) an amendment which would restrict leasing of Units and (e) an amendment which would subject any Owner to a right of first refusal or other such restriction if the Owner's Condominium is proposed to be sold, transferred or otherwise conveyed (provided, however, that the foregoing shall not be deemed to limit or otherwise affect the enforceability of any such provisions set forth in the Master Restrictions).

16.7.4 Notice to Mortgagees. Each First Mortgagee of a first Mortgage on a Condominium in the Project which is sent written notice of a proposed amendment of this Declaration by certified or registered mail with a return receipt requested shall be deemed to have approved the amendment if the First Mortgagee fails to submit a response to the notice within thirty (30) days after the date of the mailing receipt.

16.7.5 Certification of Amendments. A copy of each amendment shall be certified by at least two (2) Association officers, and the amendment will be effective when a Certificate of Amendment is Recorded. The Certificate, signed and sworn to by at least two (2) officers of the Association that the requisite number of Members have either voted for or consented in writing to any termination or amendment adopted as provided above, when Recorded, is conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for at least four (4) years. The certificate of any termination or amendment which requires the written consent of any First Mortgagees must include a certification that the requisite approval of such First Mortgagees was obtained. The certificate of any termination or

amendment which requires the written consent of Declarant or is subject to Declarant's veto right must include Declarant's signature.

16.8 Attorney Fees; Court Costs. If any action or proceeding is instituted to enforce or interpret this Declaration or for damages on account of the breach of this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the other party its reasonable attorneys fees and costs and expenses of litigation incurred in such action or proceeding.

16.9 Force Majeure. If the Association, any Owner or any other Person shall be delayed or hindered in or prevented from the performance of any act required to be performed by such Person under this Declaration by reason of acts of God, strikes, lockouts, unavailability of materials, failure of power, governmental laws or regulations, riots, insurrections, adverse weather conditions preventing the performance of work as certified to by the licensed architect, engineer, or other individual overseeing the performance of the relevant work, war or other reason beyond such party's control, then the time for performance of such act shall be extended for a period equal to the period of such delay. Lack of adequate funds or financial inability to perform shall not be deemed to be a cause beyond the control of such party.

16.10 Additional Provisions. Notwithstanding the provisions contained in the Governing Documents, the Association and the Owners should be aware that there may be (a) provisions of laws, such as the Davis-Stirling Act (but expressly excluding those provisions thereof specified in Section 1373 of the California Civil Code as being inapplicable to commercial common interest developments) or (b) provisions of the Master Restrictions, which may supplement or override the Governing Documents. Declarant makes no representations or warranties regarding the future enforceability of any provision in the Governing Documents.

16.11 No Representations and Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant, the Association or their agents or employees in connection with the Project, or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a planned development, except as specifically and expressly set forth in this Declaration.

16.12 Mergers and Consolidations. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by the Governing Document, together with the covenants and restrictions established upon any other property, as one plan.

16.13 Security and Privacy Disclaimer. Services provided by the Declarant or the Association may provide access control or other security benefits to the Project; however, these services do not provide security for Persons, personal property or Condominiums or Improvements in the

Project. Neither Declarant nor the Association undertake any obligation to provide security for the Project nor do they make any representations or warranties whatsoever concerning the privacy, security and/or safety of the Project. Neither the Association nor Declarant shall be liable to any Person and each Owner waives any claim against the Association and Declarant, for (i) any unauthorized or criminal entry of third parties into the Project, any Unit or any other Improvements in the Project, (ii) any damage, injury or death of any Person, or (iii) any loss of property in and about the Project, any Unit or any Improvements in the Project, if any of such events listed in items (i) to (iii) are caused by any unauthorized or criminal acts of third parties, regardless of any action, inaction, failure, breakdown, malfunction or insufficiency of the security services provided by the Association.

## **ARTICLE XVII: DECLARANT RIGHTS**

17.1 Interest of Declarant. Declarant, in cooperation with the City and the Master Declarant, has created a comprehensive plan for the development of the Project which includes modern planning objectives formulated for the common good within the Project. Declarant intends, but is not obligated, to develop the Building(s) in the Project, provided, however, Declarant makes no covenant, representation or warranty that the Building(s) or the Project will be developed as intended. Nothing contained herein or in any provision of any of the other Governing Documents shall obligate Declarant to develop the Project or construct any specific Improvements within the Project or on any other land. The completion of that work and the sale, resale and other disposal of the Condominiums developed within the Project is essential to the establishment of the Project as a quality condominium development. Each Owner acknowledges that Declarant has a substantial interest in assuring compliance with, and enforcement of, the covenants, conditions, restrictions and reservations contained in this Declaration. The provisions of this Article XVII supersede and control all other provisions of the Declaration as applied to Declarant.

17.2 Development Rights. Until the Declarant Rights Termination Date, Declarant shall have the right to take any of the following actions without the approval of any other Owner or the Association.

17.2.1 Subdivision. To subdivide or re-subdivide the Project prior to the first Close of Escrow for a Condominium within the Project. Declarant shall further have the right to relocate the boundaries of any of the Units remaining unsold within the Project or the boundaries of the Common Area adjacent thereto, and in connection therewith, to record amendments to the Condominium Plan for the Building within which such any such Units may be located.

17.2.2 Development; Compliance with Map Requirements. To complete excavation, grading, construction of Improvements or other development activities on the Common Area or on any portion of the Project owned by Declarant, and to take all actions necessary to comply with any map or other development conditions imposed by the City or the Master Declarant in connection with the development of the Project.

17.2.3 Construction; Plan Modifications. To unilaterally modify from time to time Declarant's development plan for the Project, or any portion thereof or any portion of the Annexable Area located adjacent thereto, and/or to alter or abandon construction plans and

designs, to modify Improvements or to construct additional Improvements as Declarant deems advisable in the course of developing the Project. Notwithstanding the foregoing, no such construction of additional Improvements or modification of Common Area may alter the dimensions of or otherwise materially adversely impact any Unit adjacent to the portion of the Common Area so altered without the prior written consent of the Owner of such Unit.

17.2.4 Creating Additional Easements. At any time before acquisition of title to a Condominium by a purchaser from Declarant, to establish additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others over the applicable Unit as reasonably necessary for the proper development and disposal of the Project. For so long as Declarant owns any Condominium within the Project, the right to grant or create exclusive and nonexclusive easements, licenses, rights-of-way and other interests in and over the Common Area for access, ingress, parking, egress, utilities, exclusive or shared trash enclosures, drainage and other purposes as Declarant from time to time deems necessary or desirable in connection with the sale or financing of one or more Condominiums in the Project; provided however, that no easements, licenses, reservations or rights-of-way established pursuant to this Section 17.2.4 shall unreasonably interfere with the rights of any Owner to access its Unit from the Common Area.

17.3 Declarant's Sales and Marketing Rights. Until the Declarant Rights Termination Date, Declarant shall have the right to take any of the following actions without the approval of any other Owner or the Association.

17.3.1 Signs. To erect, construct and maintain on the Project structures, Signs and displays reasonably necessary for the conduct of the business of constructing, developing and marketing the Project.

17.3.2 Sales Activity. To sell any portion of the Project directly or through agents and representatives, and to use the Common Area for access to the sales facilities of Declarant by prospective purchasers, sales agents and Declarant, and to use any Condominiums owned by Declarant within the Project as real estate sales offices.

17.3.3 Access Rights, Sales Activity. To use and to permit prospective purchasers of Condominiums to use, on a nonexclusive basis, the Common Area and any Improvements located thereon, without further cost, for access, ingress, egress and use as necessary to (a) show the Project to prospective purchasers or tenants; and (b) dispose of the Project as provided in this Declaration. Declarant and prospective purchasers and tenants are also entitled to the nonexclusive use of any portions of the Common Area for ingress, egress and accommodating vehicular and pedestrian traffic to and from the Project. The use of the Common Area by Declarant may not unreasonably interfere with the use thereof by the other Owners.

17.3.4 Project Name. The Project shall be marketed under the general name "100-200 Kennedy Drive Condominiums." Declarant may change the marketing name of the Project at any time in Declarant's sole discretion.

17.4 Special Power of Attorney. Each Owner, by accepting and recording a grant deed to a Condominium in the Project, is deemed to constitute and irrevocably appoint Declarant, for so long as Declarant owns all or any portion of the Project, as Owner's Attorney-in-Fact, for Owner and for each of Owner's mortgagees, optionees, Owners, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and each Owner is deemed thereby to have conveyed to Declarant a special power of attorney coupled with an interest authorizing Declarant to act as each Owner's attorney-in-fact for purposes of preparing, executing, acknowledging and recording any amendment to or restatement of the Condominium Plan covering such Owner's Condominium for the purposes stated in Section 17.2.1 above and/or in order to correct errors, to conform to as-built conditions, or to bring such Condominium Plan into compliance with any City, County, State or Federal laws or regulations; provided that no such amendment may change the location or dimensions of any Unit previously conveyed to an Owner without such Owner's express written consent. The acceptance or creation of any Mortgage or other encumbrance, whether or not voluntary, created in good faith, or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the Power of Attorney described in this Section.

17.5 Declarant's Notice Rights. Following the Declarant Rights Termination Date, the Association shall provide Declarant with all notices and other documents to which a Mortgagee is entitled pursuant to this Declaration without the need on Declarant's part to specifically request any such notices.

17.6 Exemption. Declarant is exempt from the requirements of Article IV of this Declaration.

17.7 Declarant Approval Rights.

17.7.1 Before Declarant Rights Termination Date. Without limiting the provisions of Section 14.2.2 above, the following actions may not be taken by the Association at any time before the Declarant Rights Termination Date without the prior written approval of Declarant:

- (a) Any amendment or action requiring the approval of First Mortgagees;
- (b) The annexation to the Project of additional real property;
- (c) The levy of a Capital Improvement Assessment for the construction of new facilities not constructed on the Common Area by Declarant; or
- (d) Any change in the general, overall, architectural or landscape design of the Project or the Common Area.

17.8 Priority of Declarant Rights; Assignment of Rights. Nothing in this Declaration limits, and no Owner or the Association will interfere with, Declarant's exercise of the rights established pursuant to this Article XVII. Any portion of the rights of Declarant under this Article XVII or elsewhere in the Declaration may be assigned by Declarant to any successor in



interest to any portion of Declarant's interest in the Project by an express written assignment which specifies the rights of Declarant so assigned.

[Signature on Following Page]

IN WITNESS WHEREOF, the undersigned has executed this Declaration to be effective upon Recordation in the Official Records of the County.

\_\_\_\_\_  
John J. McCoy, Trustee of the McCoy  
Trust, created on February 25, 2008

**ACKNOWLEDGEMENT**

State of California

County of \_\_\_\_\_

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared John J. McCoy, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal

\_\_\_\_\_  
Notary Public



**EXCERPT  
DRAFT MINUTES  
CAPITOLA PLANNING COMMISSION MEETING  
JANUARY 20, 2011**

**A. 100-200 KENNEDY DRIVE #10-104 APN: 036-031-01**

Master Use Permit for an existing industrial property in the IP (Industrial Park) Zoning District.  
Environmental Determination: Categorical Exemption  
Property Owner: John McCoy, filed: 12/15/10

Senior Planner Bane presented the staff report.

Commissioner Routh stated that conditions #7 and #8 are contradictory.

Commissioner Smith clarified the gate location.

Senior Planner Bane stated that condition #7 was from the original building approval and condition #8 was from the condo conversion approval. He also explained the reasoning behind the two conditions.

Commissioner Graves stated that the original gate should not have been removed, and suggested an alternative to the ongoing gate issue: issue the new tenants keys to access the gate.

The public hearing was opened.

John McCoy, property owner, spoke in support of the application. He is looking to attract the right tenants and focus on specialty food production. He is striving for a similar mix of tenants as the Swift Street Courtyard on the west side of Santa Cruz. Currently, the code does not permit the incidental sale of products, but through the master use permit process clients will be permitted to purchase products that are made on-site, such as wine.

Commissioner Graves questioned the current and intended use of the large building at 100 Kennedy.

Commissioner Ortiz questioned if the individual units are to be sold.

Mr. McCoy stated that the building at 100 Kennedy is currently being used to store construction materials for a local contractor. He intends to lease the entire building for a specialty food type business, perhaps a brewery. Although the units are all part of a commercial condominium, Mr. McCoy is the sole owner who will not be selling any of the units.

The public hearing was opened.

Phil Crews, Pelican Ranch tenant, spoke in support of the application and the owner's vision of the property.

John Benedetti, potential tenant, spoke in support of the application. He intends on signing a lease if the master use permit is approved. He stated that Mr. McCoy's vision for the property is an essential part of Think Local First.

Ian Rice, current business tenant in space #1, spoke in support of the application.

Gerald O'Brien, representative for the Santa Cruz Mountain Wine Growers Association spoke in support of the application and noted that there were emails previously sent on behalf of the Soquel/Aptos Chamber supporting the application.

Frederick Coquelin, resident of Cabrillo MHP, spoke with the following concerns: requested that the truck loading hours noted in condition #3 be modified on Saturday, Sunday and holidays to be 8:00 a.m. – 8:00 p.m.; additional concerns were with noise, vibration, on-site clean-up of food businesses that will create a drainage issue on Rosedale. Finally, he commented that the gate remains an issue and traffic through the park is a significant problem. New businesses will create more traffic.

Marilyn Chap, resident of Cabrillo MHP, spoke with the following concerns: noise and traffic. She stated the gate remains a significant issue and there is heavy traffic through the park. She supported modified delivery hours on weekends and holiday.

Manuel Vieira, Cabrillo MHP property owner, spoke in support of new business, but he did not want the nuisance of new businesses adjacent to the mobile home park. The proposed uses do not take into consideration the existing adjacent residents.

Bob Begun, spoke in support of the application. This is a quality proposal with great economic potential for Capitola.

The public hearing was closed.

Commissioner Newman was supportive of the master use permit to encourage streamlining the planning application permit process. It is difficult to lease commercial/industrial space with a potential lengthy use permit process.

Commissioner Smith concurred with Commissioner Newman and stated the importance of focusing on the proposed master use permit application rather than issues beyond the Commission's purview. Access to site is clear and traffic created by potential businesses does not appear to be an issue.

Commissioner Graves supported the master use permit. However, he suggested that there be a trash enclosure and landscaping incorporated into the site plan for the building at 100 Kennedy. He suggested an upgrade to the building to be compatible with the new building and site improvements at 200 Kennedy. He suggested blocking off the mobile home park from through traffic, but allow truck traffic to access the rear of the building.

Chairperson Ortiz was supported the master use permit and the types of proposed businesses. She suggested additional conditions to ensure the signage shall be consistent with the approved master signage program, the garbage area is maintained, there be specific wording regarding tasting room food service, prohibit exterior washing down of equipment. Chairperson Ortiz asked John McCoy if there was some type of resolution to keep visitors from traveling through the park.

John McCoy responded that all retail traffic will go to the front of the building. He was willing to propose closing the gate on weekends.

Commissioner Newman suggested the following modifications to conditions #11 and #13:

#11. All businesses within the center shall obtain a business license and shall comply with all local and state regulations prior to commencing business.

#13. Prior to leasing of any space upon the subject property, the holder of the master use permit shall submit in writing a description of the prospective tenant, including the name of the business, type

business, number of employees and the square footage of the space to be leased to the Community Development Department. Upon inspection of the property and verification that the landscaping is in good repair and that all the conditions of the master use permit are being met, the tenant use permit shall may be issued by the Community Development Director or designee, or referred to the Planning Commission. Any proposed new use in the original building at 200 Kennedy Drive shall require a conditional use permit approved by the Planning Commission.

Chairperson Ortiz questioned the hours of operation.

Senior Planner Bane stated that the hours of operation are from the CC&Rs as restricted by the applicant, but may be modified. Any activity outside of the specified hours may be modified with a use permit.

**A MOTION WAS MADE BY COMMISSIONER NEWMAN AND SECONDED BY COMMISSIONER ROUTH TO APPROVE PROJECT APPLICATION # 10-104 WITH THE FOLLOWING AMENDED CONDITIONS AND FINDINGS:**

CONDITIONS

1. The project approval consists of a Master Conditional Use Permit for the light industrial buildings located at 100-200 Kennedy Drive
2. Any significant modifications to the size or exterior appearance of the structure must be approved by the Planning Commission.
3. Truck loading and unloading hours shall be limited to 7:30AM – 8PM Monday through Friday, and 8:00AM – 8:00PM Saturday, Sunday, and holidays in order to minimize noise impacts to neighboring residents.
4. All signs shall be consistent with the master sign program. The approved sign program shall permit tenants signage along the north elevation of the new building where the main entrances to the office areas will be located. Each of the five tenant spaces will be permitted one wall sign, with a maximum height of 20" and a maximum length of 8'. Signs are to be of wood or metal construction with vinyl graphics. These sign requirements will also apply to the existing building when new tenants are incorporated and the existing nonconforming signs are removed.
5. All businesses shall obtain a sign permit from the Community Development Department.
6. No roof equipment is to be visible to the general public. Any necessary roof screening is to match the color of the building as closely as possible. Plans for any necessary screening shall be submitted to the Community Development Department prior to, or in conjunction with, building permit submittal.
7. Rosedale Avenue shall be open to vehicular access for the proposed project and Cabrillo Estates Mobile Home Park at all times.
8. The property owner shall maintain a gate, for which they control access, at the location of the previous gate that was removed. The gate shall cross the entire roadway.
9. All lighting shall be focused downward and away from adjacent properties. The Planning Commission shall review lighting upon receipt of a legitimate complaint.

10. All uses shall be conducted wholly within an enclosed building, except for off-street parking and loading facilities and no merchandise shall be displayed outside the building without an individual Conditional Use Permit being issued for the business.
11. All businesses within the center shall obtain a business license and shall comply with all local and state regulations prior to commencing business.
12. Prior to leasing of any space upon the subject property, the holder of the master use permit shall inform all prospective tenants, or tenants renewing or extending leases, of the conditions of the master use permit and of the requirements of 17.60.160 of the Capitola Municipal Code.
13. Prior to leasing of any space upon the subject property, the holder of the master use permit shall submit in writing a description of the prospective tenant, including the name of the business, type business, number of employees and the square footage of the space to be leased to the Community Development Department. Upon inspection of the property and verification that the landscaping is in good repair and that all the conditions of the master use permit are being met, the tenant use permit shall may be issued by the Community Development Director or designee, or referred to the Planning Commission. Any proposed new use in the original building at 200 Kennedy Drive shall require a conditional use permit approved by the Planning Commission.
14. A tenant use permit shall be revoked in the manner provided in Section 17.60.120 if the tenant is the cause of violation of a condition of the Master Use Permit.
15. Businesses occupying over 12,000 square feet of building shall obtain a standard conditional use permit with approval from the Planning Commission.
16. Manufacturing and industrial processes shall use only gas or electricity as a fuel; provided, however, that equipment using other fuel may be installed for standby purposes only.
17. No owner or invitee shall use or permit any sound system including, but not by way of limitation, loudspeakers, public address, systems, sound amplifiers, radio or broadcast within the project in such a manner that any sounds reproduced, transmitted or produced shall be directed beyond the interior of the building towards the residential areas.
18. No vehicle used regularly on site and under control of a business owner or invitee shall be equipped with back up noise devices audible more than twenty feet from vehicle and owner and invitee shall encourage delivery vehicles outside of their control to approach the facility in such a way to minimize noise.
19. Hours of normal operation on site shall be 7:30AM until 8PM unless a Conditional Use Permit has been obtained, and any activity outside of these hours shall be confined to quiet indoors activity not audible outside of the building. Vehicles coming and going at any non-business hours shall be quiet and conform to normal sound levels.
20. Equipment or machinery regularly used in the production of goods or services on site that produces audible at the property boundaries, including but not limited to sawing, cutting, grinding, shall require a Conditional Use Permit. Air compressors shall be of a quiet type and enclosed inside the building in sound containing enclosures.
21. Approved uses to be permitted by the Master Use Permit are as follows:
  - Administrative, executive and financial offices;

- Experimental, film or testing laboratories;
- Manufacture, assembly or packaging of products from previously prepared materials such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, but not including such operations as saw and planing mills, any manufacturing uses involving primary production of wood, metal or chemical products from raw materials;
- Manufacture of food products, pharmaceuticals and the like, but not including the production of fish or meat products, sauerkraut, vinegar or the like, or the rendering or refining of fats and oils;
- Manufacture of electric and electronic instruments and devices such as television sets, radios, and television, radio and phonographic equipment;
- Any other research or light manufacturing use which the planning commission finds not to be inconsistent with the purpose of this chapter and which will not impair the present or potential use of adjacent properties;
- Agriculture, horticulture, gardening but not including the raising of rabbits, dogs, fowl or other animals for commercial purposes, or the sale of any products on the premises.
- Retail commercial and service use, including sale and consumption of food and beverage products manufactured on site. Food and wine tasting shall be limited to the quantity to enable a retail customer to develop an appreciation of the food or beverage product. In no case shall food and wine tasting constitute a meal. No restaurant or table service is permitted without a separate conditional use permit, nor will any outdoor seating be allowed; and
- Public and quasi-public uses of an educational or recreational measure, including classes or educational instruction pertaining to products or services on-site.

22. Trash enclosures shall be covered, gated and maintained to provide a clean and sanitary area.

23. A new trash enclosure shall be constructed adjacent to the original building at 200 Kennedy Drive prior to any new tenant occupying the space.

24. A landscape plan shall be submitted that enhances the landscaping around the original building at 200 Kennedy Drive. The landscaping shall be installed prior to any new tenant occupying the space.

25. Any outdoor washdown of equipment shall be prohibited.

## FINDINGS

**A. The application, subject to the conditions imposed, will secure the purposes of the Zoning Ordinance, General Plan, and Local Coastal Plan.**

Community Development Department Staff and the Planning Commission have all reviewed the project. The project conforms to the development standards of the IP (Industrial Park) Zoning District. Conditions of approval have been included to carry out the objectives of the Zoning Ordinance and General Plan.

**B. The application will maintain the character and integrity of the neighborhood.**

Planning Department Staff and the Planning Commission have all reviewed the project. The project conforms to the development standards of the IP (Industrial Park) Zoning District and will not negatively impact the surrounding neighborhood. Conditions of approval have been included to ensure that the project maintains the character and integrity of the neighborhood.

- C. **This project is categorically exempt under Section 15301 of the California Environmental Quality Act and is not subject to Section 753.5 of Title 14 of the California Code of Regulations.**

Section 15301 of the CEQA Guidelines exempts the operation, leasing, or minor alteration of existing facilities that involve negligible or no expansion of use. No adverse environmental impacts were discovered during review of the proposed project.

**THE MOTION PASSED BY THE FOLLOWING VOTE: AYES: COMMISSIONERS GRAVES, NEWMAN, ROUTH, SMITH AND CHAIRPERSON ORTIZ; NOES: NONE; ABSENT: NONE; ABSTAIN: NONE.**



**From:** John Hibble [john@aptoschamber.com]  
**Sent:** Wednesday, January 19, 2011 5:14 PM  
**To:** PLANNING COMMISSION  
**Subject:** January 20 Agenda Item 6A  
**Attachments:** image001.jpg; header.htm

January 19, 2011

Capitola Planning Commission  
420 Capitola Avenue,  
Capitola, California.

**RE: Public Hearing, January 20, 2011 Agenda Item 6A**

100-200 KENNEDY DRIVE #10-104 APN: 036-031-01 Master Use Permit for an existing industrial property in the IP (Industrial Park) Zoning District. Environmental Determination: Categorical Exemption  
Property Owner: John McCoy, filed: 12/15/10

Dear Commissioners,

We request that you approve the master use permit for this property to include winery production facilities and tasting rooms. Small wineries are ideal tenants for industrial buildings as evidenced by the success of the wineries at the Swift Street Courtyard and adjacent buildings on the west side of the city of Santa Cruz.

Pelican Ranch Winery is hoping to move into 102 Kennedy Dr. Pelican Ranch was the first winery on the west side of Santa Cruz and their success attracted other similar businesses to the Swift & Ingalls neighborhood. They have been an active supporter of community activities, sponsoring fundraisers that raised over \$60,000 for local groups. Their employees in the tasting room have been through the Responsible Beverage Service training and no complaints or concerns have ever been lodged with Santa Cruz Police.

They have a well-established customer base from Santa Cruz, Monterey and the South Bay. They hope to grow that base by working cooperatively with the Capitola Chamber and introducing themselves to the hotels and innkeepers in mid and south county.

Santa Cruz County and the Santa Cruz Mountains are official American Viticultural Areas producing some of the world's finest wines for over a century. There are more than 46 wineries in the county producing wine worth more than \$54.5 million at retail prices. This is a very important but almost invisible part of the local economy. It is, however, tiny compared to other wine districts.

Pelican Ranch Winery will be an excellent addition to the city of Capitola and a perfect fit for this industrial property. Please grant winery as a permitted use at this location.

Sincerely,

Karen & John Hibble  
Executive Directors  
Santa Cruz Mountains Winegrowers Association  
7605 Old Dominion Court  
Aptos, CA 95003  
831.685.8463

From: Gail Levey [gal@creativegal.com]  
Sent: Thursday, January 20, 2011 5:13 PM  
To: PLANNING COMMISSION  
Subject: 100 Kennedy

Dear Commissioners,

I had planned on attending tonight's meeting to voice my concerns about 100 Kennedy. Unfortunately other concerns at Cabrillo Estates have commanded my attention.

The gate remains locked open, causing an immediate safety issue. On January 1, I was grazed by a truck speeding through the open gate. Luckily the injury was just a bruise and the police department handled the hit and run incident with their usual high level of professionalism.

As predicted, the open gate is causing the innocent residents of Cabrillo grief with increased traffic, theft and now, bodily injury. This is a family park and it is only a matter of time before a child is involved.

There is no excuse for this. The gate must be closed, certainly well before we have drivers passing through the park after a wine tasting party. Without a doubt, there will be problems associated with a wine room. The gate must be closed now, and remain closed at all times.

Sincerely,

Gail A. Levey  
476-6871930 Rosedale 36

CONDITIONS

1. The project approval consists of Conditional Use Permits for a small winery with retail sales and a tasting room (Pelican Ranch Winery), one small micro brewery with retail sales and a tasting room (Santa Adairius), and one small bakery or food producer with retail sales and a tasting room for the light industrial buildings located at 100-200 Kennedy Drive. The above mentioned uses shall allow the sale and consumption of food and beverage products manufactured on site. Food and wine tasting shall be limited to the quantity to enable a retail customer to develop an appreciation of the food or beverage product. In no case shall food and wine tasting constitute a meal. No restaurant or table service is permitted without a separate conditional use permit, nor will any outdoor seating be allowed
2. Any significant modifications to the size or exterior appearance of the structure must be approved by the Planning Commission.
3. Truck loading and unloading hours shall be limited to 7:30AM – 8PM Monday through Friday, and 8:00AM – 8:00PM Saturday, Sunday, and holidays in order to minimize noise impacts to neighboring residents.
4. All signs shall be consistent with the master sign program. The approved sign program shall permit tenants signage along the north elevation of the new building where the main entrances to the office areas will be located. Each of the five tenant spaces will be permitted one wall sign, with a maximum height of 20" and a maximum length of 8'. Signs are to be of wood or metal construction with vinyl graphics. These sign requirements will also apply to the existing building when new tenants are incorporated and the existing nonconforming signs are removed.
5. All businesses shall obtain a sign permit from the Community Development Department.
6. No roof equipment is to be visible to the general public. Any necessary roof screening is to match the color of the building as closely as possible. Plans for any necessary screening shall be submitted to the Community Development Department prior to, or in conjunction with, building permit submittal.
7. All lighting shall be focused downward and away from adjacent properties. The Planning Commission shall review lighting upon receipt of a legitimate complaint.
8. All uses shall be conducted wholly within an enclosed building, except for off-street parking and loading facilities and no merchandise shall be displayed outside the building without an individual Conditional Use Permit being issued for the business.
9. All businesses within the center shall obtain a business license and shall comply with all local and state regulations prior to commencing business.
10. Manufacturing and industrial processes shall use only gas or electricity as a fuel; provided, however, that equipment using other fuel may be installed for standby purposes only.
11. No owner or invitee shall use or permit any sound system including, but not by way of limitation, loudspeakers, public address, systems, sound amplifiers, radio or broadcast within the project in such a manner that any sounds reproduced, transmitted or produced shall be directed beyond the interior of the building towards the residential areas.

12. No vehicle used regularly on site and under control of a business owner or invitee shall be equipped with back up noise devices audible more than twenty feet from vehicle and owner and invitee shall encourage delivery vehicles outside of their control to approach the facility in such a way to minimize noise.
13. Hours of normal operation on site shall be 7:30AM until 8PM unless a Conditional Use Permit has been obtained, and any activity outside of these hours shall be confined to quiet indoors activity not audible outside of the building. Vehicles coming and going at any non-business hours shall be quiet and conform to normal sound levels.
14. Equipment or machinery regularly used in the production of goods or services on site that produces audible at the property boundaries, including but not limited to sawing, cutting, grinding, shall require a Conditional Use Permit. Air compressors shall be of a quiet type and enclosed inside the building in sound containing enclosures.
15. Trash enclosures shall be covered, gated and maintained to provide a clean and sanitary area.
16. Any outdoor washdown of equipment shall be prohibited.

#### FINDINGS

- A. **The application, subject to the conditions imposed, will secure the purposes of the Zoning Ordinance, General Plan, and Local Coastal Plan.**

Community Development Department Staff and the Planning Commission have all reviewed the project. The project conforms to the development standards of the IP (Industrial Park) Zoning District. Conditions of approval have been included to carry out the objectives of the Zoning Ordinance and General Plan.

- B. **The application will maintain the character and integrity of the neighborhood.**

Planning Department Staff and the Planning Commission have all reviewed the project. The project conforms to the development standards of the IP (Industrial Park) Zoning District and will not negatively impact the surrounding neighborhood. Conditions of approval have been included to ensure that the project maintains the character and integrity of the neighborhood.

- C. **This project is categorically exempt under Section 15301 of the California Environmental Quality Act and is not subject to Section 753.5 of Title 14 of the California Code of Regulations.**

Section 15301 of the CEQA Guidelines exempts the operation, leasing, or minor alteration of existing facilities that involve negligible or no expansion of use. No adverse environmental impacts were discovered during review of the proposed project.



Item #: 4.A.

## CITY COUNCIL AGENDA REPORT

MEETING OF FEBRUARY 10, 2011

FROM: COMMUNITY DEVELOPMENT DEPARTMENT

DATE: FEBRUARY 1, 2010

SUBJECT: **100-200 KENNEDY DRIVE #10-104 APN: 036-031-01**  
Appeal of a Planning Commission approval for a Master Use Permit for an existing industrial property in the IP (Industrial Park) Zoning District.  
Environmental Determination: Categorical Exemption  
Property Owner: John McCoy

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### **Recommended Action:**

The City Council may choose from the following four options:

- 1) Deny the appeal and approve the Master Conditional Use Permit as approved by the Planning Commission, or
- 2) Deny the Master Conditional Use Permit, or
- 3) Deny the Master Conditional Use Permit but approve a Conditional Use Permit for a small winery with retail sales and a tasting room (Pelican Ranch Winery), subject to the conditions provided (Attachment 7), or
- 4) Deny the Master Conditional Use Permit but approve Conditional Use Permits for the uses discussed at the Planning Commission, including a small winery with retail sales and a tasting room (Pelican Ranch Winery), one small micro brewery with retail sales and a tasting room (Santa Adairius), and one small bakery or food producer with retail sales and a tasting room, subject to the conditions provided (Attachment 7). All other conditional uses for the property must be approved by the Planning Commission.

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### **BACKGROUND**

The Planning Commission considered the above-mentioned application on January 20, 2011. After hearing from several members of the public, including new tenants Pelican Ranch Winery and Santa Adairius Micro Brewery, the Commission unanimously (5-0) approved the proposed Master Conditional Use Permit with the following revised or added conditions of approval:

3. Truck loading and unloading hours shall be limited to 7:30AM – 8PM Monday through Friday, and 8:00AM – 8:00PM Saturday, Sunday, and holidays in order to minimize noise impacts to neighboring residents.
4. All signs shall be consistent with the master sign program. The approved sign program shall permit tenants signage along the north elevation of the new building where the main entrances to the office areas will be located. Each of the five tenant spaces will be permitted one wall sign, with a maximum height of 20' and a maximum length of 8'. Signs are to be of wood or metal construction with vinyl graphics. These sign requirements will also apply to the existing building when new tenants are incorporated and the existing nonconforming signs are removed.

11. All businesses within the center shall obtain a business license and shall comply with all local and state regulations prior to commencing business operating.
13. Prior to leasing of any space upon the subject property, the holder of the master use permit shall submit in writing a description of the prospective tenant, including the name of the business, type business, number of employees and the square footage of the space to be leased to the Community Development Department. Upon inspection of the property and verification that the landscaping is in good repair and that all the conditions of the master use permit are being met, the tenant use permit ~~shall~~ may be issued by the Community Development Director or designee, or referred to the Planning Commission. Any proposed new use in the original building at 200 Kennedy Drive shall require a conditional use permit approved by the Planning Commission.
21. Approved uses to be permitted by the Master Use Permit are as follows:
  - Administrative, executive and financial offices;
  - Experimental, film or testing laboratories;
  - Manufacture, assembly or packaging of products from previously prepared materials such as cloth, plastic, paper, leather, precious or semi-precious metals or stones, but not including such operations as saw and planing mills, any manufacturing uses involving primary production of wood, metal or chemical products from raw materials;
  - Manufacture of food products, pharmaceuticals and the like, but not including the production of fish or meat products, sauerkraut, vinegar or the like, or the rendering or refining of fats and oils;
  - Manufacture of electric and electronic instruments and devices such as television sets, radios, and television, radio and phonographic equipment;
  - Any other research or light manufacturing use which the planning commission finds not to be inconsistent with the purpose of this chapter and which will not impair the present or potential use of adjacent properties;
  - Agriculture, horticulture, gardening but not including the raising of rabbits, dogs, fowl or other animals for commercial purposes, or the sale of any products on the premises.
  - Retail commercial and service use, including sale and consumption of food and beverage products manufactured on site. Food and wine tasting shall be limited to the quantity to enable a retail customer to develop an appreciation of the food or beverage product. In no case shall food and wine tasting constitute a meal. No restaurant or table service is permitted without a separate conditional use permit, nor will any outdoor seating be allowed; and
  - Public and quasi-public uses of an educational or recreational measure, including classes or educational instruction pertaining to products or services on site.
22. Trash enclosures shall be covered, gated and maintained to provide a clean and sanitary area.
23. A new trash enclosure shall be constructed adjacent to the original building at 200 Kennedy Drive prior to any new tenant occupying the space.
24. A landscape plan shall be submitted that enhances the landscaping around the original building at 200 Kennedy Drive. The landscaping shall be installed prior to any new tenant occupying the space.

25. Any outdoor washdown of equipment shall be prohibited.

An appeal letter from Councilmember Termini was received on January 28, 2011 (Attachment 3). Councilmember Termini believes that the subject building is close enough to residential areas to warrant Planning Commission review for each use. The appeal letter, Planning Commission staff report, and minutes from the hearing are attached for your information as Attachments 2 through 4.

**PROJECT DESCRIPTION**

The applicant is requesting approval of a Master Conditional Use Permit for the light industrial buildings located at 100-200 Kennedy Drive in the IP (Industrial Park) zoning district. The 45,725 square foot site at the end of Kennedy Drive is currently occupied by an older 4,803 square foot building (former Moto Italiano) as well as a newly constructed 7,072 square foot light industrial building with an additional 2,448 square feet of interior mezzanine space. The new building is split into five individual commercial units which range from 1,318 to 1,455 square feet. Being recently developed, the site conforms to current city parking and landscaping requirements. At present, the new building is vacant with the exception of *Pelican Ranch Winery* which recently moved into the building. The wine production use falls under the category of "Manufacture of food products" and is therefore a principally permitted use in the IP zoning.

The proposed Master Conditional Use Permit for the industrial complex would allow not only the principally permitted uses listed in the IP zoning, but also a list of specific uses that would normally require an individual use permit. The applicant would like to develop a group of food production related companies at the site, similar to the Swift Street Courtyard in Santa Cruz (Kelly's French Bakery, Bonny Doon Winery, etc.) The industrial complex would host a mix of specialty foods, including the potential for tasting rooms and food education classes. With that in mind, he is requesting the following uses be permitted under the Master Conditional Use Permit:

1. Retail commercial and service use, including sale and consumption of food and beverage products manufactured on site; and
2. Public and quasi-public uses of an educational or recreational measure, including classes or educational instruction pertaining to products or services on site.

Per Zoning Code Section 17.60.160, after a Master Use Permit has been issued, tenant use permits that occupy less than 12,000 square feet shall be approved by the Community Development Director upon inspection of the property, and verification that it and its landscaping are in good repair, and that all other conditions of the master use permit are being met. If one of the above-mentioned uses was proposed and of concern to the Director, the Director can require that a Conditional Use Permit be approved by the Planning Commission. In addition, a tenant use permit may be revoked if the tenant is the cause of violation of a condition of the Master Use Permit.

**Recommendation Options**

Staff has presented the following four options to the City Council for consideration:

**1) Deny the appeal and approve the Master Conditional Use Permit as approved by the Planning Commission.**

This would approve the Master Conditional Use Permit as it was approved by the Planning Commission. The Council may also add or amend conditions as it sees fit. Community Development staff supports the application as approved by the Planning Commission.

**2) Deny the Master Conditional Use Permit.**

This option would deny the proposed Master Conditional Use Permit outright, and require that any newly proposed conditional uses submit a new application for a

Conditional Use Permit and obtain approval from the Planning Commission.

**3) Deny the Master Conditional Use Permit but approve a Conditional Use Permit for a small winery with retail sales and a tasting room (Pelican Ranch Winery), subject to the conditions provided (Attachment 7).**

Option three would deny the proposed Master Conditional Use Permit, but would approve a Conditional Use Permit for the existing Pelican Ranch Winery to add retail sales and a tasting room to their current wine production facility. The use would be approved under the conditions of approval listed on attachment 7, in addition to any deemed appropriate and added by the Council. Any other conditional uses for the remaining commercial spaces will be required to submit a new application for a Conditional Use Permit and obtain approval from the Planning Commission.

**4) Deny the Master Conditional Use Permit but approve Conditional Use Permits for the uses discussed at the Planning Commission, including a small winery with retail sales and a tasting room (Pelican Ranch Winery), one small micro brewery with retail sales and a tasting room (Santa Adairius), and one small bakery or food producer with retail sales and a tasting room, subject to the conditions provided (Attachment 7). All other conditional uses for the property must be approved by the Planning Commission.**

The final option would deny the proposed Master Conditional Use Permit, but would approve three Conditional Use Permits. The three approved uses would include:

1. A small winery with retail sales and a tasting room (Pelican Ranch Winery)
2. A small micro brewery with retail sales and a tasting room (Santa Adairius).
3. A small bakery or food producer (excluding fish or meat products, sauerkraut, vinegar or the like, or the rendering or refining of fats and oils) with retail sales and a tasting room.

The three uses would be approved under the conditions of approval listed on attachment 7, in addition to any deemed appropriate and added by the Council. Any other conditional uses for the remaining commercial spaces will be required to submit a new application for a Conditional Use Permit and obtain approval from the Planning Commission.

**FISCAL IMPACT** – None

**ATTACHMENTS**

Attachment 1 – Conditions and Findings for the Master Conditional Use Permit

Attachment 2 – Appeal Letter from Councilmember Termini

Attachment 3 – January 20, 2011 Planning Commission Staff Report

Attachment 4 – January 20, 2011 Planning Commission Minutes

Attachment 5 – Letter from John Hibble, dated January 19, 2011

Attachment 6 – Letter from Gail Levey, dated January 20, 2011

Attachment 7 – Conditions and Findings for individual Conditional Use Permits (Options 3 & 4)

**Report Prepared By:** Ryan Bane  
Senior Planner

**Forwarded  
By City Manager:** \_\_\_\_\_



**URGENCY ORDINANCE NO. \_\_\_\_\_**

**AN UNCODIFIED ORDINANCE OF THE CITY OF CAPITOLA  
ADOPTED AS AN URGENCY MEASURE IMPOSING A TEMPORARY  
MORATORIUM ON THE INSTALLATION OF PG&E SMARTMETERS AND  
RELATED EQUIPMENT IN, ALONG, ACROSS, UPON, UNDER AND  
OVER THE PUBLIC STREETS AND OTHER PLACES WITHIN THE  
CITY OF CAPITOLA**

The City Council of the City of Capitola finds as follows:

- A. WHEREAS, the City of Capitola ("City") through its police powers granted by Article XI of the California Constitution, retains broad discretion to legislate for public purposes and for the general welfare, including but not limited to matters of public health, safety and consumer protection; and
- B. WHEREAS, the City has a franchise agreement with PG&E that has been in effect since April 18, 1949; and
- C. WHEREAS, in addition, the City retains authority under Article XII, Section 8 of the Constitution to grant franchises for public utilities, and pursuant to California Public Utilities Code Section 6203, "may in such a franchise impose such other and additional terms and conditions.. " whether governmental or contractual, as in the judgment of the legislative body are to the public interest;" and
- D. WHEREAS, Public Utilities Code section 2902 reserves the City's right to supervise and regulate public utilities in matters affecting the health, convenience and safety of the general public, "such as the use and repair of public streets by any public utility, the location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets, and the speed of common carriers operating within the limits of the municipal corporation;" and
- E. WHEREAS, Pacific Gas & Electric Company ("PG&E") is now installing SmartMeters in Central and Northern California and is installing these meters within the City of Capitola; and
- F. WHEREAS, concerns about the impact and accuracy of SmartMeters have been raised nationwide, leading the Maryland Public Service Commission to deny permission on June 21, 2010 for the deployment of SmartMeters in that state. The State of Hawaii Public Utility Commission also recently declined to adopt a smart grid system in that state; and
- G. WHEREAS, major problems and deficiencies with PG&E SmartMeters in California have been brought to the attention of the City Council of the City of Capitola, including PG&E's confirmation that its SmartMeters have provided incorrect readings costing ratepayers untold thousands of dollars in overcharges. In addition, PG&E records outline "risks" and "issues" including an ongoing inability to recover real-time data because of faulty hardware originating with PG&E vendors; and
- H. WHEREAS, the ebb and flow of gas and electricity into homes discloses detailed information about private aspects of daily life. Energy usage data, measured moment by moment, allows the reconstruction of a household's activities: when people wake up, when they come home, when they go on vacation, and even when they take a hot bath. SmartMeters represent a new form of technology that relays detailed hitherto confidential information reflecting the times and amounts of the use of electrical power without adequately protecting that data from being accessed by

unauthorized persons or entities and as such pose an unreasonable intrusion of utility customers' privacy rights and security interests. Indeed, the fact that the CPUC has not established safeguards for privacy in its regulatory approvals may violate the principles set forth by the U.S. Supreme Court in *Kyllo v. United States* (2001), 533 U.S. 27; and

I. WHEREAS, there is now evidence showing that problems with SmartMeters could adversely impact the amateur radio communication network that operates throughout California and neighboring states, as well as other radio emergency communication systems that serve first responders, government agencies, and the public; and

J. WHEREAS, significant health questions have been raised concerning the increased electromagnetic frequency radiation (EMF) emitted by the wireless technology in SmartMeters, which will be in every house, apartment and business, thereby adding additional human-made EMF to our environment around the clock to the already existing EMF from utility poles, individual meters and telephone poles; and

K. WHEREAS, FCC safety standards do not exist for chronic long-term exposure to EMF or from multiple sources, and reported adverse health effects from electromagnetic pollution include sleep disorders, irritability, short term memory loss, headaches, anxiety, nausea, DNA breaks, abnormal cell growth, cancer, premature aging, etc, Because of untested technology, international scientists, environmental agencies, advocacy groups and doctors are calling for the use of caution in wireless technologies; and

L. WHEREAS, the primary justification given for the SmartMeters program is the assertion that it will encourage customers to move some of their electricity usage from daytime to evening hours; however, PG&E has conducted no actual pilot projects to determine whether this assumption is in fact correct. Non-transmitting time-of-day meters are already available for customers who desire them, and enhanced customer education is a viable non-technological alternative to encourage electricity use timeshifting. Further, some engineers and energy conservation experts believe that the SmartMeters program could well actually increase total electricity consumption and therefore the carbon footprint; and

M. WHEREAS, Assembly member Jared Huffman has recently introduced legislation (AB 37) which would add a section to the Public Utilities Code to require the CPUC to identify alternative options for customers who do not wish to have a wireless SmartMeter installed and allow customers to opt-out of wireless SmartMeter installation, including removing existing SmartMeters where requested by the customer. Most importantly, the legislation would suspend deployment of SmartMeters until the CPUC meets the above requirements; and

N. WHEREAS, the City Council of the City of Capitola on September 23, 2010 adopted a resolution demanding PG&E halt the installation of SmartMeters and related equipment within the City of Capitola until concerns regarding the accuracy and safety of the SmartMeters is addressed and demanding that PG&E implement mechanisms to allow residents to opt-out and remove SmartMeters from resident's houses who do not want them; and

O. WHEREAS, PG&E has declined to honor the City's request in this regard; and

P. WHEREAS, because the potential risks to the health, safety and welfare of City residents are so great the City Council wishes to adopt a moratorium on the installation of PG&E SmartMeters and related equipment within the City of Capitola. The moratorium period will allow the legislative process referenced above to be completed and for additional information to be collected and analyzed regarding potential problems with these SmartMeters; and

Q. WHEREAS, there is a current and immediate threat to public health, safety and welfare because, without this urgency ordinance, PG&E SmartMeters or supporting equipment will be installed or constructed or modified in the City and will subject residents of Capitola to the privacy, security, health, accuracy and consumer fraud risks of the unproven SmartMeter technology; and

R. WHEREAS, the City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction or installation of any facilities and, in fact, imposes greater restrictions on such construction and installation in order to protect the public health, safety and general welfare. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations; and

S. WHEREAS, there is no feasible alternative to satisfactorily study the potential impact identified above as well or better with a less burdensome or restrictive effect than the adoption of this interim urgency moratorium ordinance; and

T. WHEREAS, based on the foregoing it is in the best interest of public health, safety and welfare to allow adequate study of the impacts resulting from the SmartMeter technology; therefore it is appropriate to adopt a temporary moratorium that would remain in effect from the date of its adoption through December 31, 2011, unless the City Council acts to repeal it prior to that date.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Capitola as follows:

Section 1. Moratorium. From and after the effective date of this Ordinance, no PG&E SmartMeter may be installed in or on any home, apartment, condominium or business of any type within the City of Capitola, and no equipment related to PG&E SmartMeters may be installed in, on, under, or above any public street or public right of way within the City of Capitola.

Section 2. Violations of this moratorium may be charged as infractions or misdemeanors as set forth in Chapter 4.04 of the Capitola Municipal Code. In addition, violations shall be deemed public nuisances, with enforcement and abatement by injunction or any other remedy authorized by law.

Section 3. The City Council finds and determines that: (a) there is a current and immediate threat to the public peace, health, or safety; (b) this moratorium must be imposed in order to protect and preserve the public interest, health, safety, comfort and convenience and to preserve the public welfare; and (c) it is necessary to preserve the public health and safety of all residents or landowners adjacent to such uses as are affected by this interim ordinance as well as to protect all of the citizens of the City of Capitola by preserving and improving the aesthetic and economic conditions of the City.

Section 4. If any provision of this interim ordinance is held to be unconstitutional, it is the intent of the City Council that such portions of such ordinance shall be severable from the remainder and the remainder be given full force and effect.

Section 5. This interim ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2) - the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment and Section 15060(c)(3) - the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 6. Effective Dates. This ordinance shall take effect immediately based on the findings by the City Council that this ordinance is necessary for the protection of the public health, safety, and general welfare. This ordinance shall be in full force and effect from the date of its adoption by the City Council through December 31, 2011, at which time its terms and provision shall expire and no longer remain in effect.

This ordinance was passed and adopted on the 10<sup>th</sup> day of February, 2011, as an Urgency Ordinance to be effective immediately, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

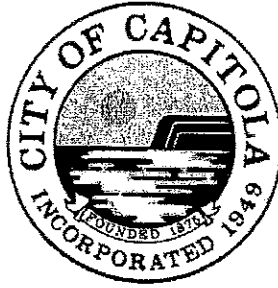
DISQUALIFIED:

APPROVED:

\_\_\_\_\_  
Dennis R. Norton, Mayor

ATTEST:

\_\_\_\_\_, MMC  
Pamela Greeninger, City Clerk



October 6, 2010

*Via United States Mail*

Mr. Paul Clanon  
Executive Director  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

**Re: SmartMeter Deployment-City of Capitola**

Dear Mr. Clanon:

At its September 23, 2010 meeting, after conducting a public hearing on Pacific Gas & Electric's current and potential deployment of SmartMeters in the City of Capitola, the City Council directed that a letter be sent to the California Public Utilities Commission objecting to any such deployment unless and until reliable and independent evidence is produced which conclusively demonstrates that SmartMeters do not pose a public health hazard. Pursuant to City Council direction, I have also written to our state legislators, Senator Simitian and Assembly Member Monning, voicing the same concerns. Copies of those letters are enclosed for your review and file. The City's public health concerns are summarized in City Council Resolution 3831 which was adopted by the City Council at its September 23, 2010 meeting. A copy of this resolution is also enclosed for your review and file.

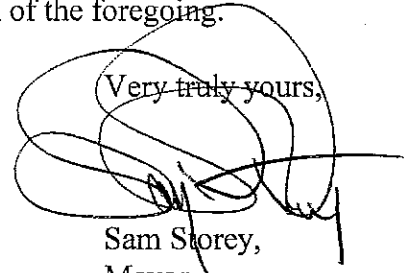
As you are probably aware, the City's public health concern is rooted in the fact that SmartMeters emit electromagnetic radiation. For the most part, the City of Capitola is comprised of very small discrete residential and commercial parcels meaning that numerous SmartMeters would be installed in unusually close proximity to one another. From the City's perspective, it has not been definitively established that the deployment of SmartMeters at the rate and density with which they would be installed in the City of Capitola will be non-detrimental to the health of persons living and working in their vicinity. We understand that the California Council on Science and Technology is in the process of determining whether the Federal Communications Commission standards for SmartMeters are sufficiently protective when taking into account current exposure levels to radio frequency and electromagnetic fields and that the Commission's research and investigation in this regard will be completed in the foreseeable future. Accordingly, the City does not feel that it is unreasonable for PG&E to defer its remaining Capitola SmartMeter deployment until such time as the Commission's study has been completed and its report has been disseminated for the CPUC's review as well as that of members of the public who, after all, are not only being required to accept installation of SmartMeters on their property but are also being asked, as ratepayers, to assume the cost burden for that installation.

Mr. Paul Clanon  
October 5, 2010  
Page 2 of 2

Finally, as set forth in the enclosed City Council Resolution, it is the City's firm position that the PG&E SmartMeter deployment program, in order to address the public health concerns of Capitola residents and workers, must, at a minimum, offer an "opt-out" alternative to individuals who object to the installation of SmartMeters on their property as well as an offer to remove SmartMeters from properties in the City which were SmartMeter-equipped without the prior knowledge or consent of the property owner.

Thank you very much for your consideration of the foregoing.

Very truly yours,

A handwritten signature in black ink, appearing to be "Sam Storey", written over the text "Very truly yours,".

Sam Storey,  
Mayor  
City of Capitola

/ang  
Encls.

cc: City Council  
City Manager  
Senator Simitian  
Assembly Member Monning  
Wendy Abbot Sarsfield, PG&E Government Relations Manager,  
Silicon Valley and Greater Central Coast



## ATTACHMENT 2

420 Capitola Avenue  
Capitola, California 95010  
Telephone: (831) 475-7300  
FAX: (831) 479-8879  
Website: [www.ci.capitola.ca.us](http://www.ci.capitola.ca.us)

<date>

Assemblymember Bill Monning  
27<sup>th</sup> Assembly District  
State Capitol  
P.O. Box 942849  
Sacramento, CA 94249-0027

RE: **City of Capitola Support of Assembly Bill 37 (Huffman) concerning the Pacific Gas & Electric SmartMeter Program**

Dear Assemblymember Monning:

The City Council of the City of Capitola is again writing you concerning Pacific Gas and Electric Company's continued installation of SmartMeters in our jurisdiction. We remain deeply concerned about the protecting the public health of City residents and visitors to our community and believe both California Public Utilities Commission and the PG&E have proven to be non responsive to public concerns regarding the SmartMeter program.

Based on our City Council's well founded concerns regarding public health, on September 23, 2010 the Council passed a resolution demanding that PG&E implement mechanisms to allow residents to both opt-out, and remove SmartMeters from resident's houses who do not want them.

On February 10, 2011 the City Council heard additional information on the continuing PG&E SmartMeter program and voted in support Assembly Bill 37 introduced by Assembly Member Huffman on December 6, 2010 requiring the CPUC by January 1, 2012 to identify alternate options for customers of electrical corporations that decline the installation of wireless advanced metering options. This opt-out program is essential to protecting the safety of our residents who feel threatened by the intrusion of SmartMeters.

We ask that you take all necessary actions to complete the adoption of AB 37 and its placement into law. We look forward to hearing from you regarding this matter of public importance.

Sincerely,

**CITY OF CAPITOLA**

Dennis Norton  
Mayor

cc: Council Members  
Jamie Goldstein, City Manager

**ASSEMBLY BILL**

**No. 37**

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**Introduced by Assembly Member Huffman**

December 6, 2010

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An act to add Section 8370 to the Public Utilities Code, relating to electricity, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 37, as introduced, Huffman. Smart grid deployment: smart meters.

(1) The federal Energy Independence and Security Act of 2007 states that it is the policy of the United States to maintain a reliable and secure electricity structure that achieves certain objectives that characterize a smart grid. Existing federal law requires each state regulatory authority, with respect to each electric utility for which it has ratemaking authority, and each nonregulated electric utility, to consider certain standards and to determine whether or not it is appropriate to implement those standards to carry out the purposes of the federal Public Utility Regulatory Policies Act. The existing standards include time-based metering and communications, consideration of smart grid investments, and providing purchases with smart grid information, as specified.

Under existing law, the Public Utilities Commission (CPUC) has regulatory authority over public utilities, including electrical corporations and gas corporations, as defined. Existing law requires the CPUC, by July 1, 2010, and in consultation with the State Energy Resources Conservation and Development Commission, the Independent System Operator, and other key stakeholders, to determine the requirements for a smart grid deployment plan consistent with certain policies set forth in state and federal law. Existing law requires that the smart grid improve overall efficiency, reliability, and cost-effectiveness



of electrical system operations, planning, and maintenance. Existing law requires each electrical corporation, by July 1, 2011, to develop and submit a smart grid deployment plan to the commission for approval.

This bill would require the CPUC, by January 1, 2012, to identify alternative options for customers of electrical corporations that decline the installation of wireless advanced metering infrastructure devices, commonly referred to as smart meters, as part of an approved smart grid deployment plan. The bill would also require the CPUC, when it has identified those alternative options, to require each electrical corporation to permit a customer to decline the installation of an advanced metering infrastructure device and make the alternative options available to that customer. The bill would also require the CPUC to disclose certain information to customers about the technology of smart meters. The bill would require the CPUC to direct each electrical corporation to suspend the deployment of advanced metering infrastructure until the CPUC has complied with the above requirements.

(2) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the CPUC is a crime.

Because the bill would require action by the CPUC to implement certain of its requirements, a violation of which would be a crime, these provisions would impose a state-mandated local program by creating a new crime.

(3) 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 no reimbursement is required by this act for a specified reason.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

- 1 SECTION 1. Section 8370 is added to the Public Utilities Code,
- 2 to read:
- 3 8370. (a) By January 1, 2012, the commission shall do all of
- 4 the following:

1 (1) Identify alternative options for customers of electrical  
2 corporations that decline the installation of wireless advanced  
3 metering infrastructure devices as part of a smart grid deployment  
4 plan approved by the commission pursuant to this chapter. The  
5 alternative options identified by the commission shall provide  
6 reliability and efficiency equivalent to the approved devices.

7 (2) When the commission has identified alternative options in  
8 accordance with paragraph (1), it shall require each electrical  
9 corporation to permit a customer to decline the installation of an  
10 advanced metering infrastructure device, and to make alternative  
11 options identified pursuant to paragraph (1) available to that  
12 customer.

13 (3) Direct each electrical corporation to disclose to customers  
14 information about the technology of advanced metering  
15 infrastructure devices, including radio frequency, magnitude of  
16 signal, and duration of signal.

17 (4) Assess the net effect of customers declining the installation  
18 of advanced metering infrastructure devices on smart grid reliability  
19 and efficiency.

20 (b) The commission shall direct each electrical corporation to  
21 suspend the deployment of advanced metering infrastructure until  
22 the commission has complied with the requirements of subdivision  
23 (a).

24 SEC. 2. No reimbursement is required by this act pursuant to  
25 Section 6 of Article XIII B of the California Constitution because  
26 the only costs that may be incurred by a local agency or school  
27 district will be incurred because this act creates a new crime or  
28 infraction, eliminates a crime or infraction, or changes the penalty  
29 for a crime or infraction, within the meaning of Section 17556 of  
30 the Government Code, or changes the definition of a crime within  
31 the meaning of Section 6 of Article XIII B of the California  
32 Constitution.

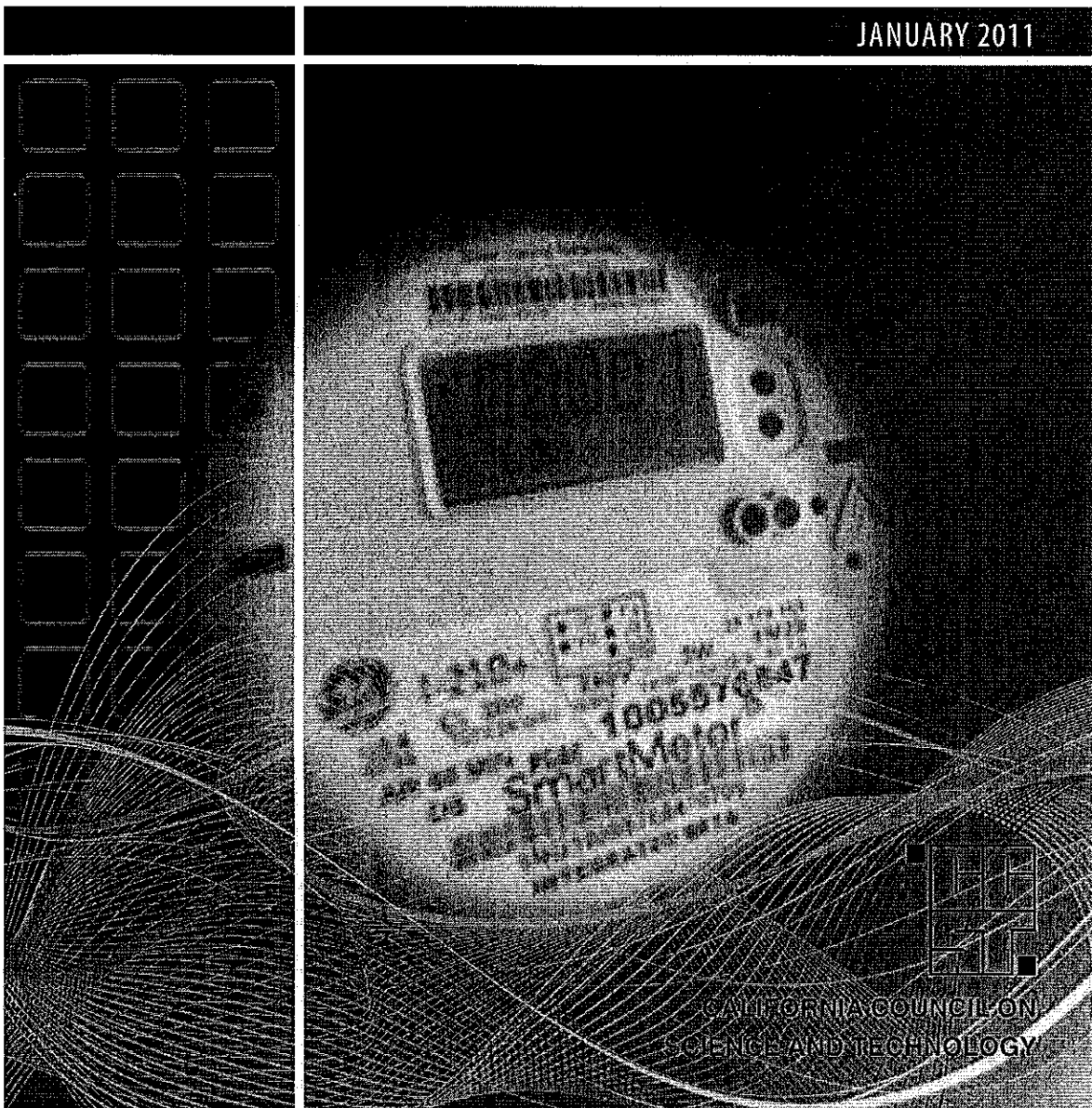
33 SEC. 3. This act is an urgency statute necessary for the  
34 immediate preservation of the public peace, health, or safety within  
35 the meaning of Article IV of the Constitution and shall go into  
36 immediate effect. The facts constituting the necessity are:

1 In order to ensure that utility customers in California are able to  
2 make informed decisions about the deployment of smart grid  
3 technology, it is necessary for this act to take effect immediately.

O

HEALTH  
IMPACTS OF **RADIO FREQUENCY**  
FROM **SMART METERS**

JANUARY 2011



## **ACKNOWLEDGMENTS**

We would like to thank the many people who provided input and feedback towards the completion of this report. Without the insightful feedback that these individuals generously provided, this report could not have been completed. We would like to give special thanks to the California Smart Grid Center, College of Engineering and Computer Science at the California State University, Sacramento and to the University of California's Center for Information Technology Research in the Interest of Society (CITRIS).

This report was conducted with the oversight of a CCST Smart Meter Project Team, whose members include: Rollin Richmond (Chair), Emir Macari, Patrick Mantey, Paul Wright, Ryan McCarthy, Jane Long, David Winickoff, and Larry Papay. We also thank J.D. Stack for his technical contributions and Lora Lee Martin for the overall coordination of this report response. We express gratitude to CCST's members and colleagues for their many contributions to the report.

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Cataloging Number in Publications Data Main Entry Under Title:  
Health Impacts of Radio Frequency From Smart Meters  
January 2011  
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CCST is a non-profit organization established in 1988 at the request of the California State Government and sponsored by the major public and private postsecondary institutions of California and affiliate federal laboratories in conjunction with leading private-sector firms. CCST's mission is to improve science and technology policy and application in California by proposing programs, conducting analyses, and recommending public policies and initiatives that will maintain California's technological leadership and a vigorous economy.

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For questions or comments on this publication contact:  
California Council on Science and Technology  
1130 K Street, Suite 280  
Sacramento, California 95814  
(916) 492-0996  
[ccst@ccst.us](mailto:ccst@ccst.us)

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## Letter from CCST

With rapidly emerging and evolving technologies, lawmakers at times find themselves pressed to make policy decisions on complex technologies. Smart meters are one such technology.

Smart meters are being deployed in many places in the world in an effort to create a new generation of utility service based on the concepts of a smart grid, one that is agile, efficient and cost effective.

The electricity crisis of 2000 and 2001 helped force the issue here in California, lending significant urgency to the need for better management of power generation and distribution. In 2006, the California Public Utilities Commission authorized the Pacific Gas and Electric Company to implement a relatively new technology, smart meters, to gather much more precise information about power usage throughout the state. The process of installing the meters throughout the state is still underway.

As with any new technology, there are unknowns involved. Smart meters generally work by transmitting information wirelessly. Some people have expressed concerns about the health effects of wireless signals, particularly as they become virtually ubiquitous. These concerns have recently been brought to the attention of state legislators, with some local municipalities opting to ban further installation of the meters in their communities.

We are pleased that Assembly Members Huffman and Monning have turned to CCST for input on this issue. It is CCST's charge to offer independent expert advice to the state government and to recommend solutions to science and technology-related policy issues. In this case, we have assembled a succinct but comprehensive overview of what is known about human exposure to wireless signals and the efficacy of the FCC safety standards for these signals. To do so, we assembled a project team that consulted with over two dozen experts and sifted through over a hundred articles and reports, providing a thorough, unbiased overview in a relatively rapid manner.

In situations where public sentiment urges policy makers to make policy decisions with potentially long-term consequences, access to the best information possible is critical. This is the role that CCST was created to fulfill.



Susan Hackwood  
Executive Director, CCST



Rollin Richmond  
Project Team Chair, CCST

**Health Impacts of Radio Frequency from Smart Meters  
Response to Assembly Members Huffman and Monning**

California Council on Science and Technology

January 2011

**KEY REPORT FINDINGS**

1. Wireless smart meters, when installed and properly maintained, result in much smaller levels of radio frequency (RF) exposure than many existing common household electronic devices, particularly cell phones and microwave ovens.
2. The current FCC standard provides an adequate factor of safety against *known thermally* induced health impacts of existing common household electronic devices and smart meters.
3. To date, scientific studies have not identified or confirmed negative health effects from *potential non-thermal* impacts of RF emissions such as those produced by existing common household electronic devices and smart meters.
4. Not enough is currently known about potential non-thermal impacts of radio frequency emissions to identify or recommend additional standards for such impacts

**OTHER CONSIDERATIONS**

Smart electricity meters are a key enabling technology for a "smart grid" that is expected to become increasingly clean, efficient, reliable, and safe at a potentially lower cost to the consumer. The CCST Smart Meter Project Team offers the following for further consideration by policy makers, regulators and the utilities. We appreciate that each of these considerations would likely require a cost/benefit analysis. However, we feel they should be considered as the overall cumulative exposure to RF emissions in our environment continues to expand.

1. As wireless technologies of all types increase in usage, it will be important to: (a) continue to quantitatively assess the levels of RF emissions from common household devices and smart meters to which the public may be exposed; and (b) continue to investigate potential thermal and non-thermal impacts of such RF emissions on human health.
2. Consumers should be provided with clearly understood information about the radiofrequency emissions of all devices that emit RF including smart meters. Such information should include intensity of output, duration and frequency of output, and, in the cases of the smart meter, pattern of sending and receiving transmissions to and from all sources.
3. The California Public Utilities Commission should consider doing an independent review of the deployment of smart meters to determine if they are installed and operating consistent with the information provided to the consumer.
4. Consideration could be given to alternative smart meter configurations (such as wired) in those cases where wireless meters continue to be concern to consumers.



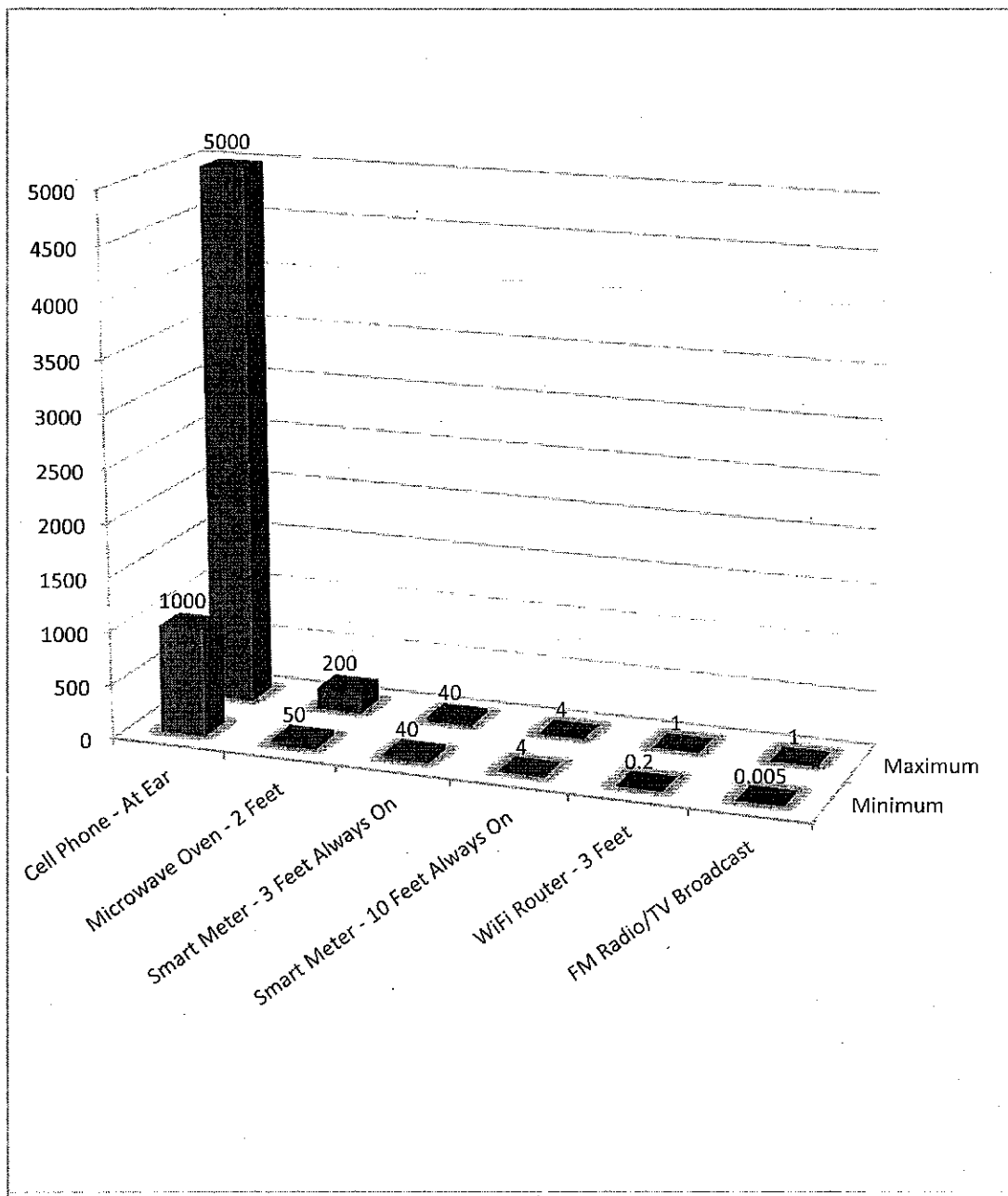


Figure 1. Comparison of Radio-Frequency Levels from Various Sources in  $\mu\text{W}/\text{cm}^2$

Note: Exposure levels in  $\mu\text{W}/\text{cm}^2$  obtained from Table 2 and converted from  $\text{mW}/\text{cm}^2$ . Smart meter figures represent 100% duty cycle (i.e., always on) as hypothetical maximum use case.

## Legislative Request

On July 30, 2010, California Assembly Member Jared Huffman wrote to the California Council on Science and Technology (CCST) to request that the Council perform an “independent, science-based study...[that] would help policy makers and the general public resolve the debate over whether smart meters present a significant risk of adverse health effects.” California Assembly Member Bill Monning signed onto the request with his own letter to CCST on September 15, 2010. The City of Mill Valley also sent a letter on September 20<sup>th</sup> supporting Assembly Member Huffman’s request for the study.

## Approach

Reflecting the requests of the Assembly Members, CCST agreed to compile and assess the evidence available to address:

- 1. Whether Federal Communications Commission (FCC) standards for smart meters are sufficiently protective of public health, taking into account current exposure levels to radiofrequency and electromagnetic fields.**
- 2. Whether additional technology-specific standards are needed for smart meters and other devices that are commonly found in and around homes, to ensure adequate protection from adverse health effects.**

CCST convened a Smart Meter Project Team composed of CCST Council and Board members, supplemented with additional experts in relevant fields (see Appendix A for Project Team members). The Project Team identified and reviewed over 100 publications and postings about smart meters and other devices in the same range of emissions, including research related to cell phone RF emissions, and contacted over two dozen experts in radio and electromagnetic emissions and related fields to seek their opinion on the two identified issues.

It is important to note that CCST has not undertaken primary research of its own to address these issues. This response is limited to soliciting input from technical experts and to reviewing and evaluating available information from past and current research about health impacts of RF emitted from electric appliances generally, and smart meters specifically. A subset of those contacted provided written input on the issues to CCST. This report has been extensively reviewed by the Project Team, experts in related fields, and has been subject to the CCST peer review process (see Appendix B). It has also been made available to the public for comment.

## Two Types of Radio Frequency Effects: Thermal and Non-thermal

Household electronic devices, such as cellular and cordless telephones, microwave ovens, wireless routers, and wireless smart meters produce RF emissions. Exposure to RF emissions may lead to thermal and non-thermal effects. Thermal effects on humans have been extensively studied and appear to be well understood. The Federal Communications Commission (FCC) has established guidelines to protect public health from known hazards associated with the thermal impacts of RF: tissue heating from absorbing energy associated with radiofrequency emissions. Non-thermal effects, however, including cumulative or prolonged exposure to lower levels of RF emissions, are not well understood. Some studies have suggested non-thermal effects may include fatigue, headache, irritability, or even cancer. *But these findings have not been scientifically established, and the mechanisms that might lead to non-thermal effects remain uncertain.* Additional research and monitoring is needed to better identify and understand potential non-thermal effects.

### Findings

Given the body of existing, *generally accepted scientific knowledge* regarding smart meters and similar electronic devices, CCST finds that:

1. **The FCC standard provides an adequate factor of safety against known *thermally induced health impacts of smart meters and other electronic devices in the same range of RF emissions.***

The potential for behavioral disruption from increased body tissue temperatures is the only biological health impact that has been consistently demonstrated and scientifically proven to result from absorbing RF within the band of the electromagnetic spectrum (EMF) that smart meters use. The Federal Communications Commission (FCC) has set a limit on the Standard Absorption Rate (SAR) from electronic devices, which is well below the level that has been demonstrated to affect behavior in laboratory animals. Smart meters, including those being installed by Pacific Gas and Electric Company (PG&E) in the Assembly Members' districts, if installed according to the manufacturers instructions and consistent with the FCC certification, emit RF that is a very small fraction of the exposure level established as safe by the FCC guidelines.

The FCC guidelines provide a significant factor of safety against thermal impacts that occur at the power levels and within the RF band used by smart meters. Given current scientific knowledge, the FCC guideline provides a more than adequate margin of safety against the known thermal effects.

2. **At this time there is no clear evidence that additional standards are needed to protect the public from smart meters or other common household electronic devices.**

No clear causal relationship between RF emissions and non-thermal human health impacts has been scientifically established, nor have the mechanisms that might lead to such a biological impact been clearly identified. Additional research is needed to better understand and verify these potential mechanisms.

Given the existing significant scientific uncertainty around non-thermal effects, there is currently no generally accepted definitive, evidence-based indication that additional standards are needed. Because of the lack of generally accepted evidence, there is also not an existing basis from which to understand what types of standards could be helpful or appropriate. Without a clearer understanding of the biological mechanisms involved identifying additional standards or evaluating the relative costs and benefits of those standards cannot be determined at this time.

CCST notes that in some of the studies reviewed, contributors have raised emerging questions from some in the medical and biological fields about the potential for biological impacts other than the thermal impact that the FCC guidelines address. A report of the National Academies identifies research needs and gaps and recommended areas of research to be undertaken to further understanding of long-term exposure to RF emissions from communication devices, particularly from non-thermal mechanisms that are not currently addressed by the FCC guidelines.<sup>1</sup> In our increasingly wireless society, smart meters account for a very small portion of RF emissions to which we are exposed. Concerns about human health impacts of RF emissions from smart meters should be considered in this broader context.

"Scientifically established", "generally accepted scientific knowledge" and other such references throughout this document are referencing information obtained through the scientific method. A scientific method consists of the collection of data through observation and experimentation, and the formulation and testing of hypotheses. These steps must be repeatable in order to predict future results. Scientific inquiry is generally intended to be as objective as possible, to reduce biased interpretations of results. Another basic expectation is to document, archive and share all data and methodology so they are available for careful scrutiny by other scientists, giving them the opportunity to verify results by attempting to reproduce them. This practice, called full disclosure, also allows statistical measures of the reliability of these data to be established.

Health concerns surrounding RF from smart meters are similar to those from many other devices that we use in our daily lives, including cordless and cellular telephones, microwave ovens, wireless routers, hair dryers, and wireless-enabled laptop computers. As detailed in the report, a comparison of electromagnetic frequencies from smart meters and other devices shows that the exposure level is very low.

<sup>1</sup> National Research Council (2008) *Identification of Research Needs Relating to Potential Biological or Adverse Health Effects of Wireless Communication*, The National Academies Press, Washington, D.C.

## What are Smart Meters?

Smart meters measure attributes of electricity, natural gas, or water as delivered to consumers and transmit that information (e.g., usage) digitally to utility companies. Some smart meters are also designed to transmit real-time information to the consumer. These smart meters replace traditional, analog meters and meter readers with an automated process that is expected to reduce operating costs for utilities, and potentially, costs for customers (see Figure 2).

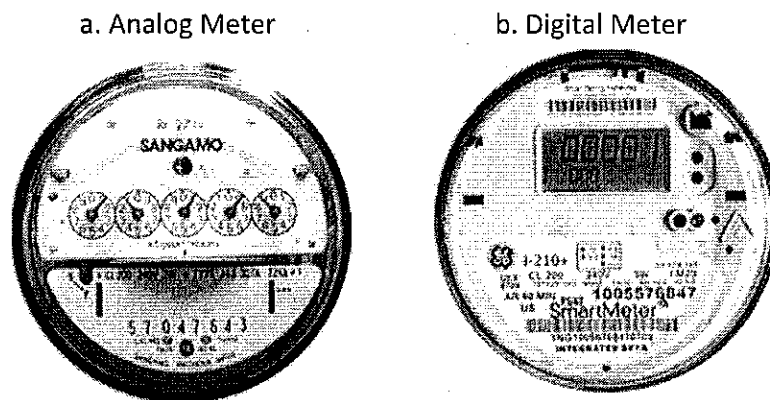


Figure 2. a) An analog, conventional meter and a (b) digital smart meter (Source: PG&E)

Each of California's major electricity utilities has begun deploying smart meter infrastructure.

There are many kinds of smart meters manufactured by a variety of companies. The meter, including sensors and the housing or casing, may be manufactured by one company while the communications device (installed within the meter) is manufactured by another. Depending upon the internal communications device employed, meters are configured to operate in a wired or in wireless environment. The smart meters used by PG&E are made by General Electric and Landis + Gyr and use a wireless communications technology from Silver Spring Networks. Each of these PG&E meters has two transmitters to provide two different communications of data from these meters.<sup>2</sup> The first provides for the "automatic meter reading" (AMR) function of the meter (and for more detailed and real time monitoring of the characteristics of the electrical energy delivered to the consumer) and sends this data to an access point, where it is collected along with data from many other customers and transmitted to PG&E using a wireless area network (WAN) (similar to the way cell phone communication works).

<sup>2</sup> Tell, R. (2008) "Supplemental Report on An Analysis of Radiofrequency Fields Associated with Operation of the PG&E Smart Meter Program Upgrade System," Prepared for Pacific Gas & Electric Company, Richard Tell Associates, Inc., October 27.

## SMART METER NETWORK COMPONENTS

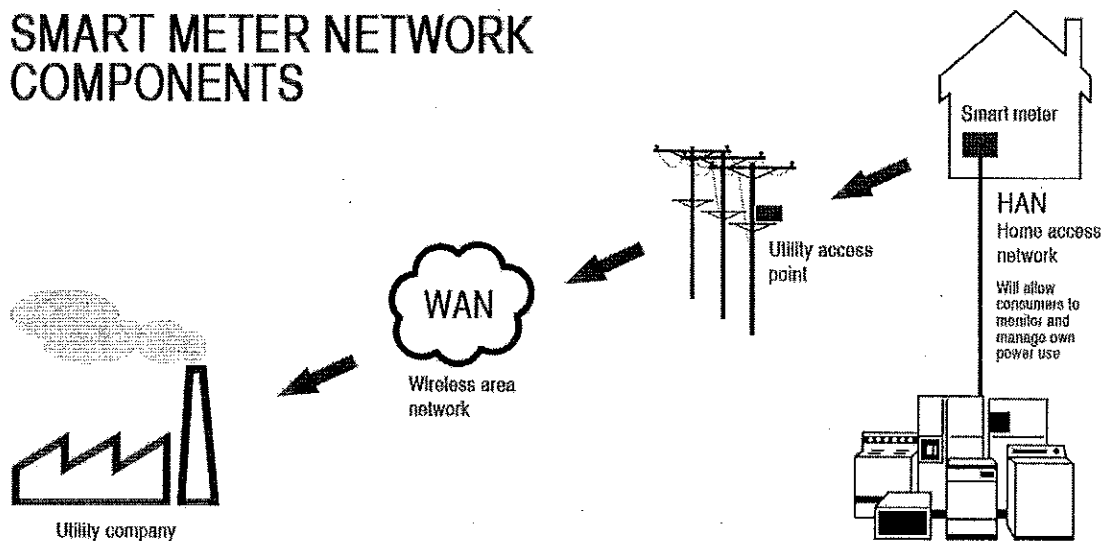


Figure 3. Simplified depiction of Smart Meter system network. Arrows show the use of radiofrequency (RF) signals for automated meter reading, communications among electric power meters, relays, access points, the company's enterprise management systems. The future home access network will operate within the house.

Smart meters have evolved from automatic meter reading (AMR; i.e., replacing meter readers) to a real time monitoring of power as delivered to the consumer by the utility company. CCST obtained from PG&E the Richard Tell Associates report, which describes the operation of the smart meter from the 2008 perspective of AMR, not a fully deployed real time smart grid. The Richard Tell Associates reports describe the use of the smart meter radios being deployed by PG&E as licensed by the FCC for a maximum power output of 1 W (watt) and within the 902-928 MHz (mega-hertz) frequency band. In its initial deployment, PG&E reports that it will configure the radios to transmit data from the meter to the access point once every four hours, for about 50 milliseconds at a time.<sup>3</sup> Accounting for this, the current duty cycles of the smart meter transmitter (that is, the percent of time that the meter operates) would then typically be 1 percent, or in some cases where the meter is frequently used as a relay, as much as 2-4 percent. *This means that the typical smart meter in this initial (AMR) use would not transmit any RF signal at least 96-98 percent of the time.*

It is important to note that any one smart meter is part of a broader "mesh" network and may act as a relay among other smart meters and utility access points. In addition, when the smart grid is fully functional the smart meters would be expected to be transmitting much more than once every four hours, providing data in near real-time, which will result in a much higher duty

<sup>3</sup> Tell, R. (2008) "Supplemental Report on An Analysis of Radiofrequency Fields Associated with Operation of the PG&E Smart Meter Program Upgrade System," Prepared for Pacific Gas & Electric Company, Richard Tell Associates, Inc., October 27.  
[http://www.pge.com/includes/docs/pdfs/shared/edusafety/systemworks/rfsafety/rf\\_fields\\_supplemental\\_report\\_2008.pdf](http://www.pge.com/includes/docs/pdfs/shared/edusafety/systemworks/rfsafety/rf_fields_supplemental_report_2008.pdf)

cycle. For purposes of this report we include a hypothetical scenario where the smart meter is continually transmitting. Even in this 100% duty cycle situation the power output would be well below the FCC limits.

Smart meters are designed to transmit data to a utility access point that is usually 25 feet above ground, on utility or light poles. These access points are designed to transmit data from up to 5,000 smart meters to the utility company. Access points have a similar AMR transmitter as smart meters, as well as an additional *AirCard*, which communicates with utilities and is similar to wireless cards used in laptop computers. *AirCards* typically operate at 0.25-1 W, in the 800-900 MHz or 1.9 GHz range.

In some cases, data is moved through the mesh network, relaying the data through other meters to the utility access point. This may occur when the topography or built environment interferes with the transmission of data from a smart meter to the access point. In these cases, the relaying of data may occur between one smart meter and another before the signal is sent to the utility access point (e.g., hops along a set of meters). Additionally, some non-meter data relays will also exist in the system to connect some smart meters to utility access points.

*Many smart meters, including those from PG&E, also have a second transmitter that, at some future point in time, will allow customers to enable a home access network (HAN). The HAN will allow increased consumer monitoring of electricity use and communication among appliances and the future smart grid. This functionality is important to achieve the full potential of the smart grid. This second internal transmitter, for delivery of smart meter data to the consumer, reportedly will operate at a rated power of 0.223W, at frequency of about 2.4 GHz (again, similar to that of cell phones and wireless phones). The actual duty cycle of this transmitter will depend on the design and operation of the home area network.*

### **Why are Smart Meters Being Installed Throughout California?**

It is anticipated, when fully operational, that smart electricity meters are a key enabling technology for a "smart grid" that is expected to become increasingly clean, efficient, reliable, and safe (see Figure 3) at a potential lower cost to the consumer. (Digital meters are also being used for reading of natural gas and water consumption). Smart electrical meters allow direct two-way communication between utilities and customers, which is expected to help end users adjust their demand to price changes that reflect the condition of the electricity grid. These end user adjustments can help to protect the overall reliability of the electricity grid, cut costs for utility customers, and improve the operation and efficiency of the electricity grid. The smart grid will enable grid operators to better balance electricity supply and demand in real-time, which becomes increasingly important as more intermittent wind and solar generation resources are added to the grid.

Figure 4 depicts the potential operation of a smart grid.

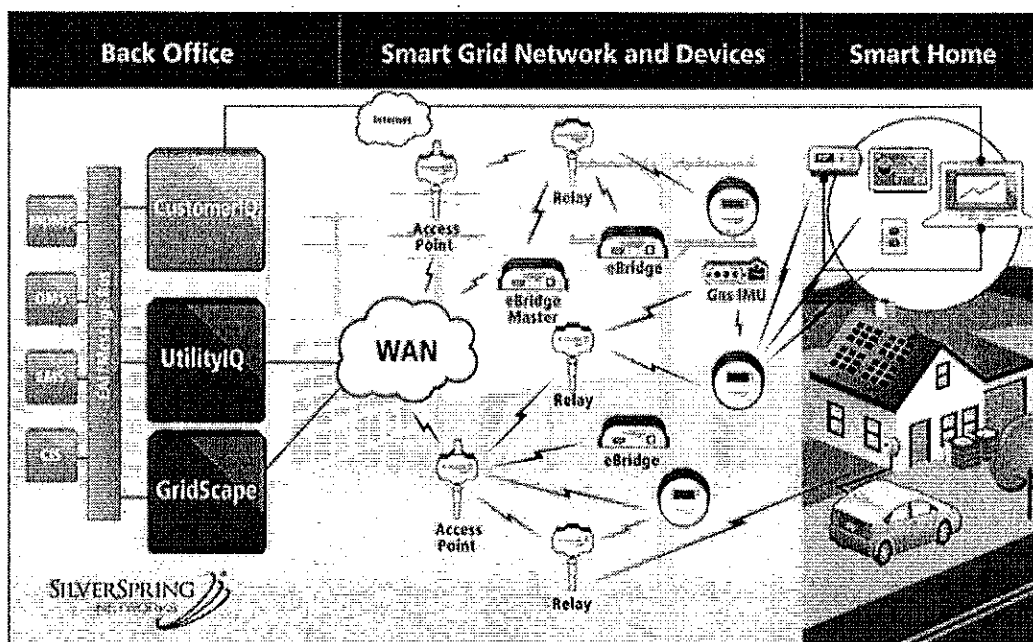


Figure 4. Illustration of components of the PG&E Smart Meter Program Upgrade showing the use of radiofrequency (RF) signals for communications among electric power meters, relays, access points and, ultimately, the company's enterprise management systems. (Source Silver Spring Network<sup>4</sup>)

Smart meters will also allow utilities to communicate grid conditions to customers through price signals, so that consumers, via their HAN, can delay non-time sensitive demands (such as clothes drying) to a time when electricity is cheapest or has the most benefit to the reliability of the system. In some cases wireless signals interior to the structure will also be able to automatically adjust the heating and ventilation systems and to adjust heat or air conditioning units. This adaptation to price or reliability signals could reduce overall electricity costs for customers, improve the utilization of renewable and non-renewable power plants, and cut costs associated with adding intermittent wind and solar resources to the grid.

While such long-term value of smart meters will take years to fully realize, they are sufficiently promising that the federal government has required utilities to take steps to implement smart

<sup>4</sup> See <http://www.silverspringnet.com/products/index.html> for component descriptions. Network infrastructure includes the Silver Spring Access Points (APs) and Relays that forward data from endpoints across the utility's backhaul or WAN infrastructure into the back office.

The UtilityIQ application suite incorporates both utility applications such as Advanced Metering and Outage Detection as well as administrative programs for managing and upgrading the network. GridScape provides management for DA communications networks.

The CustomerIQ web portal enables utilities to directly communicate usage, pricing, and recommendations to consumers. Silver Spring works with each utility to customize the information portrayed and to import utility-specific information such as rate schedules.



grid networks, including the use of smart meters.<sup>5</sup> After review and authorization from the California Public Utilities Commission,<sup>6</sup> utilities in California have begun to install smart meters throughout the state. Some California utilities (such as Sacramento Municipal Utility District) have received significant federal funding for smart meter deployment from the American Recovery and Reinvestment Act (federal stimulus package). Many countries around the world are actively deploying smart meters as well. Digital smart meters are generally considered to be the fundamental technology required to enable widespread integration of information technology (IT) into the power grid (i.e., the smart grid). The following table (table 1) summarizes some potential societal benefits expected to result from the smart grid.

**Table 1: Smart Grid Benefits**

<p style="text-align: center;"><b><u>Consumers</u></b></p> <ol style="list-style-type: none"> <li>1. Cost Savings Resulting from Energy Efficiency</li> <li>2. Increased Consumer Choice and Convenience</li> <li>3. More Transparent, Real-Time Information and Control for Consumers</li> </ol>	<p style="text-align: center;"><b><u>Environment</u></b></p> <ol style="list-style-type: none"> <li>1. Widespread Deployment of Renewable Energy (Solar, Wind, Biofuels) and Electric Vehicles (EVs)</li> <li>2. Reduced Need to Build More Fossil Fueled Power plants</li> <li>3. Reduced Carbon Footprint and Other Pollutants (via Renewables, Energy Efficiency, Electric Vehicles)</li> </ol>
<p style="text-align: center;"><b><u>Utilities</u></b></p> <ol style="list-style-type: none"> <li>1. Reduced Cost Due to Increased Efficiencies in Delivering Electricity and Reduction in Manpower to Read Meters.</li> <li>2. Improved Reliability and More Timely Outage Response</li> <li>3. Increased Customer Satisfaction Due to Cost Savings and Self-Control</li> </ol> <p><i>Source: California Smart Grid Center</i></p>	<p style="text-align: center;"><b><u>Economy</u></b></p> <ol style="list-style-type: none"> <li>1. Creates New Market for Goods and Services (i.e., New Companies, New Jobs)</li> <li>2. Up-skilling Workforce to be Prepared for New Jobs</li> <li>3. Reduced Dependence on Foreign Oil, Keeps Dollars at Home</li> </ol>

### **What Health Concerns are Associated with Smart Meters?**

Human health impacts from exposure to electromagnetic frequency (EMF) emissions vary depending on the frequency and power of the fields. Smart meters operate at low power and in the RF portion of the electromagnetic spectrum. At these levels, RF emissions from smart

<sup>5</sup> The federal Energy Independence and Security Act of 2007 directs states to encourage utilities to initiate smart grid programs, allows recovery of smart grid investments through utility rates, and reimburses 20% of qualifying smart grid investments. The American Recovery and Reinvestment Act of 2009 provided \$4.5 billion to develop smart grid infrastructure in the U.S. For more information, see: Congressional Research Service (2007) "Energy Independence and Security Act of 2007: A Summary of Major Provisions," CRS Report for Congress, Order Code RL341294, December 21. ([http://energy.senate.gov/public\\_files/RL342941.pdf](http://energy.senate.gov/public_files/RL342941.pdf))

<sup>6</sup> California Public Utilities Commission decision on Application 07-12-009 (March 12, 2009). Decision on Pacific Gas and Electric Company's Proposed Upgrade to the Smartmeter Program.

meters are unlikely to produce *thermal effects*; however it is not scientifically confirmed whether or what the non-thermal effects on living organisms, and potentially, human health might be. These same concerns over potential impacts should apply to all other electronic devices that operate with similar frequency and power levels, including cell phones, computers, cordless phones, televisions, and wireless routers. Any difference in health impacts from these devices is likely to be a result of differences in usage patterns among them.

### **Thermal Effects**

Electromagnetic waves carry energy, and EMF absorbed by the body can increase the temperature of human tissue. The scientific consensus is that body temperatures must increase at least 1°C to lead to potential biological impacts from the heat. The only scientifically verified effect that has been shown to occur in the power and frequency range that smart meters are designed to occupy is a disruption in animal feeding behavior at energy exposure levels of 4 W/kg and with an accompanying increase in body temperature of 1°C or more.<sup>7</sup> The exposure levels from smart meters even at close range are far below this threshold. The FCC has set limits on power densities from electronic devices that are well below the level where demonstrated biological impacts occur, and the limits are tens or hundreds of times higher than likely exposure from smart meters.<sup>8</sup>

### **Non-thermal Effects**

There are emerging questions in the medical and biological fields about potential harmful effects caused by non-thermal mechanisms of absorbed RF emissions. Complaints of health impacts from “electromagnetic stress” have been reported, with symptoms including fatigue, headache, and irritability. Some studies have suggested that RF absorption from mobile phones may disrupt communication between human cells, which may lead to other negatives impacts on human biology.<sup>9,10</sup> While concerns of brain cancer associated with mobile phone usage persist, there is currently no definitive evidence linking cell phone usage with increased incidence of cancer.<sup>11</sup> But due to the recent nature of the technology, impacts of long-term exposure are not known. Ongoing scientific study is being conducted to understand non-thermal effects from long-term exposure to mobile phones and smart meters, etc., especially

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<sup>7</sup> D'Andrea, J.A., Adair, E.R., and J.O. de Lorge (2003) Behavioral and cognitive effects of microwave exposure, *Bioelectromagnetics Suppl* 6, S39-62 (2003).

<sup>8</sup> Tell, R. (2008) “Supplemental Report on An Analysis of Radiofrequency Fields Associated with Operation of the PG&E Smart Meter Program Upgrade System,” Prepared for Pacific Gas & Electric Company, Richard Tell Associates, Inc., October 27.  
([http://www.pge.com/includes/docs/pdfs/shared/edusafety/systemworks/rfsafety/rf\\_fields\\_supplemental\\_report\\_2008.pdf](http://www.pge.com/includes/docs/pdfs/shared/edusafety/systemworks/rfsafety/rf_fields_supplemental_report_2008.pdf))

<sup>9</sup> Markova, E., Malmgren, L., and I.Y. Belyaev (2009) Microwaves from mobile phones inhibit 53PB1 focus formation in human stem cells stronger than in differentiated cells: Possible mechanistic link to cancer risk. *Environmental Health Perspectives*, doi:10.1289/ehp.0900781.

<sup>10</sup> Nittby, H., Grafstrom, G., Eberhardt, J.L., Malmgren, L., Brun, A., Persson B.R.R., and L.G. Salford (2008) Radiofrequency and Extremely Low-Frequency Electromagnetic Field Effects on the Blood-Brain Barrier *Electromagnetic Biology and Medicine*, 27: 103–126, 2008.

<sup>11</sup> Ahlbom, A., Feychting, M., Green, A., Kheifets, L., Savitz, D. A., and A. J. Swerdlow (2009) Epidemiologic evidence on mobile phones and tumor risk: a review. *Epidemiology* 20, 639-52 (2009).

the cumulative impact from all RF emitting devices including that of a network of smart meters operating throughout a community.<sup>12</sup>

There currently is no conclusive scientific evidence pointing to a non-thermal cause-and-effect between human exposure to RF emissions and negative health impacts. For this reason, regulators and policy makers may be prudent to call for more research while continuing to base acceptable human RF exposure limits on currently proven scientific and engineering findings on known thermal effects, rather than on general concerns or speculation about possible unknown and as yet unproven non-thermal effects. Such questions will likely take considerable time to resolve. The data that are available strongly suggest that if there are non-thermal effects of RF absorption on human health, such effects are not so profound as to be easily discernable.

### **FCC Guidelines Address Known Thermal Effects Only, not Non-thermal Effects**

In 1985, the FCC first established guidelines to limit human exposure and protect against thermal effects of absorbed RF emissions. The guidelines were based on those from the American National Standards Institute (ANSI) that were issued in 1982.<sup>13</sup> In 1996, the FCC modified its guidelines,<sup>14</sup> based on a rulemaking process that began in 1993 in response to a 1992 revision of the ANSI guidelines<sup>15, 16</sup> and findings by the National Council on Radiation Protection and Measurements (NCRP).<sup>17</sup> The 1996 guidelines are still in place today.

In its rulemaking process to set SAR and MPE limits, the FCC relied on many federal health and safety agencies, including the U.S. Environmental Protection Agency and the Food and Drug Administration. While the FCC guidelines appear to provide a large factor of safety against known thermal effects of exposure to radiofrequency, they do not necessarily protect against potential non-thermal effects, nor do they claim to.<sup>18</sup> Without additional understanding of these effects, there is inadequate basis to develop additional guidelines at this time.

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<sup>12</sup> National Research Council (2008) *Identification of Research Needs Relating to Potential Biological or Adverse Health Effects of Wireless Communication*, The National Academies Press, Washington, D.C. (<http://www.nap.edu/catalog/12036.html>)

<sup>13</sup> American National Standards Institute (1982) "American National Standard Radio Frequency Radiation Hazard Warning Symbol," ANSI C95.2-1982, Institute of Electrical and Electronics Engineers, Inc.

<sup>14</sup> FCC (1997) "Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields," OET Bulletin 65 (Edition 97-01), Federal Communications Commission, August. ([http://www.fcc.gov/Bureaus/Engineering\\_Technology/Documents/bulletins/oet65/oet65.pdf](http://www.fcc.gov/Bureaus/Engineering_Technology/Documents/bulletins/oet65/oet65.pdf))

<sup>15</sup> American National Standards Institute (1992) "Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz," ANSI/IEEE C95.1-1992 (previously issued as IEEE C95.1-1991), Institute of Electrical and Electronics Engineers, Inc.

<sup>16</sup> American National Standards Institute (1992) "Recommended Practice for the Measurement of Potentially Hazardous Electromagnetic Fields – RF and Microwave," ANSI/IEEE C95.3-1992, Institute of Electrical and Electronics Engineers, Inc.

<sup>17</sup> NCRP (1986) "Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields," NCRP Report No. 86 (1986), National Council on Radiation Protection Measurements.

<sup>18</sup> The U.S. EPA confirmed this in a letter to The Electromagnetic Radiation Policy Institute, dated March 8, 2002. ([http://www.emrpolity.org/litigation/case\\_law/docs/noi\\_epa\\_response.pdf](http://www.emrpolity.org/litigation/case_law/docs/noi_epa_response.pdf))

The FCC guidelines measure exposure to RF emissions in two ways. Specific absorption rate (SAR) measures the rate of energy absorption and is measured in units of watts-per-kilogram of body weight (W/kg). It accounts for the thermal effects on human health associated with heating body tissue and is used as a limiting measurement for wireless devices, such as mobile phones, that are used in close proximity to human tissue.<sup>19</sup> The FCC limits, as well as the underlying ANSI and NCRP limits, are based on a SAR threshold of 4 W/kg. At the time of the FCC rulemaking, and still today, behavioral disruption in laboratory animals (including non-human primates) at this absorption rate is the only adverse health impact that has been clearly linked to RF at levels similar to those emitted by smart meters. This finding is supported in scientific literature<sup>20, 21</sup> and by the World Health Organization and many health agencies in Europe.<sup>22, 23</sup> The FCC limit of 1.6 W/kg provides a significant factor of safety against this threshold.

Limits on SAR provide the basis for another measurement of exposure, maximum permissible exposure (MPE). MPE limits average exposure over a given time period (usually 30 minutes for general exposure) from a device and is often used for exposure to stationary devices and where human exposure is likely to occur at a distance of more than 20 cm. It is measured in micro ( $10^6$ ) watts-per-square-centimeter ( $\mu\text{W}/\text{cm}^2$ ), and accounts for the fact that the human body absorbs energy more efficiently at some radiofrequencies than others. The human body absorbs energy most efficiently in the range of 30-300 MHz, and the corresponding MPE limits for RF emissions in this range are consequently the most stringent. In the frequency bands where smart meters operate, including PG&E's, namely the 902-928 MHz band and 2.4 GHz range, the human body absorbs energy less efficiently, and the MPE limits are less restrictive.

The FCC limits on MPE are summarized in Figure 5.<sup>24, 25</sup> At 902 MHz, appropriate for operation of the AMR transmitter of the smart meter, the FCC limit is  $601 \mu\text{W}/\text{cm}^2$ . At higher frequencies,

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<sup>19</sup> FCC (2001) "Additional Information for Evaluating Compliance of Mobile and Portable Devices with FCC Limits for Human Exposure to Radiofrequency Emissions," Supplement C (Edition 01-01) to OET Bulletin 65 (Edition 97-01), Federal Communications Commission, June.

([http://www.fcc.gov/Bureaus/Engineering\\_Technology/Documents/bulletins/oet65/oet65c.pdf](http://www.fcc.gov/Bureaus/Engineering_Technology/Documents/bulletins/oet65/oet65c.pdf))

<sup>20</sup> D'Andrea, J.A., Adair, E.R., and J.O. de Lorge (2003) Behavioral and cognitive effects of microwave exposure, *Bioelectromagnetics* Suppl 6, S39-62 (2003).

<sup>21</sup> Sheppard, A.R, Swicord, M. L., and Q. Balzano (2008) Quantitative evaluations of mechanisms of radiofrequency interactions with biological molecules and processes, *Health Phys* 95, 365-96 (2008).

<sup>22</sup> The World Health Organization has reviewed international guidelines for limiting radiofrequency exposure and scientific studies related to human health impacts and concludes that exposure below guideline limits don't appear to have health consequences. (<http://www.who.int/peh-emf/standards/en/>)

<sup>23</sup> Committee on Man and Radiation (COMAR) (2009) "Technical Information Statement: Expert reviews on potential health effects of radiofrequency electromagnetic fields and comments on The Bioinitiative Report," *Health Physics* 97(4):348-356 (2009).

<sup>24</sup> FCC (1997) "Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields," OET Bulletin 65 (Edition 97-01), Federal Communications Commission, August.

([http://www.fcc.gov/Bureaus/Engineering\\_Technology/Documents/bulletins/oet65/oet65.pdf](http://www.fcc.gov/Bureaus/Engineering_Technology/Documents/bulletins/oet65/oet65.pdf))

<sup>25</sup> FCC (1999) "Questions and Answers about Biological Effects and Potential Hazards of Radiofrequency Electromagnetic Fields," OET Bulletin 56 (Fourth Edition), Federal Communications Commission, August. ([http://www.fcc.gov/Bureaus/Engineering\\_Technology/Documents/bulletins/oet56/oet56e4.pdf](http://www.fcc.gov/Bureaus/Engineering_Technology/Documents/bulletins/oet56/oet56e4.pdf))

the human body absorbs even less energy, and the threshold for the 2.4 GHz transmitter for home area network communications is consequently higher, 1000  $\mu\text{W}/\text{cm}^2$ .

PG&E commissioned a 2008 study by Richard Tell Associates, "Supplemental Report on An Analysis of Radiofrequency Fields Associated with Operation of the PG&E Smart Meter Program Upgrade System." In this study of PG&E's proposed smart meter network it is noted that the FCC limits on MPE include a factor of safety, and the perceived hazardous exposure level is 50 times higher than the FCC limits.<sup>26</sup> The study estimates that the highest exposure from smart meters, if an individual were standing directly in front of and next to the meter, would be 8.8  $\mu\text{W}/\text{cm}^2$  transmitting at 2 to 4% of the time. The study notes that this is almost 70 times less than the FCC limit and 3,500 times less than the demonstrated hazard level. In all likelihood, individuals will be much farther away from smart meters and likely behind them, (within a structure) where power density will be much lower. The highest exposure from the entire smart meter system would occur immediately adjacent to an access point. It is very unlikely that an individual would be immediately adjacent to an access point, as they are normally located 25 feet above the ground on a telephone or electrical pole or other structure. The peak power density from an access point is estimated to be 24.4  $\mu\text{W}/\text{cm}^2$ , or about 25 times less than the FCC limit. From the ground, exposure to power density from access points is estimated to be 15,000 times less than the FCC limit in great part due to the distance from the device.

The PG&E commissioned report by Richard Tell Associates is based only on an AMR duty cycle of transmitting data once every four hours which results in this very low estimated peak power. However, we are not aware of the justification for using averaging over a four-hour period. We do know the FCC<sup>27</sup> allows averaging of exposure over a designated period (30 minutes). To truly be a smart grid the data will be transmitted at a much more frequent rate than this. In this report we look at the worst-case scenario, a meter that is stuck in the "on" position, constantly relaying, at a 100% duty cycle. Even in this 100% scenario the RF emissions would be measurably below the FCC limits for thermal effects.

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<sup>26</sup> Tell, R. (2008) "Supplemental Report on An Analysis of Radiofrequency Fields Associated with Operation of the PG&E Smart Meter Program Upgrade System," Prepared for Pacific Gas & Electric Company, Richard Tell Associates, Inc., October 27. ([http://www.pge.com/includes/docs/pdfs/shared/edusafety/systemworks/rfsafety/rf\\_fields\\_supplemental\\_report\\_2008.pdf](http://www.pge.com/includes/docs/pdfs/shared/edusafety/systemworks/rfsafety/rf_fields_supplemental_report_2008.pdf))

<sup>27</sup> [http://www.fcc.gov/Bureaus/Engineering\\_Technology/Documents/bulletins/oet56/oet56e4.pdf](http://www.fcc.gov/Bureaus/Engineering_Technology/Documents/bulletins/oet56/oet56e4.pdf)

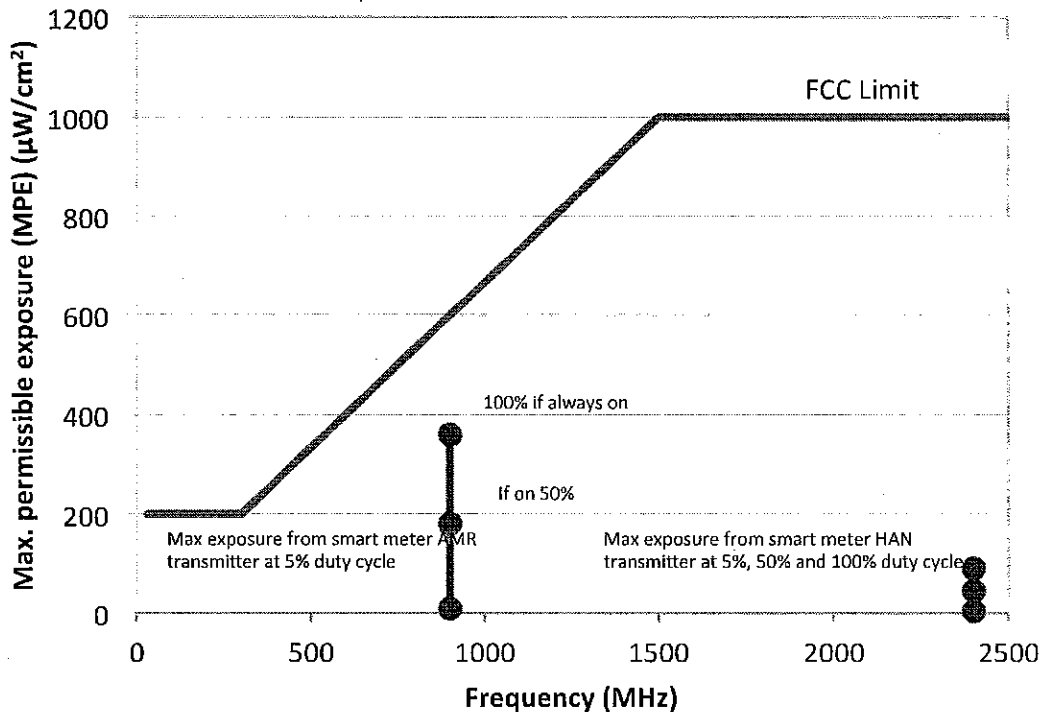


Figure 5. FCC maximum permissible exposure limits on power density rise with frequency because the human body can safely absorb more energy at higher frequencies. The estimated maximum exposure from a 1-Watt AMR transmitter at 5% duty cycle (i.e., 72 minutes/day) and one-foot distance is  $18 \mu\text{W}/\text{cm}^2$ , or 3% of the FCC limit. Even if a meter malfunctioned and was stuck in the always-on transmit mode (i.e., 100% duty cycle), exposure levels would be 60% of the FCC limit for an AMR transmitter. For a 250mW HAN transmitter at a 5% duty cycle, the level would be .45% of the FCC limit and 9% of the FCC limit if the transmitter were on 100%. Exposure figures derived from November 2010 Electric Power Research Institute (EPRI) field measurement study entitled "Radio Frequency Exposure Levels from Smart Meters".<sup>28</sup>

### Power Density (and Exposure Level) Declines Rapidly with Distance

The power density from smart meters, or other devices that emit RF, falls off dramatically with distance. Figure 6 illustrates this affect for an example smart meter. While the estimated maximum exposure level at 1 foot from the meter with a duty cycle of 50% is  $180 \mu\text{W}/\text{cm}^2$  (far below the FCC guidelines), at a distance of about 10 feet, the power-density exposure approaches zero.

<sup>28</sup> EPRI (2010) "Radio Frequency Exposure Levels from Smart Meters," Electric Power Research Institute, November 2010.

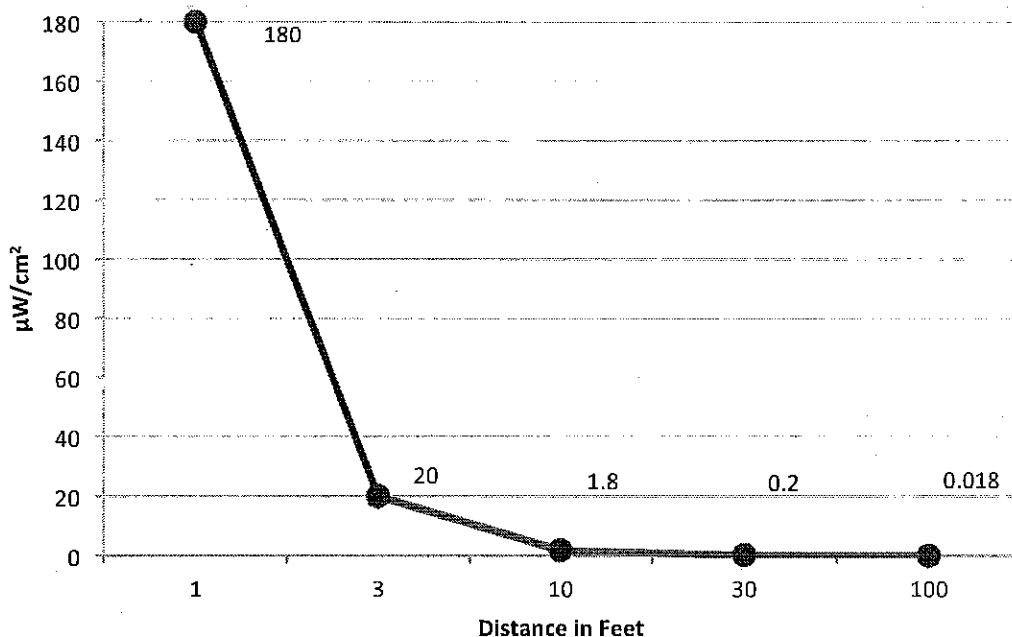


Figure 6. Power density from a sample smart meter versus distance;<sup>29</sup> 1-Watt emitter at 50% duty cycle. Typical smart meter AMR transmitter power density declines rapidly with distance. The rapid drop of power density with distance (inverse-square law) is similar for various duty cycles and different sets of source data.

### Comparison of Electromagnetic Frequencies from Smart Meters and Other Devices

Health concerns surrounding RF from smart meters are similar to those from many other devices that we use in our daily lives, including cordless and mobile telephones, microwave ovens, wireless routers, hair dryers, and wireless-enabled laptop computers.

In addition to slight differences in frequency and power levels, which affect human absorption of RF from these devices, the primary difference among them is how they are used. Cell phones, for example, are often used for many minutes at a time, several times over the course of a day, and held directly next to one's head.

For perspective, microwave ovens operate at a similar frequency as the HAN transmitter of smart meters (2.45 GHz), and the U.S. Food and Drug Administration has set limits on leakage levels that are five times higher (5,000 µW/cm<sup>2</sup>) than the FCC limit for smart meters and other devices operating at 2.4 GHz.<sup>30</sup> Wireless routers and Wi-Fi equipment produce radiofrequency

<sup>29</sup> EPRI (2010) "Radio Frequency Exposure Levels from Smart Meters," Electric Power Research Institute, November 2010.

<sup>30</sup> FDA, "Summary of the Electronic Product Radiation Control Provisions of the Federal Food, Drug, and Cosmetic Act," U.S. Food and Drug Administration. (<http://www.fda.gov/Radiation-EmittingProducts/ElectronicProductRadiationControlProgram/LawsandRegulations/ucm118156.htm>)

fields of about  $0.2 - 1.0 \mu\text{W}/\text{cm}^2$ .<sup>31, 32, 33</sup> People in metropolitan areas are exposed to radiofrequency from radio and television antennas, as well, although for most of the population, exposure is quite low, around  $0.005 \mu\text{W}/\text{cm}^2$ .<sup>34</sup>

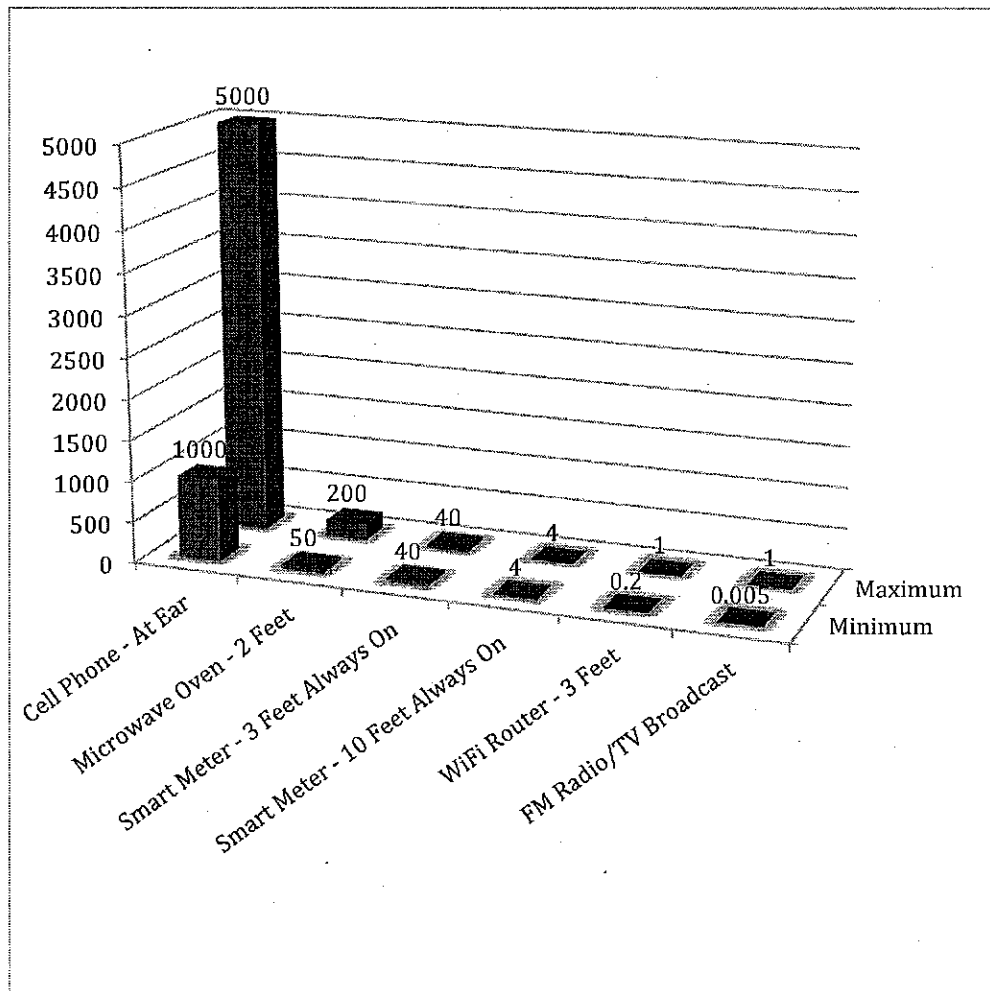


Figure 7. Comparison of Radio-Frequency Levels from Various Sources in  $\mu\text{W}/\text{cm}^2$

Note: Exposure levels in  $\mu\text{W}/\text{cm}^2$  obtained from Table 2 and converted from  $\text{mW}/\text{cm}^2$ . Smart meter figures represent 100% duty cycle (i.e., always on) as hypothetical maximum use case.

<sup>31</sup> "Radio-Frequency Exposure Levels from Smart Meters", white paper by Rob Kavet and Gabor Mezei of the Electric Power Research Institute (EPRI), November 2010.

<sup>32</sup> Foster, K.R. (2007) Radiofrequency exposure from wireless LANS utilizing WI-FI technology. *Health Physics*, Vol. 92, No. 3, March, pp. 280-282.

<sup>33</sup> Schmidt, G. et al. (2007) Exposure of the general public due to wireless LAN applications in public Places, *Radiation Protection Dosimetry*, Vol. 123, No. 1, Epub June 11, pp. 48-52.

<sup>34</sup> EPA (1986) The Radiofrequency Radiation Environment: Environmental Exposure Levels and RF Radiation Emitting Sources, EPA 520/1-85-014, U.S. Environmental Protection Agency, July.



**Table 2: Radio-Frequency Levels from Various Sources**

Source	Frequency	Exposure Level (mW/cm <sup>2</sup> )	Distance	Time	Spatial Characteristic
Mobile phone	900 MHz, 1800 MHz	1–5	At ear	During call	Highly localized
Mobile phone base station	900 MHz, 1800 MHz	0.000005–0.002	10s to a few thousand feet	Constant	Relatively uniform
Microwave oven	2450 MHz	~50.05-0.2	2 inches-2 feet	During use	Localized, non-uniform
Local area networks	2.4–5 GHz	0.0002–0.001 0.000005–0.0002	3 feet	Constant when nearby	Localized, non-uniform
Radio/TV broadcast	Wide spectrum	0.001 (highest 1% of population) 0.000005 (50% of population)	Far from source (in most cases)	Constant	Relatively uniform
Smart meter	900 MHz, 2400 MHz	0.0001 (250 mW, 1% duty cycle)	3 feet	When in proximity during transmission	Localized, non-uniform
		0.002 (1 W, 5% duty cycle)			
		0.000009 (250 mW, 1% duty cycle)	10 feet		
		0.0002 (1 W, 5% duty cycle)			

Source: Electric Power Research Institute (EPRI), Radio Frequency Exposure Levels from Smart Meters (November 2010)

## What is Duty Cycle and How Does it Affect Human Health?

Duty cycle refers to the fraction of time a device is transmitting. For instance, a duty cycle of 1% means the device transmits RF energy 1% of a given time period. One percent of the time in a day is equivalent to 14.4 minutes per day. *The duty cycle, or signal duration is an often-overlooked factor when comparing exposures from different kinds of devices (e.g., mobile phones, Wi-Fi routers, smart meters, microwave ovens, FM radio/TV broadcast signals).*

Duty cycles of various devices vary considerably. The duty cycle of AM/FM radio/TV broadcasts, are 100%; in other words, they are transmitting continuously. Mobile phones usage varies widely from user to user, of course. However, the national average use is about 450 minutes per month. This usage equates to a 1% duty cycle for the “average” user.

From information that CCST was able to obtain we understand that the smart meter transmitter being used by PG&E operates with a maximum power output of 1 W (watt) and within the 902-928 MHz (mega-hertz) frequency band. Each smart meter is part of a broader “mesh” network and may act as a relay between other smart meters and utility access points. The transmitter at each smart meter will be idle some of the time, with the percent of time idle (not transmitting) depending on the amount and schedule of data transmissions made from each meter, the relaying of data from other meters that an individual meter does, and the networking protocol (algorithm) that manages control and use of the communications paths in the mesh network.

Theoretically the transmit time could increase substantially beyond today's actual operation level if new applications and functionality are added to the meter's communication module in the future. For a hypothetical “worst case” illustration (i.e., if the meter malfunctioned and was stuck in the transmit mode), an absolute upper end duty cycle would be 100%, where the transmitter is always on. The table below compares the effect of different duty cycles against the FCC guidelines for human exposure limits.

Typical Smart Meter Operation With Repeater Activity	Scaled Hypothetical Maximum Use Case (i.e., always on)
5% Duty Cycle	100% Duty Cycle
72 minutes/day	24 hours/day
3% of FCC limit	60% of FCC limit

Source data on operating duty cycles (i.e., first column) from Electric Power Research Institute (EPRI) actual field testing of smart meters, as reported in *Radio Frequency Exposure Levels from Smart Meters*, November 2010. Second column hypothetical maximum case derived through extrapolation of first column data. Both exposure levels at 1 foot distance.

*In summary, the duty cycles of smart meters in typical meter-read operation and added maximum-case repeater operation result in exposures that are 3% of the FCC exposure guidelines. Even in a hypothetical always-on scenario the maximum exposure would be about 60% of the FCC limit, which provides a wide safety margin from known thermal effects of RF emissions.*

### **What About Exposure Levels from a Bank of Meters and from Just Behind the Wall of a Single Meter?**

In a November 2010 study Electric Power Research Institute (EPRI)<sup>35</sup> field tested exposure levels from a bank of 10 meters of 250 mW power level at one foot distance in order to simulate a bank of smart meters located at a multifamily building, such as an apartment house. The exposure level was equivalent to 8% of the FCC standard.

In the same study EPRI measured exposure of one meter from eight inches *behind* the meter panel box in order to simulate proximity on the opposite site of the meter wall. At 5% duty cycle it yielded an exposure of only 0.03% of the FCC standard. Even at 100% duty cycle (i.e., always transmitting), exposure at eight inches behind the meter was 0.6% of the FCC limit.

### **Is the FCC Standard Sufficient to Protect Public Health?**

The FCC guidelines do provide a significant factor of safety against thermal impacts the only currently understood human health impact that occurs at the power level and within the frequency band that smart meters use. In addition to the factor of safety built into the guidelines, at worst, human exposure to RF from smart meter infrastructure operating at even 50% duty cycle will be significantly lower than the guidelines. While additional study is needed to understand potential non-thermal effects of exposure to RF and effects of cumulative and prolonged exposure to several devices emitting RF, given current scientific knowledge the FCC guideline provides an adequate margin of safety against known thermal effects.

### **Are Additional Technology-specific Standards Needed?**

The FCC guidelines protect against thermal effects of RF exposure. Many non-thermal effects have been suggested, and additional research is needed to better understand and scientifically validate them.

Given the scientific uncertainty around non-thermal effects of all RF emitting equipment, at this time there is no clear indication of what, if any, additional standards might be needed. Neither is there a basis from which to understand what types of standards could be helpful or appropriate. Without a clear understanding of the biological mechanisms at play, the costs and benefits of additional standards for RF emitting devices including smart meters, cannot be determined at this time.

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<sup>35</sup> EPRI (2010) "A perspective on radio-frequency exposure associated with residential automatic meter reading technology," Electric Power Research Institute, February.

## **Public Information and Education**

It is important that consumers have clear and easily understood information about smart meter emissions as well as readily available access to clear, factual information and education on known effects of RF emissions at various field strengths and distances from an array of devices commonly found in our world.

Equipped with this information, people can make knowledgeable judgments about how to prudently minimize possible risks to themselves and their families by utilizing standards-compliant devices at known safe distances. Also, people will be better able to gauge relative field strengths of various RF sources in our everyday environment (e.g., mobile phones, electric blankets, clock radios, TV and radio, computers, smart meters, power lines, microwave ovens, etc.). An ongoing regularly updated source of unbiased information on the state of scientific research, both proven and as-yet-unproven causal effects being studied, if presented by an independent entity, would provide consumers a credible and transparent source from which to obtain facts about RF in our environment.

CCST is not currently aware of a single website with up-to-date consumer information which we are able to endorse as impartial.

## **Alternatives to Wireless?**

Assembly Member Huffman has inquired about potential alternatives to wireless communication with smart meters. There are currently several other methods of transmitting data from some smart meters to the utility company. These methods include transmitting over a power line or wired through phone lines, fiber-optic or coaxial cable. Each method has tradeoffs among cost and performance (e.g., how much data can be carried, how far, how fast). The ability to have a transmission protocol alternative to wireless depends upon the type and configuration of the meter used. Some existing smart meters can be hard-wired, while others would have to be modified or replaced. The communications board plugs into a digital meter. The current PG&E meters use a SilverSpring communications board that only supports wireless protocol. SilverSpring or another vendor could provide an alternative communications means if such were warranted and cost effective. The related costs of an alternative approach would need to be factored into the decision making process related to different options.

If future research were to establish a causal relationship between RF emissions and negative human health impacts, industries and governments worldwide may be faced with difficult choices about practical alternatives to avoid and mitigate such effects. This would greatly affect the widespread use of mobile phones, cordless phones, Wi-Fi devices, smart meters, walkie-talkies, microwave ovens, and many other everyday appliances and devices emitting RF. If such a hypothetical scenario were to occur, smart meters could conceivably be adapted to non-wireless transmission of data. However, retrofitting millions of smart meters with hard-wired technology could be difficult and costly. Perhaps more importantly, retrofitting smart

meters would not address the significantly greater challenge presented by the billions of mobile phones in use globally.

### Key Factors to Consider When Evaluating Exposure to Radiofrequency from Smart Meters

1. Signal Frequency	Compare to devices in the 900 MHz band and 2.4 GHz band	Frequency similar to mobile phones, Wi-Fi, laptop computers, walkie-talkies, baby monitors, microwave ovens
2. Signal Strength (or Power Density)	Microwatts/square centimeter ( $\mu\text{W}/\text{cm}^2$ )	Meter signal strength very small compared to other devices listed above
3. Distance from Signal	Signal strength drops rapidly (doubling distance cuts power density by four)	Example: 1 ft. – $8.8 \mu\text{W}/\text{cm}^2$ 3 ft. – $1.0 \mu\text{W}/\text{cm}^2$ 10 ft. – $0.1 \mu\text{W}/\text{cm}^2$
4. Signal Duration	<ul style="list-style-type: none"> <li>- Extremely short amount of time (2.0-5.0%, max.)</li> <li>- No RF signal 95-98% of the time (over 23 hours/day)</li> </ul>	<ul style="list-style-type: none"> <li>- Often overlooked factor when comparing devices.</li> <li>- Short duration combined with weak signal strength yields tiny exposures</li> </ul>
5. Thermal Effects	<ul style="list-style-type: none"> <li>- Scientific consensus on proven effects from heat at high RF levels</li> </ul>	<ul style="list-style-type: none"> <li>- FCC "margin-of-safety" limits 50 times lower than hazardous exposure level</li> <li>- Typical meter operates at 70 times less than FCC limit and 3,500 times less than the demonstrated hazard level</li> </ul>
6. Non-thermal Effects	<ul style="list-style-type: none"> <li>- Inconclusive research to date</li> <li>- No established cause-and-effect pointing to negative health impacts</li> </ul>	Continuing research needed

## Conclusion

The CCST Project Team, after carefully reviewing the available literature on the current state of science on health impacts of radiofrequency from smart meters and input from a wide array of subject matter experts, concludes that:

1. **The FCC standard provides a currently accepted factor of safety against known thermally induced health impacts of smart meters and other electronic devices in the same range of RF emissions. Exposure levels from smart meters are well below the thresholds for such effects.**
2. **There is no evidence that additional standards are needed to protect the public from smart meters.**

The topic of potential health impacts from RF exposure in general, including the small RF exposure levels of smart meters, continues to be of concern. This report has been developed to provide readers and consumers with factual, relevant information about the:

- Scientific basis underpinning current RF limits
- Need for further research into RF effects
- Relative nature of RF emissions from a wide array of devices commonly used throughout world (e.g., cellular and cordless phones, Wi-Fi devices, laptop computers, baby monitors, microwave ovens).

CCST encourages the ongoing development of unbiased sources of readily available and clear facts for public information and education. A web-based repository of written reports, frequently asked questions and answers, graphics, and video demonstrations would provide consumers with factual, relevant information with which to better understand RF effects in our environment.

## Appendix A – Letters Requesting CCST

STATE CAPITOL  
P.O. BOX 942049  
SACRAMENTO, CA 94249-0066  
(916) 319-2006  
FAX (916) 319-2106

DISTRICT OFFICE  
3501 CIVIC CENTER DRIVE, SUITE 412  
SAN RAFAEL, CA 94903  
(415) 479-4920  
FAX (415) 479-2123

Assembly  
California Legislature



JARED HUFFMAN  
ASSEMBLYMEMBER, SIXTH DISTRICT

COMMITTEES  
CHAIR, WATER, PARKS AND  
WILDLIFE  
NATURAL RESOURCES  
UTILITIES AND COMMERCE

SUBCOMMITTEE NO.3  
ON RESOURCES

July 30, 2010

Karl Pister, Chair  
Susan Hackwood, Executive Director  
California Council on Science and Technology  
1130 K Street, Suite 280  
Sacramento, CA 95814-3965

Dear Chair Pister and Ms. Hackwood:

I am writing to request a study by the California Council on Science and Technology in response to the many concerns and questions that have been raised by constituents in my Assembly District including the Marin County Board of Supervisors, City of Sebastopol, City of Fairfax, and Marin Association of Realtors relating to potential negative health effects from SmartMeters, the electronic monitoring devices that Pacific Gas and Electric Company (PG&E) is installing statewide to continuously measure the electricity output from each household and business.

SmartMeters are currently being installed throughout the state under the authority of the California Public Utilities Commission (CPUC) pursuant to a series of decisions that span from 2006 through 2009. The authority for PG&E to deploy SmartMeters in its territory is embodied in two decisions: D.06-07-027 (the initial deployment) and D.09-03-026 (the upgrade). On the question of health effects of radiation from the devices, PG&E and CPUC maintain that electromagnetic fields emitted from these SmartMeters and the radio frequency power associated with the wireless radios fall within the Federal Communications Commission's (FCC) regulations, pointing out that SmartMeters emit fewer radio frequencies than the amount allowable for cellular telephones, microwave ovens, and wireless Internet Services.

Critics claim, among other things, that FCC standards are not sufficiently protective of public health and do not take into account the cumulative effect of radiation exposure from a growing number of sources and devices, including continuous exposure from some sources. For example, they cite a letter from the Radiation Protection Division of the Environmental Protection Agency (attached), they argue, "...these standards were thermally based and do not apply to chronic, nonthermal exposure situations, ... and that ... the current exposure guidelines are based on the effects resulting from whole-body heating, not exposure of and effect on critical organs including the brain and the eyes." Therefore, they argue the "safety" standards were not designed to protect the public from health problems under the circumstances which the meters are being used.

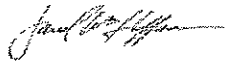
  
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Letter to Karl Pister and Susan Hackwood  
July 30, 2010  
Page 2

An independent, science-based study by the California Council on Science and Technology would help policy makers and the general public resolve the debate over whether SmartMeters present a significant risk of adverse health effects. Toward that end, I request that the Council specifically determine whether FCC standards for SmartMeters are sufficiently protective of public health taking into account current exposure levels to radiofrequency and electromagnetic fields, and further to assess whether additional technology specific standards are needed for SmartMeters and other devices that are commonly found in and around homes, to ensure adequate protection from adverse health effects.

Thank you for your serious consideration of this important and time-sensitive request. Please do not hesitate to contact me if I can be of assistance going forward

Sincerely,



**JARED HUFFMAN**  
Assemblymember, 6<sup>th</sup> District



COMMITTEES  
CHILD HEALTH  
ARTS, ENTERTAINMENT, SPORTS,  
TOURISM & INTERNET MEDIA  
ENVIRONMENTAL SAFETY &  
TOXIC MATERIALS  
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California Legislature



WILLIAM W. MONNING  
ASSEMBLY MEMBER, TWENTY-SEVENTH DISTRICT

STATE CAPITOL  
P.O. BOX 94949  
SACRAMENTO, CA 94249-0327  
(916) 318-3327  
FAX (916) 319-2127  
DISTRICT OFFICES  
701 OCEAN STREET, SUITE 319 B  
SANTA CRUZ, CA 95060  
(831) 425-1503  
FAX (831) 425-2570  
99 PACIFIC STREET, SUITE 555 D  
MONTEREY, CA 93940  
(831) 649-2832  
(831) 649-2935  
SANTA CLARA COUNTY DIRECT LINE  
(408) 782-0647

September 15, 2010

Karl Pister, Chair  
California Council on Science and Technology  
1130 K Street, Suite 280  
Sacramento, CA 95814-3965

Dear Chair Pister:

This letter is to formally request that I be included in the response from the California Council on Science and Technology (CCST) regarding the health safety evaluation of the new electronic metering devices, otherwise known as Smart Meters, currently being installed by Pacific Gas and Electric Company (PG&E) which will be available by October 15, 2010.

Numerous concerns and questions have been raised by PG&E customers throughout the state, as well as local government entities such as the County of Santa Cruz, the City of Capitola, City of Santa Cruz, City of Scotts Valley, and the City of Watsonville, relating to potential health effects of the radio frequency (RF) emitted from Smart Meters.

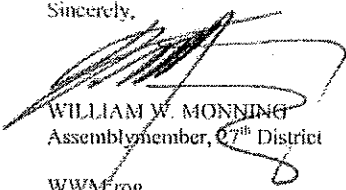
As you know, the federal Energy Independence and Security Act of 2007 required each state to initiate a smart grid system. In response to this federal mandate, the State of California enacted Senate Bill 17, Chapter 327, Statutes of 2009, granting the California Public Utilities Commission (CPUC) smart grid oversight authority. While the CPUC has authorized PG&E to install their current Smart Meter system, CPUC has not addressed the question of whether the RF emissions from Smart Meter devices have potential health impacts.

While PG&E maintains that Smart Meters comply with the Federal Communications Commission (FCC) safety standards, there is still public concern that the FCC standards do not sufficiently protect the public's health and do not take into account the cumulative effect of radiation exposure from the growing number of sources and devices emitting RF.

The scientific evaluation by the California Council on Science and Technology will help to inform both elected officials and the public about the safety of PG&E's Smart Meters and I appreciate the Council taking the time to assess this very important issue.

Thank you for your time and assistance on this issue.

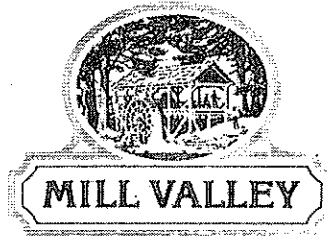
Sincerely,

  
WILLIAM W. MONNING  
Assemblymember, 27<sup>th</sup> District

WWM:rog

Printed on Recycled Paper

Stephanie Moulton-Peters  
Mayor  
Ken Wachtel  
Vice-Mayor  
Garry Lion  
Councilmember



Shawn Marshall  
Councilmember  
Andrew Bergman  
Councilmember  
James C. McCann  
City Manager

September 20, 2010

Karl Pister, Chair  
Susan Hackwood, Executive Director  
California Council on Science and Technology  
1130 K Street, Suite 280  
Sacramento, CA 95814-3965

Dear Chair Pister and Ms. Hackwood:

On behalf of the Mill Valley City Council, I am writing to support Assemblymember Jared Huffman's request for a study by the California Council on Science and Technology (CCST) to specifically determine whether Federal Communications Commission (FCC) standards for Pacific Gas and Electric (PG&E) SmartMeters are sufficiently protective of public health.

This request is in response to the many concerns and questions that have been raised by Mill Valley residents relating to potential negative health effects from SmartMeters. Mill Valley residents have expressed their concerns that these devices, which are regulated by the California Public Utilities Commission (CPUC), emit levels of radiation that may be harmful to public health, especially with consideration to the long-term and cumulative impacts of the devices. The CPUC maintains that SmartMeters emit radiation well below the FCC-established safety standards, and have therefore not ordered PG&E to halt the installation of the advanced metering devices.

Critics argue that the safety standards determined by the FCC are not sufficient and specifically not designed to protect the public from health problems under the circumstances which the meters will be used. The FCC standards, they claim, do not take into consideration long-term and cumulative exposures to these devices.

The City of Mill Valley City Council therefore join Assemblymember Huffman in requesting the CCST undertake a study to specifically determine whether FCC standards for SmartMeters are sufficiently protective of public health, taking into account current exposure levels to radiofrequency and electromagnetic fields, and further to assess whether additional technology

specific standards are needed for SmartMeters and other devices that are commonly found in and around homes, to ensure adequate protection from adverse health effects.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Stephanie Moulton-Peters". The signature is written in a cursive style with a large initial 'S' and a long, sweeping tail for the 'Peters' part.

Stephanie Moulton-Peters, Mayor  
City of Mill Valley

Cc: Mill Valley City Council  
Assemblymember Jared Huffman  
Joshua Townsend, PG&E Public Affairs Manager  
Marzia Zafar, CPUC Business and Community Outreach Division Manager

## **Appendix B – Project Process**

### **CCST Smart Meter Project Approach**

Assembly Member Huffman (Marin) (July 30, 2010 letter) and Assembly Member Monning (Santa Cruz) (September 17, 2010 letter) requested CCST's assistance in determining if there are health safety issues regarding the new SMART meters being installed by the utilities. In addition, the City of Mill Valley sent a letter to CCST (September, 2010) in support of Mr. Huffman's request. (Appendix A - letters)

The CCST Executive Committee appointed a Smart Meter Project Team that oversaw the development of a response on the issue (Appendix C):

- Rollin Richmond (Chair), President Humboldt State University, CSU
- Jane Long, Associate Director at Large, Global Security Directorate Fellow, Center for Global Security Research Lawrence Livermore National Laboratory
- Emir Macari, Dean of Engineering and Computer Science, California State University, Sacramento and Director of the California Smart Grid Center
- Patrick Mantey, Director, CITRIS @ Santa Cruz
- Ryan McCarthy, 2009 CCST Science and Technology Policy Fellow
- Larry Papay, CEO, PQR, LLC, mgmt consulting firm
- David Winickoff, Assistant Professor of Bioethics and Society, Department of Environmental Science, Policy and Management, UC Berkeley
- Paul Wright, Director, UC Center for Information Technology Research in the Interest of Society (CITRIS)

In addition to those on the project team, CCST approached over two dozen technical experts to contribute their opinion to inform CCST's response. The experts were referred from a variety of sources and were vetted by the Smart Meter Project Team. Efforts were made to include both biological and physical scientists and engineers to help provide broad context and perspective to the response. Many of the experts approached indicated they did not have time to provide a written response however they provided references to additional experts and/or literature for review. A few experts identified were not asked to contribute due to affiliations that were felt to be a conflict of interest. Experts were asked to provide written comment on two issues, to provide referral to other experts, and to suggest literature that should be reviewed. Appendix D provides a list of those experts who provided written comment.

Smart Meter Project Team members and the experts providing written technical input completed a conflict of interest disclosure form to reveal any activities that could create the potential perception of a conflict.

In addition to written and oral input from technical experts, CCST identified relevant reports and other sources of information to inform the final report. This material can be found listed in Appendix E and on a CCST website: <http://ccst.us/projects/smart/>.

**Peer Review:** After the draft report was vetted in great detail by the Smart Meter Project Team, it was forwarded to the CCST Board and Council for peer review.

**Public Comment:** The report is being posted to the CCST website that will allow the general public to comment.

## **Appendix C – Project Team**

The California Council on Science and Technology adheres to the highest standards to provide independent, objective, and respected work. Board and Council Members review all work that bears CCST's name. In addition, CCST seeks peer review from external technical experts. The request for rigorous peer review results in a protocol that ensures the specific issue being addressed is done so in a targeted way with results that are clear and sound.

In all, this report reflects the input and expertise of nearly 30 people in addition to the project team. Reviewers include experts from academia, industry, national laboratories, and non-profit organizations.

We wish to extend our sincere appreciation to the project team members who have helped produce this report. Their expertise and diligence has been invaluable, both in rigorously honing the accuracy and focus of the work and in ensuring that the perspectives of their respective areas of expertise and institutions were taken into account. Without the insightful feedback that these experts generously provided, this report could not have been completed.

### **Rollin Richmond, Smart Meter Project Chair, CCST Board Member**

*President Humboldt State University, CSU*

Prior to Richmond's appointment at Humboldt State University in 2002, he had a distinguished career as a faculty member, researcher in evolutionary biology and academic administrator. Richmond received a Ph.D. in genetics from the Rockefeller University and a bachelor's degree in zoology from San Diego State University. Dr. Richmond's career has included: Chairperson of biology at Indiana University, founding Dean of the College of Arts and Sciences at the University of South Florida, Provost at the State University of New York at Stony Brook, and Provost and Professor of Zoology and Genetics at Iowa State University. He was named the sixth President of Humboldt State University in July of 2002. Dr. Richmond is a fellow of the American Association for the Advancement of Science and a member of Phi Beta Kappa. His research interests are in evolutionary genetics.

### **Jane Long, CCST's California's Energy Future Project Co-Chair and CCST Sr. Fellow**

*Associate Director at Large, Global Security Directorate Fellow, Center for Global Security Research Lawrence Livermore National Laboratory*

Dr. Long is the Principal Associate Director at Large for Lawrence Livermore National Laboratory working on energy and climate. She is also a Fellow in the LLNL Center for Global Strategic Research. Her current interests are in reinvention of the energy system in light of climate change, national security issues, economic stress, and ecological breakdown. She holds a bachelor's degree in engineering from Brown University and Masters and Ph.D. from UC Berkeley.

**Patrick Mantey**

*Director, UC Center for Information Technology Research in the Interest of Society (CITRIS)  
@ Santa Cruz, University of California, Santa Cruz*

Mantey holds the Jack Baskin Chair in Computer Engineering and was the founding Dean of the Jack Baskin School of Engineering. He is now the director of CITRIS at UC Santa Cruz and of ITI, the Information Technologies Institute in the Baskin School of Engineering. In 1984, he joined the UCSC faculty to start the engineering programs, coming from IBM where he was a senior manager at IBM Almaden Research. His research interests include system architecture, design, and performance, simulation and modeling of complex systems, computer networks and multimedia, real-time data acquisition, and control systems. Mantey is a Fellow of the Institute of Electrical and Electronics Engineers. His current projects at CITRIS include the Residential Load Monitoring Project and work on power distribution system monitoring and reliability. Mantey received his B.S. (magna cum laude) from the University of Notre Dame, his M.S. from the University of Wisconsin-Madison, and his Ph.D. from Stanford University, all in electrical engineering. He is a Fellow of the Institute of Electrical and Electronics Engineers (IEEE).

**Emir José Macari**

*Dean of Engineering and Computer Science, California State University, Sacramento and  
Director of the California Smart Grid Center*

Prior to his appointment as dean at CSU Sacramento, Macari was dean of the College of Science, Mathematics and Technology at the University of Texas at Brownsville. Prior to that, he served as the program director for the Centers of Research Excellence in Science and Technology at the National Science Foundation. He spent five years as the Chair and Bingham C. Stewart Distinguished Professor in the Department of Civil and Environmental Engineering at Louisiana State University. At the Georgia Institute of Technology he taught both engineering and public policy and at the University of Puerto Rico he was a professor and director of Civil Infrastructure Research Center. He has also worked as a civil engineer in private industry and has been a fellow at NASA. Macari holds both a doctorate and a master's degree in civil engineering geomechanics from the University of Colorado. He has a bachelor's degree in civil engineering geomechanics from Virginia Tech University.

**Larry Papay CCST Board Member**

*CEO, PQR, LLC, mgmt consulting firm*

Papay is currently CEO and Principal of PQR, LLC, a management consulting firm specializing in managerial, financial, and technical strategies for a variety of clients in electric power and other energy areas. His previous positions include Sector Vice President for the Integrated Solutions Sector, SAIC; Senior Vice President and General Manager of Bechtel Technology & Consulting; and Senior

Vice President at Southern California Edison. Papay received a B.S. in Physics from Fordham University, a M.S. in Nuclear Engineering from MIT, and a Sc.D. in Nuclear Engineering from MIT. He is a member of the National Academy of Engineering and served on its Board of Councilors from 2004-2010. He served as CCST Council Chair from 2005 through 2008, after which he was appointed to the Board.

**David E Winickoff**

*Associate Professor of Bioethics and Society, Department of Environmental Science, Policy and Management, UC Berkeley*

David Winickoff (JD, MA) is Associate Professor of Bioethics and Society at UC Berkeley, where he co-directs the UC Berkeley Science, Technology and Society Center. Trained at Yale, Harvard Law School, and Cambridge University, he has published over 30 articles in leading bioethics, biomedical, legal and science studies journals such as *The New England Journal of Medicine*, the *Yale Journal of International Law*, and *Science, Technology & Human Values*. His academic and policy work spans topics of biotechnology, intellectual property, geo-engineering, risk-based regulation, and human subjects research.

**Paul Wright**

*Director, UC Center for Information Technology Research in the Interest of Society (CITRIS)*

As Director of CITRIS Wright oversees projects on large societal problems such as energy and the environment; IT for healthcare; and intelligent infrastructures such as: public safety, water management and sustainability. Wright is a professor in the mechanical engineering department, and holds the A. Martin Berlin Chair. He is also a co-director of the Berkeley Manufacturing Institute (BMI) and co-director of the Berkeley Wireless Research Center (BWRC). Born in London, he obtained his degrees from the University of Birmingham, England and came to the United States in 1979 following appointments at the University of Auckland, New Zealand and Cambridge University England. He is also a member of the National Academy of Engineering.

**Ryan McCarthy**

*Science and Technology Policy Fellow, California Council on Science and Technology*

McCarthy recently completed the CCST Science and Technology Policy Fellowship in the office of California Assembly Member Wilmer Amina Carter, where he advised on issues associated with energy, utilities, and the environment, among others. McCarthy holds a master and doctorate degree in civil and environmental engineering from UC Davis, and a bachelor's degree in structural engineering from UC San Diego. His expertise lies in transportation and energy systems analysis, specifically regarding the electricity grid in California and impacts of electric vehicles on energy use and emissions in the state.



## **Appendix D – Written Submission Authors**

### **Written Input Received from:**

#### **Physical Sciences/Engineers**

Kenneth Foster, Professor, Department of Bioengineering, University of Pennsylvania

Rob Kavet, Physiologist/Engineer, Electric Power Research Institute (EPRI)

#### **Biologists/medical**

De-Kun Li, MD, Ph.D., Senior Reproductive and Perinatal Epidemiologist, Division of Research, Kaiser Foundation Research Institute, Kaiser Permanente

Asher Sheppard, Ph.D., Asher Sheppard Consulting, trained in physics, environmental medicine, and neuroscience

Magda Havas, B.Sc., Ph.D., Environmental & Resource Studies, Trent University, Peterborough, Canada

Cindy Sage, MA, Department of Oncology, University Hospital, Orebro, Sweden and Co-Editor, BioInitiative Report

Ray Neutra, MD, Ph.D., Epidemiologist, retired Chief of the Division of Environmental and Occupational Disease Control, California Department of Public Health (CDPH)

## Appendix E – Additional Materials Consulted

All sources can be accessed through the CCST website at <http://ccst.us>

### American Academy of Pediatrics

- The Sensitivity of Children to Electromagnetic Fields American Academy of Pediatrics (August 3, 2005)

### Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)

- [www.arpansa.gov.au](http://www.arpansa.gov.au) Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)
- Radiation Protection - Committee on Electromagnetic Energy Public Health Issues (Fact Sheet)  
Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) (May 2010)
- Radiation Protection - Mobile Telephones and Health Effects  
Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) (June 25, 2010)

### Documents From the California Department of Public Health (CDPH)

- Mixed Signals About Cellphones' Health Risks Hang Up Research  
The Chronicle (September 26, 2010)
- Summary of the Literature: What do we Know About Cell Phones and Health?  
(July 20, 2010)
- Brain Tumor Risk in Relation to Mobile Telephone Use: Results of the INTERPHONE International Case - Control Study  
Oxford University Press (March 8, 2010)
- Mobile Phones and Health  
U.K. Department of Health
- Late Lessons from Early Warnings: Towards Realism and Precaution with EMF?  
David Gee, European Environment Agency, (January 30, 2009)
- Statement of Finnish Radiation and Nuclear Safety Authority (STUK) Concerning Mobile Phones and Health  
Radiation and Nuclear Safety Authority - STUK (January 7, 2009)
- Fact Sheet: Children and Safe Cell Phone Use  
Toronto Public Health (July 2008)
- Children and Mobile phones: The Health of the Following Generations in Danger  
Russian National Committee on Non-Ionizing Radiation Protection (April 14, 2008)
- AFSSE Statement on Mobile Phones and Health  
French Environmental Health and Safety Agency - AFSSE (April 16, 2003)

### Committee on Man and Radiation (COMAR)

- IEEE Engineering in Medicine and Biology Society Committee on Man and Radiation (COMAR)
- COMAR Technical Information Statement the IEEE Exposure Limits for

### Radiofrequency and Microwave Energy

IEEE Engineering in Medicine and Biology Magazine (April 2005)

#### **Commonwealth Club of California**

- Commonwealth Club of California - The Health Effects of Electromagnetic Fields (Video) (November 18, 2010)

#### **Electric Power Research Institute (EPRI)**

- emf.epri.com EMF/RF Program at EPRI
- Radio-Frequency Exposure Levels from SmartMeters  
Electric Power Research Institute (November 2010) - accessed via the Internet December 2010
- Perspective on Radio-Frequency Exposure Associated With Residential Automatic Meter Reading Technology  
Electric Power Research Institute (EPRI) (February 22, 2010)
- Testing and Performance Assessment for Field Applications of Advanced Meters  
Electric Power Research Institute (EPRI) (December 4, 2009)
- Overview of Personal Radio Frequency Communication Technologies  
Electric Power Research Institute (EPRI) (September 9, 2008)
- Characterizing and Quantifying the Societal Benefits Attributable to Smart Metering Investments  
Electric Power Research Institute (EPRI) (July 2008)
- Metering Technology  
Electric Power Research Institute (June 20, 2008)
- The BioInitiative Working Group Report  
Electric Power Research Institute (EPRI) (November 23, 2007)
- An Overview of Common Sources of Environmental Levels of Radio Frequency Fields  
Electric Power Research Institute (EPRI) (September 2002)

#### **Environmental Protection Agency**

- United States Environmental Protection Agency's Response to Janet Newton  
(March 8, 2002)
- United States Environmental Protection Agency's Response to Jo-Anne Basile  
(September 16, 2002)

#### **Epidemiology**

- Prenatal and Postnatal Exposure to Cell Phone Use and Behavioral Problems in Children  
Epidemiology July 2008 - Volume 19 - Issue 4 - pp 523-529

#### **European Journal of Oncology - Ramazzini Institute**

- Non-Thermal Effects and Mechanisms of Interaction between Electromagnetic Fields and Living Matter  
(2010)

#### **Federal Communications Commission**

- [Radio Frequency Safety FAQ's](#)
- [RF Safety Page](#)
- [Federal Communications Commission Response to Cindy Sage \(August 6, 2010\)](#)
- [FCC Certifications](#)
  - [FCC Certification for the Silver Spring Networks Devices - September 28, 2009](#)
  - [FCC Certification for the Silver Spring Networks Devices - September 28, 2009](#)
  - [FCC Certification for the Silver Spring Networks Devices - September 4, 2007](#)
  - [FCC Certification for the Silver Spring Networks Devices - July 6, 2007](#)
- [Questions and Answers about Biological Effects and Potential Hazards of Radiofrequency Electromagnetic Fields](#)  
Federal Communications Commission Office of Engineering & Technology (August 1999)
- [Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields](#)  
Federal Communications Commission Office of Engineering & Technology (August 1997)

#### **Food and Drug Administration**

- [No Evidence Linking Cell Phone Use to Risk of Brain Tumors](#)  
U.S. Food and Drug Administration (May 2010)

#### **Health Protection Agency**

- [Wi-Fi](#)  
Health Protection Agency (Last reviewed: October 26, 2009)
- [Cordless Telephones - Digital Enhanced Cordless Telecommunications \(DECT\) and other Cordless Phones](#)  
Health Protection Agency (Last reviewed: September 4, 2008)

#### **International Commission on Non-Ionizing Radiation Protection (ICNIRP)**

- [www.icnirp.de](http://www.icnirp.de) International Commission on Non-Ionizing Radiation Protection (ICNIRP)
- [International Commission on Non-Ionizing Radiation Protection \(ICNIRP\) on the Interphone Publication](#)  
International Commission on Non-Ionizing Radiation Protection (May 18, 2010)
- [ICNIRP Statement on the "Guidelines for Limiting Exposure to Time-Varying Electric, Magnetic, and Electromagnetic Fields \(up to 300 GHz\)"](#)  
International Commission on Non-Ionizing Radiation Protection (September 2009)
- [Epidemiologic Evidence on Mobile Phones and Tumor Risk](#)  
International Commission on Non-Ionizing Radiation Protection (September 2009)
- [Exposure to High Frequency Electromagnetic Fields, Biological Effects and Health Consequences \(100 kHz - 300 GHz\)](#)

International Commission on Non-Ionizing Radiation Protection (2009)

**National Academies Press**

- Identification of Research Needs Relating to Potential Biological or Adverse Health Effects of Wireless Communication  
National Academies Press (2008)
- An Assessment of Potential Health Effects from Exposure to PAVE PAWS Low-Level Phased-Array Radiofrequency Energy (9.9MB PDF)  
National Academies Press (2005)

**National Cancer Institute**

- Cell Phones and Cancer Risk (Fact Sheet)  
National Cancer Institute
- Cell Phones and Brain Cancer: What We Know (and Don't Know)  
National Cancer Institute (September 23, 2008)

**National Institute of Environmental Health Sciences**

- Electric and Magnetic Fields  
National Institute of Environmental Health Sciences

**PG&E**

- Understanding Radio Frequency (RF)  
PG&E
- Supplemental Report on An Analysis of Radiofrequency Fields Associated with Operation of PG&E SmartMeter Program Upgrade System  
Richard A. Tell, Richard Tell Associates, Inc. (October 27, 2008)
- Smart Grid: Utility Challenges in the 21st Century (7.4MB PDF)  
Andrew Tang, Smart Energy Web, Pacific Gas and Electric Company (September 18, 2009)
- Summary Discussion of RF Fields and the PG&E SmartMeter System  
Richard A. Tell, Richard Tell Associates, Inc. (2005 Report and 2008 Supplemental Report)
- Analysis of RF Fields Associated with Operation of PG&E Automatic Meter Reading Systems  
Richard A. Tell, Richard Tell Associates, Inc. and J. Michael Silva, P.E. Eneritech Consultants (April 5, 2005)

**Provided by Raymond Neutra**

- www.ehib.org/emf The California Electric and Magnetic Fields (EMF) Program
- Should the World Health Organization (WHO) Apply the Precautionary Principal to Low and High Frequency Electromagnetic Fields?  
Raymond Richard Neutra

**Society for Risk Analysis**

- Risk Governance for Mobile Phones, Power Lines and Other EMF Technologies  
Society for Risk Analysis (2010)

### **Swedish State Radiation Protection Authority (SSI)**

- The Nordic Radiation Safety Authorities See no Need to Reduce Public Exposure Generated by Mobile Bas Stations and Wireless Networks  
Swedish State Radiation Protection Authority (SSI) (2009)

### **University of Ottawa**

- Wireless Communication and Health - Electromagnetic Energy and Radiofrequency Radiation FAQ's  
University of Ottawa, RFcom

### **World Health Organization**

- Database of Worldwide EMF Standards
- WHO - Electromagnetic Fields
- Electromagnetic Fields and Public Health - Base Stations and Wireless Networks (Fact Sheet N°304)  
World Health Organization (May 2006)
- Electromagnetic Fields and Public Health - Electromagnetic Hypersensitivity (Fact Sheet N°296)  
World Health Organization (December 2005)
- Electromagnetic Fields and Public Health - Mobile phones (Fact Sheet N°193)  
World Health Organization (May 2010)

### **Unsolicited Submissions**

Documents Provided by Alexander Blink, Executive Director of the DE-Toxics Institute, Fairfax CA

- Points and Sources Submitted for Consideration by Alexander Blink 2
- Points and Sources Submitted for Consideration by Alexander Blink 1
- Public Health Implications of Wireless Technologies, Cindy Sage
- Memory and Behavior, By Henry Lai, Bioelectromagnetics Research Laboratory, University of Washington

#### **Sage Consulting**

- Assessment of Radiofrequency Microwave Radiation Emissions from Smart Meters  
Sage Associates (January 2011)
- Cindy Sage Letter to Julius Knapp (FCC)  
(September 22, 2010)
- Response Letter to Cindy Sage from Julius Knapp (FCC)  
(August 6, 2010)
- Cindy Sage Letter to Edwin D. Mantipty (FCC)  
(March 15, 2010)
- Bioinitiative Report: A Rational for a Biologically-based Public Exposure Standard for Electromagnetic Fields (ELF and RF) (3.1MB PDF)
- Bioinitiative Report: What is the BioInitiative Report?
- Bioinitiative Report: Myocardial Function Improved by Electromagnetic Field Induction of Stress Protein hsp70 (1.1MB PDF)

- Bioinitiative Report: The Interphone Brain Tumor Study (1.6MB PDF)  
Cindy Sage, Editorial Perspective
- Bioinitiative Report: Steps to the Clinic with ELF EMF (1.0MB PDF)
- Mobile Phone Base Stations - Effects on Wellbeing and Health  
Pathophysiology (August 2009)
- Increased Blood-Brain Barrier Permeability in Mammalian Brain 7 Days  
after Exposure to the Radiation from a GSM-900 Mobile Phone  
Pathophysiology (August 2009)
- Public Health Implications of Wireless Technologies  
Pathophysiology (August 2009)
- Genotoxic Effects of Radiofrequency Electromagnetic Fields  
Pathophysiology (August 2009)
- Epidemiological Evidence for an Association Between Use of Wireless  
Phones and Tumor Diseases  
Pathophysiology (August 2009)
- Public Health Risks from Wireless Technologies: The Critical Need for  
Biologically-based Public Exposure Standards for Electromagnetic Fields  
(2.9MB PDF)  
BioInitiative Briefing for President-Elect Obama Transition Team
- The BioInitiative Report: A Rationale for A Biologically-based Public  
Exposure Standard for Electromagnetic Fields (ELF and RF) (3.6MB PDF)  
Cindy Sage PowerPoint Presentation (November 2007)

#### Wilner & Associates

- SmartMeters and Existing Electromagnetic Pollution  
Wilner & Associates (January 2011) - **This report was not commissioned by CCST**
- Application for Modification Before the California Public Utilities  
Commission (3.5MB PDF)

#### Other Documents

- Health Canada Safety Code 6 and City of Toronto's Proposed Prudent Avoidance  
Policy  
(2010)
- Transmitting Smart Meters Pose A Serious Threat To Public Health  
(2010)
- RF Safety and WiMax FAQ's: Addressing Concerns About Perceived Health Effects  
(April 2008)

#### Relevant Websites

- EMF - Portal
- emfacts.com
- emfsafetynetwork.org
- lbagroup.com

- [NIOSH Program Portfolio](#) Centers for Disease Control and Prevention (CDC)
- [Radio Frequency RF Safety and Antenna FAQs](#)
- [Smart Grid Information Clearinghouse \(SGIC\)](#)
- [stopsmartmeters.org](#)



## Appendix F – Glossary

**Access point** - A term typically used to describe an electronic device that provides for wireless connectivity via a WAN to the Internet or a particular computer facility.

**Duty cycle** – A measure of the percentage or fraction of time that an RF device is in operation. A duty cycle of 100% corresponds to continuous operation (e.g., 24 hours/day). A duty cycle of 1% corresponds to a transmitter operating on average 1% of the time (e.g., 14.4 minutes/day).

**Electromagnetic field (EMF)** - A composition of both an electric field and a magnetic field that are related in a fixed way that can convey electromagnetic energy. Antennas produce electromagnetic fields when they are used to transmit signals.

**Federal Communications Commission (FCC)** - The Federal Communications Commission (FCC) is an independent agency of the US Federal Government and is directly responsible to Congress. The FCC was established by the Communications Act of 1934 and is charged with regulating interstate and international communications by radio, television, wire, satellite, and cable. The FCC also allocates bands of frequencies for non-government communications services (the NTIA allocates government frequencies). The guidelines for human exposure to radio frequency electromagnetic fields as set by the FCC are contained in the Office of Engineering and Technology (OET) Bulletin 65, Edition 97-01 (August 1997). Additional information is contained in OET Bulletin 65 Supplement A (radio and television broadcast stations), Supplement B (amateur radio stations), and Supplement C (mobile and portable devices).

**Gigahertz (GHz)** - One billion Hertz, or one billion cycles per second, a measure of frequency.

**Hertz** - The unit for expressing frequency, one Hertz (Hz) equals one cycle per second.

**Megahertz (MHz)** - One million Hertz, or one million cycles per second, a unit for expressing frequency.

**Mesh network** - A network providing a means for routing data, voice and instructions between nodes. A mesh network allows for continuous connections and reconfiguration around broken or blocked data paths by "hopping" from node to node until the destination is reached.

**Milliwatt per square centimeter (mW/cm<sup>2</sup>)** - A measure of the power density flowing through an area of space, one thousandth (10<sup>-3</sup>) of a watt passing through a square centimeter.

**Microwatt per square centimeter ( $\mu\text{W}/\text{cm}^2$ )** - A measure of the power density flowing through an area of space, one millionth ( $10^{-6}$ ) of a watt passing through a square centimeter.

**Radiofrequency (RF)** - The RF spectrum is formally defined in terms of frequency as extending from 0 to 3000 GHz, the frequency range of interest is 3 kHz to 300 GHz.

**Repeater unit** - A device that can simultaneously receive a radio signal and retransmit the signal. Repeater units are used to extend the range of low power transmitters in a geographical area.

**Router** - An electronic computer device that is used to route and forward information, typically between various computers within a local area network or between different local area networks.

**Smart meter** - A digital device for measuring consumption, such as for electricity and natural gas, and sending the measurement to a utility company. Automated meter reading (AMR) meters send information one-way only. Automated meter infrastructure (AMI) meters are capable of two-way communications.

**Specific absorption rate (SAR)** - The incremental energy absorbed by a mass of a given density. SAR is expressed in units of watts per kilogram (or milliwatts per gram, mW/g).

**Transmitter** - An electronic device that produces RF energy that can be transmitted by an antenna. The transmitted energy is typically referred to a radio signal or RF field.

**Wide area network (WAN)** - A computer network that covers a broad area such as a whole community, town, or city. Commonly, WANs are implemented via a wireless connection using radio signals. High-speed Internet connections can be provided to customers by wireless WANs.

**Wi-Fi** - An name given to the wireless technology used in home networks, mobile phones, and other wireless electronic devices that employ the IEEE 802.11 technologies (a standard that defines specific characteristics of wireless local area networks).

## **Appendix G – CCST 2011 BOARD MEMBERS**

**Karl S. Pister**, *Board Chair; Chancellor Emeritus, UC Santa Cruz; and Dean and Roy W. Carlson Professor of Engineering Emeritus, UC Berkeley*

**Bruce M. Alberts**, *Professor, Department of Biochemistry & Biophysics, UC San Francisco*

**Ann Arvin**, *Vice Provost and Dean of Research, Lucile Salter Packard Professor of Pediatrics and Professor of Microbiology and Immunology, Stanford University*

**Warren J. Baker**, *Emeritus, President, California Polytechnic State University, San Luis Obispo*

**Peter Cowhey**, *Council Vice-Chair and Dean, School of International Relations and Pacific Studies, UC San Diego*

**Bruce B. Darling**, *Executive Vice President, University of California*

**Susan Hackwood**, *Executive Director, California Council on Science and Technology*

**Randolph Hall**, *Vice Provost for Research Advancement, University of Southern California*

**Charles E. Harper**, *Executive Chairman, Sierra Monolithics, Inc.*

**Miriam E. John**, *Council Chair and Emeritus Vice President, Sandia National Laboratories, California*

**Mory Gharib**, *Vice Provost, California Institute of Technology*

**Bruce Margon**, *Vice Chancellor of Research, University of California, Santa Cruz*

**Tina Nova**, *President, CEO, and Director, Genoptix, Inc.*

**Lawrence T. Papay**, *CEO and Principal, PQR, LLC*

**Patrick Perry**, *Vice Chancellor of Technology, Research and Information Systems, California Community Colleges*

**Rollin Richmond**, *President, Humboldt State University*

**Sam Traina**, *Vice Chancellor of Research, University of California, Merced*

## **Appendix H – CCST 2011 COUNCIL MEMBERS**

**Miriam E. John**, *Council Chair and Emeritus Vice President, Sandia National Laboratories, California*

**Peter Cowhey**, *Council Vice Chair and Dean, School of International Relations and Pacific Studies, UC San Diego*

**Wanda Austin**, *President and CEO, The Aerospace Corporation*

**Julian Betts**, *Professor of Economics, UC San Diego*

**George Blumenthal**, *Chancellor, UC Santa Cruz*

**Susan Bryant**, *Former Vice Chancellor for Research, UC Irvine*

**Charles Elachi**, *Director, Jet Propulsion Laboratory*

**David Gollaher**, *President and CEO, California Healthcare Institute*

**Corey Goodman**, *Former President, Biotherapeutics and Bioinnovation Center, Pfizer*

**M.R.C. Greenwood**, *President, The University of Hawai'i System*

**Susan Hackwood**, *Executive Director, California Council on Science and Technology*

**Bryan Hannegan**, *Vice President of Environment and Renewables, Electric Power Research Institute*

**Sung-Mo "Steve" Kang**, *Chancellor, University of California, Merced*

**Charles Kennedy**, *Vice President for Health Information Technology, WellPoint, Inc.*

**Jude Laspa**, *Deputy Chief Operating Officer, Bechtel Group, Inc.*

**William Madia**, *Former Senior Executive Vice President of Laboratory Operations, Battelle*

**David W. Martin, Jr., M.D.**, *Chairman & CEO, AvidBiotics Corporation*

**Fariborz Maseeh**, *Founder and Managing Principal, Picoco LLC*

**George H. Miller**, *Director, Lawrence Livermore National Laboratory*

**Michael Nacht**, *Dean, Goldman School of Public Policy, UC Berkeley*

**Stephen D. Rockwood**, *Executive Vice President, Science Applications International Corporation*

**Jeffrey Rudolph**, *President and CEO, California Science Center*

**Shankar Sastry**, *Dean, College of Engineering, University of California, Berkeley*

**Soroosh Sorooshian**, *Distinguished Professor and Director, Center for Hydrometeorology & Remote Sensing (CHRS), UC Irvine*

**James L. Sweeney**, *Director, Precourt Institute for Energy Efficiency, and Professor of Management Science and Engineering, Stanford University*

**S. Pete Worden**, *Director, NASA Ames Research Center*

**Julie Meier Wright**, *President and CEO, San Diego Economic Development Corporation*

**Kathy Yelick**, *Director, National Energy Research Scientific Computing Center (NERSC), Lawrence Berkeley National Laboratory*

## **Appendix I – Report Credits**

### **CCST Smart Meters Project Team:**

Rollin Richmond (Chair), *President Humboldt State University, CSU*

Jane Long, *Associate Director at Large, Global Security Directorate Fellow, Center for Global Security Research Lawrence Livermore National Laboratory*

Emir Macari, *Dean of Engineering and Computer Science, California State University, Sacramento and Director of the California Smart Grid Center*

Patrick Mantey, *Director, CITRIS @ Santa Cruz*

Ryan McCarthy, *2009 CCST Science and Technology Policy Fellow*

Larry Papay, *CEO, PQR, LLC, mgmt consulting firm*

David Winickoff, *Assistant Professor of Bioethics and Society, Department of Environmental Science, Policy and Management, UC Berkeley*

Paul Wright, *Director, UC Center for Information Technology Research in the Interest of Society (CITRIS)*

### **With Additional Assistance From:**

JD Stack, *Administrator, California Smart Grid Center, College of Engineering and Computer Science, California State University, Sacramento*

### **CCST Executive Director:**

Susan Hackwood

### **Project Manager:**

Lora Lee Martin, *Director, S&T Policy Fellows*

### **CCST Staff:**

Donna King, *Executive Assistant and Accountant*

Sandra Vargas-De La Torre, *Project Coordinator, Layout*

11730

CAPITOLA CITY COUNCIL – JULY 22, 2010

3. CONSENT CALENDAR - Continued

- F. **Approve Contract with Carolyn Flynn for an Amount not to exceed \$13,437 for Professional Services Related to the Community Development Block Grant (CDBG) Program Administration and Implementation of the City's Economic Development Grants. [500-10 A/C: Flynn, Carolyn]**

**ACTION:** Council Member Graves moved, seconded by Council Member Nicol, to approve the proposed sole source contract with Carolyn Flynn for an amount not to exceed \$13,437 for FY 2010/11 for assistance with the City's Economic Development CDBG Planning and Technical Assistance Grants and overall administration of the City's Community Development Block Grant (CDBG) Program, as submitted. The motion carried on the following vote: AYES: Council Members Graves, Norton, Nicol, Begun, and Mayor Storey. NOES: None. ABSENT: None. ABSTAIN: None.

- G. **Accept 2010 Transient Occupancy Tax Audit Report. [310-50]**

**ACTION:** Council Member Graves moved, seconded by Council Member Nicol, to accept the 2010 Transient Occupancy Tax Audit Report, as submitted. The motion carried on the following vote: AYES: Council Members Graves, Norton, Nicol, Begun, and Mayor Storey. NOES: None. ABSENT: None. ABSTAIN: None.

- H. **Approve Contract with Daniel Kostelec for Building Inspector Services for an Amount not to exceed \$30,000. [500-10 A/C: Kostelec, Daniel]**

**ACTION:** Council Member Graves moved, seconded by Council Member Nicol, to approve the proposed sole source contract with Daniel Kostelec at \$75.00 per hour for an amount not to exceed \$30,000 for FY 2010-2011 to provide Building Code Inspection, Plan Review and Consultation Services, as submitted. The motion carried on the following vote: AYES: Council Members Graves, Norton, Nicol, Begun, and Mayor Storey. NOES: None. ABSENT: None. ABSTAIN: None.

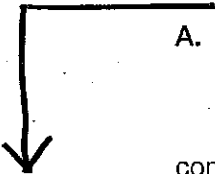
- I. **Approve Contract with Brian Martin for an Amount not to exceed \$35,000 for FY 2010-2011 for Police Administrative and Consultation Services; and Adopt Resolution Amending the FY 2010-2011 Supplemental Law Enforcement Services Fund (SLESF) Budget by transferring \$35,000 from SLESF Salaries & Benefits to SLESF Contract Services. [500-10 A/C: Martin, Brian]**

**ACTION:** Council Member Graves moved, seconded by Council Member Nicol, to approve a sole source contract for professional services with Brian Martin for an amount not to exceed \$35,000 for FY 2010/2011 to provide Police Administrative and Consultation Services; and adopted Resolution No. 3825, Resolution Amending the FY2010/11 Supplemental Law Enforcement Services Fund (SLESF) Budget by Transferring \$35,000 from SLESF Salaries & Benefits to SLESF Contract Services, as submitted. The motion carried on the following vote: AYES: Council Members Graves, Norton, Nicol, Begun, and Mayor Storey. NOES: None. ABSENT: None. ABSTAIN: None.

4. PUBLIC HEARINGS

- A. **Public Hearing to Receive Information Pertaining to the Installation of SmartMeters in the City of Capitola by PG&E. Presentation: City Manager's Department. [565-30]**

Council Member Graves recused himself from participating in this item due to a conflict of interest. He had asked that this matter be the last item on the agenda; however, since it is not, he said he agrees with the recommended action on the next item relative to the General Plan Update. Council Member Graves left the meeting at 8:00 p.m.



## 4. A. PUBLIC HEARINGS (Continued)

Mayor Storey introduced this item and asked for staff's report.

City Manager Goldstein provided a brief verbal report. He pointed out that representatives from PG&E are available to make a presentation on SmartMeters and to respond to questions of Council Members.

Bill Devereaux, SmartMeter Senior Director from San Francisco, utilized a PowerPoint Presentation to review PG&E's SmartMeter Program. *(A copy of the presentation is on file.)* Following his presentation, Mr. Devereaux responded to questions of Council Members.

Michael Hertz, PG&E's expert on EMF, responded to technical questions from council members concerning Federal Communications Commission (FCC) standards and testing. He discussed reports available at the FCC website. Council Member Begun asked to receive copies of the reports. *(Note: The reports were provided to the Council Members at the meeting and are on file.)*

Council Member Norton asked if the public could opt out of the SmartMeter program. Mr. Hertz responded that the California Public Utility Commission has set the program up so that it rolls out to all customers of PG&E. They have not provided provisions for customers to opt out at this point.

Mr. Devereaux and Mr. Hertz responded to various questions of council members pertaining to SmartMeter complaints, accuracy, health concerns, testing, gas modules, studies and reports, etc.

Mayor Storey opened the public hearing at 8:44 p.m.

The following individuals discussed their concerns and opposition to the installation of SmartMeters and urged the City Council to join other committees within the state to pass a moratorium on the installation of SmartMeters:

Joshua Hart, Director of the Scotts Valley Neighbors Against Smart Meters

Dr. Karl Moref, Aptos, said he came at the request of citizens in Capitola to discuss his knowledge pertaining to the biological effects of exposure to SmartMeters. Dr. Moref said there are a lot of questions and unknowns about the effects of SmartMeters at this time, and he believes more testing is necessary.

Nina Beety, Monterey & Santa Cruz County Representative for EMF (electromagnetic fields) Safety Network

David Desetelle believes everyone should have a choice as to whether they should have SmartMeters or not.

Monica McGwire, resident of Santa Cruz (mother of David Desetelle)

Joseph Light, resident on Bulb Avenue in Santa Cruz, expressed concerns about his health problems since the installation of a cell tower at the telephone switching station near his home. He has had to pay \$250 for a device to shield him from radiation.

## 4. A. PUBLIC HEARINGS (Continued)

Barri Boone, resident of a senior complex in Capitola  
Michelle, resident of Soquel  
Pete Gossman  
Tammy Donnelly, resident of Aptos  
Paul Kendall  
Heidi Bazzano, resident of Scotts Valley  
Carol Prettie, Soquel resident at the border of Capitola  
Professor Glen Chase, Santa Cruz County  
Taali Rosellini, resident of Aptos and a teacher and documentary film maker  
Kim Tunilla, resident of Santa Cruz, certified diet counselor working in the field of holistic healing  
Marilyn Garrett, resident of Santa Cruz County  
Ms. Nelson, education psychologist  
Catherine Herndon, Santa Cruz resident

At 10:04 p.m. Mayor Storey provided representatives from PG&E an opportunity to respond to comments made during the public hearing.

Michael Hertz and Bill Devereaux responded to a number of the comments made, particularly relating to testing, FCC regulations, and energy usage. Mr. Devereaux noted that the SmartMeter Program has created over 1,000 new jobs.

Mayor Storey closed the public hearing at 10:15 p.m.

Each council member commented on this issue. After considerable Council discussion the following action was taken:

**ACTION:** Council Member Norton moved, that the City sign on to both the City and County of San Francisco petition and the EMF Safety Network petition to the Public Utilities Commission and that the City Council review its petitions in October of this year. Council Member Begun seconded the motion.

Council Member Begun commented that the accuracy of the meters is not the problem, stating that people have been measuring electrical usage for over one hundred years; it is the potential health problem of the devices in question.

Prior to voting on the motion, Deputy City Attorney Cassman clarified that legal counsel was directed to file amicus support of both the City and County of San Francisco petition and the EMF Safety Network petition. She stated that while the City Attorney's office had reviewed the timeliness and the procedural ability of the Council to support the San Francisco petition, it had not done the same yet for the EMF petition. Ms. Cassman wanted the council to be aware that the City joining the EMF Safety Network petition will be contingent upon procedural ability to join the EMF petition at this time. Mayor Storey said the Council's instruction to file this amicus is necessarily subject to the procedural ability of the City to join at this point in time.

The motion carried on the following vote: AYES: Council Members Norton, Begun, and Mayor Storey. NOES: Council Member Nicol. ABSENT: None. ABSTAIN: None. DISQUALIFIED: Council Member Graves.





Item #: 4.A.

## CITY COUNCIL AGENDA REPORT

MEETING OF JULY 22, 2010

FROM: CITY MANAGER'S DEPARTMENT  
DATE: JULY 12, 2010  
SUBJECT: Public Hearing to Receive Information Pertaining to the Installation of SmartMeters in the City of Capitola by PG&E

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**Recommended Action:** That the City Council conduct a hearing to receive information from PG&E and the public pertaining to SmartMeters and provide direction to staff, if any.

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### DISCUSSION

On June 24 the City Council directed staff to place this matter on a future agenda for open session. As directed by Council, staff contacted the Government Relations Manager for PG&E, who indicated appropriate PG&E representatives would be available to attend a hearing on July 22 and that the installation of SmartMeters in Capitola would be delayed until after the July 22 hearing.

Attached to the agenda report is a petition from the City and County of San Francisco which calls on the California Public Utilities Commission to suspend PG&E's authorization to continue installing SmartMeters until state regulators conclude their investigation into whether the meters currently being deployed are accurate. The County of Santa Cruz and the City of Santa Cruz have joined in the petition and the City Attorney has ascertained that time remains for other jurisdictions to join should this be the Council's direction after hearing from PG&E representatives and interested members of the public.

In addition, PG&E has supplied a packet of information regarding SmartMeters to include with the agenda report. Information regarding SmartMeters and electromagnetic radiation which was submitted to the Council at its meetings of May 27 and June 24 was previously distributed to City Council. Copies of those documents will be available for review at City Hall, but are not included in the packet.

New information received since the June 24 meeting is included under Attachment 3.

**FISCAL IMPACT** - None

### ATTACHMENTS

1. Information regarding SmartMeters submitted by PG&E
2. The City and County of San Francisco's Petition to Modify Decision 09-03-026 to Temporarily Suspend Pacific Gas and Electric Company's Installation of SmartMeters
3. Correspondence received since June 24, 2010
  - a) Email dated 7/6/10 from Elisabeth Russell, AMBAG Special Projects Manager
  - b) Letter dated 7/15/10 and attachments submitted by Marilyn Garrett
  - c) Email dated 7/15/10 and attachments submitted by Nina Beety

**Report Prepared By:** Jamie Goldstein  
City Manager

**Reviewed and Forwarded  
By City Manager:** \_\_\_\_\_

5. A. OTHER BUSINESS (Continued)

Under discussion of the motion, Council Member Begun said he would like to accept the report, but he is not sure this is the right time to install utilities on the site. Public Works Director Jesberg stated that the recommended action is not to obtain approval to put the utilities in now, but to direct staff to pursue the possibilities of installing utilities. Staff would return to council for approval.

City Manager Goldstein also responded to questions of council regarding staff's recommendation for getting revenue from the site and obtaining water credits.

After discussion of the motion, Council Member Begun seconded the motion. There was additional council discussion prior to the vote being taken on the motion.

The motion to approve staff's recommendation carried on the following vote: AYES: Council Members Norton, Nicol, Begun, and Mayor Storey. NOES: None. ABSENT: Council Member Graves. ABSTAIN: None.

B. Report on SmartMeters. [565-30]

City Manager Goldstein summarized the written agenda report, providing background information pertaining to prior council action with respect to SmartMeters, his discussions with staff from the Town of Fairfax regarding their Urgency Ordinance, and a letter he received from the California Public Utilities Commission pertaining to this matter. He commented on several options the council may wish to consider, which are itemized in the agenda report, and he responded to questions of council members.

Mayor Storey opened the item for public comment at 8:24 p.m. He announced that there would be 3-minute limit for each speaker. It was suggested representatives from PG&E speak first.

Brian Jensen, Government Relations for PG&E, provided a brief summary regarding the SmartMeter technology and implementation of the program in California. He and Michael Herz, EMF Program Manager, responded to questions of council members.

Mayor Storey opened the item for public comments at 8:38 p.m.

The following people expressed their concerns about SmartMeters and urged the City Council to ban the installation of SmartMeters by PG&E in Capitola:

- Charles Strong, Capitola resident
- Mary Boone, Capitola resident at Loma Vista Mobile Estates
- Jeff, resident at Turner Lane Mobile Home Park
- Cindy Valdez, resident of Turner Lane Mobile Home Park
- Julie Castro, a mobile home park resident from Soquel
- Susan Ray, Capitola resident and health care practitioner
- Mike Boyd, President of CARE (Californians for Renewable Energy, Inc.)
- Monica McGwire, health care practitioner in Capitola
- Tammie Donnelly, Aptos resident.
- Marcy Meyers, owner of Capitola business "Way of Life"
- Dr. Karl Meret, resident of Aptos with several clients from Capitola
- Sherry Jackson, La Selva Beach resident
- Marsha Taffett, McCormick Court resident
- Unidentified male speaker, resident on Bulb Avenue near the AT&T substation

## 5. B. OTHER BUSINESS (Continued)

Karen Nevis, Clares Street resident, commented on SmartMeters located at the new senior complex on Bay Avenue and shared photographs of SmartMeters installed there, including 34 meters in one building.

Glen Chase, Professor of Environmental Economics

Rhonda commented that there is no proof that the SmartMeter is going to save any energy and reduce energy costs

Marilyn Garrett, resident of Aptos, expressed her concerns and submitted a petition requesting a halt to the installation of SmartMeters in Santa Cruz County

An unidentified man commented that he had a smart meter when he was growing up on the West Side of Santa Cruz; it was his father, who went around turning off the lights. He urged the council to ban them.

At 9:27 p.m., following comments from the public, Mayor Storey asked if PG&E representatives wished to respond.

Michael Herz of PG&E submitted copies of fact sheets from the World Health Organization and other information from various organizations pertaining to biological effects and health consequences of electromagnetic fields. He responded to additional questions of council members.

Brian Jensen discussed answer meetings that have been held at their payment center in Capitola, and he announced that on October 13, 2010, at the Loudon Nelson Community Center, PG&E would be holding a public open house from 6 to 9 p.m. to answer questions and discuss the SmartMeter Program. He invited members of the public to attend.

Council Member Norton asked how the council could prolong the installation of SmartMeters in our community. He also asked if there were a phone number to call PG&E if someone were interested in opting out of the program, particularly due to medical reasons.

Mr. Jensen provided the following toll free phone number to call: 1-866-743-0263

Considerable Council discussion was followed by this action:

**ACTION:** Council Member Begun moved, seconded by Council Member Norton, to direct staff to implement the first three options contained in the staff Agenda Report, including:

- Direct staff to request the Legislature, through our local Assembly member Bill Monning, to order a thorough analysis of the environmental and health effects of this technology.
- Direct the City Attorney to write to the CPUC requesting a halt to the installation of SmartMeters in Capitola until a health and safety analysis has been completed.
- Direct staff to prepare a resolution demanding PG&E halt the installation of Smart-Meters in Capitola.

City Manager Goldstein said staff has prepared a draft resolution, which he could display on the screen should the council wish to consider it immediately.

Council Member Norton requested a friendly amendment to the motion to include writing a letter to Senator Joe Simitian, as well as to Assemblymember Monning. Council Member Begun accepted the amendment to his motion.

Under discussion of the motion, there was an inquiry regarding the vote needed to adopt an urgency ordinance. City Manager Goldstein said a unanimous vote is required.

## 5. B. OTHER BUSINESS (Continued)

City Manager Goldstein displayed a draft resolution on the overhead projector and read the entire document for council consideration.

Council Member Begun commented on the statement of accuracy and safety and requested the statement say, "...to delay the implementation of SmartMeters until the questions about their accuracy, health, and safety can be evaluated."

Mayor Storey commented on PG&E and the CPUC not allowing the right to choose, and he asked if the council would consider adding language to the resolution about freedom of choice being an important fundamental right to the citizens of Capitola. He also requested adding language to say the lack of an opt-out provision in the current PG&E SmartMeter Program is not acceptable, and if a SmartMeter is installed, it should be able to be removed if a resident does not want one.

The motion makers, Council Members Begun and Norton, accepted the proposed resolution as modified during the City Council's discussion and clarified the following action on the motion:

1. Staff was directed to request the Legislature, through our local Assemblymember Bill Monning and Senator Joe Simitian, to order a thorough analysis of the environmental and health effects of this technology;
2. The City Attorney was directed to write to the CPUC requesting a halt to the installation of SmartMeters in Capitola until a health, safety and accuracy analysis has been completed; and
3. The City Council adopted **Resolution No. 3831, Resolution of the City Council of the City of Capitola Demanding PG&E Halt the Installation of SmartMeters and Related Equipment with the City of Capitola**, as modified during discussion of the motion.

The motion carried on the following vote: AYES: Council Members Norton, Begun, and Mayor Storey. NOES: Council Member Nicol. ABSENT: Council Member Graves. ABSTAIN: None.

AT THIS POINT, ITEMS REMOVED FROM CONSENT CALENDAR WILL BE CONSIDERED

3. CONSENT CALENDAR (*Items pulled for separate discussion.*)

**D. Receive Report on Review of Tree Protection Ordinance and Overview of Implementation Practices. [1030-60]**

Community Development Director Johnson summarized the written agenda report and responded to questions of council members.

Council Member Norton is in concurrence with direction; however, his concern is that he would like to know that there is communication between the Police Department, community and staff with respect to dealing with tree issues, particularly on the weekends and holidays.

Council discussion was followed by this action:

**ACTION:** Council Member Norton moved, seconded by Council Member Nicol, to approve recommended action to receive the Report on Review of Tree Protection Ordinance and Overview of Implementation Practices and directed staff to file the report, as submitted. The motion carried unanimously.



Item #: 5.B.

## CITY COUNCIL AGENDA REPORT

MEETING OF SEPTEMBER 23, 2010

FROM: CITY MANAGER'S DEPARTMENT  
DATE: SEPTEMBER 16, 2010  
SUBJECT: REPORT ON SMARTMETERS

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**Recommended Action:** Council direction.

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### **BACKGROUND**

On July 22, 2010 City Council held a hearing to receive input regarding the installation of SmartMeters in the City of Capitola. At that meeting, Council received testimony from PG&E representatives, as well as members of the public. At the conclusion of that meeting, City Council directed the City Attorney to join both the City and County of San Francisco and the EMF Safety Network petitions to the California Public Utilities Commission (CPUC) and that the City Council review its petitions in October of this year.

Since that hearing, Council has directed staff to: research the ordinance adopted by the City of Fairfax, provide an update regarding the CPUC petition filed by the City of San Francisco regarding the accuracy to the SmartMeter, provide an update regarding SmartMeter deployment activity in the Capitola, and to invite an RF expert to the September 23 hearing.

### **DISCUSSION**

Earlier this month, the PUC received a report regarding the accuracy of SmartMeter from the consulting firm Structure Group, commissioned under a \$1.4 million contract with the PUC. The report found the SmartMeters are "consistent with industry standards and performing accurately." The report also found PG&E did not adequately address customer complaints and concerns about the new technology, which is designed to give consumers more up-to-date data on their energy use.

The final ruling by the CPUC on the City of San Francisco's petition is expected this Fall.

In August, the Town of Fairfax passed an urgency ordinance that places a one year moratorium on the deployment of SmartMeter in Fairfax. According to the meeting minutes, PG&E representatives present at that Council meeting testified they would voluntarily halt the deployment of the SmartMeter in Fairfax.

Based on further discussions with the Town of Fairfax, their staff has been informed, on a number of occasions, that PG&E's position is that the Town is preempted by state law from blocking the installation of SmartMeter, and that PG&E does not intend to abide by the moratorium at such time as it is scheduled to install SmartMeter in the Town. At that point it will be up to the Town to file a lawsuit should the Town wish to enforce its moratorium.

In correspondence addressed to the Town of Fairfax (Attachment 2), the CPUC also indicates that the California Constitution grants authority to regulate utilities to the CPUC. Therefore, it is the CPUC's position that any local ordinance to regulate PG&E would be unenforceable.

PG&E representatives have been invited to the September 23 hearing, and have indicated PG&E representatives will attend, as well as an outside RF expert under contract with PG&E. PG&E also indicates that approximately 80 electric and 242 gas SmartMeters have been installed in the City, with full deployment scheduled for early 2011.

There are several options available should Council wish to make known concerns about PG&E's SmartMeter Program. For example, Council could:

- Direct staff to request the Legislature, through our local Assembly member Bill Monning, to order a thorough analysis of the environmental and health effects of this technology.
- Direct the City Attorney to write to the CPUC requesting a halt to the installation of SmartMeter in Capitola until a health and safety analysis has been completed.
- Direct staff to prepare a resolution demanding PG&E halt the installation of SmartMeter in Capitola.
- Direct staff to prepare an urgency ordinance imposing a moratorium on the installation of SmartMeters in Capitola, which would require a 4/5 vote to enact as required by California Government Code 65858 8 (a).

**FISCAL IMPACT** - None

**ATTACHMENTS**

1. Town of Fairfax Ordinance
2. Aug. 2, 2010 CPUC letter to Town of Fairfax

**Report Prepared By:** Jamie Goldstein  
City Manager

**Reviewed and Forwarded  
By City Manager:** \_\_\_\_\_

COPY

## RESOLUTION NO. 3831

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA  
DEMANDING PG&E HALT THE INSTALLATION OF SMARTMETERS AND RELATED  
EQUIPMENT WITHIN THE CITY OF CAPITOLA**

WHEREAS, Pacific Gas & Electric Company ("PG&E") is now installing SmartMeters in Central and Northern California and is installing these meters within the City; and

WHEREAS, concerns about the impact and accuracy of SmartMeters have been raised at public hearings for the City of Capitola; and

WHEREAS, the CPUC currently has pending before it a petition from the City and County of San Francisco, and other municipalities, including the City of Capitola, seeking to delay the implementation of SmartMeters until the questions about their accuracy, health, and safety can be evaluated; and

WHEREAS, major problems and deficiencies with SmartMeters in California have been brought to the attention of the City Council of the City of Capitola, including:

- The flow of gas and electricity into homes discloses private detailed information. SmartMeters represent a new form of technology that relays detailed hitherto confidential information reflecting the times and amounts of electrical power used without adequately protecting that data from being accessed by unauthorized persons and as such pose an unreasonable intrusion into resident's privacy and security interests; and
- Significant health questions have been raised concerning the increased electromagnetic frequency radiation (EMF) emitted by the wireless technology in SmartMeters, which will be in every house, apartment and business, thereby adding additional man-made EMF to our environment around the clock to the already existing EMF from utility poles, individual meters and telephone poles; and
- FCC safety standards do not exist for chronic long-term exposure to EMF or from multiple sources, and reported adverse health effects from electromagnetic pollution include sleep disorders, irritability, short term memory loss, headaches, anxiety, nausea, DNA breaks, abnormal cell growth, cancer, premature aging, etc. Because of untested technology, international scientists, environmental agencies, advocacy groups and doctors are calling for the use of caution in wireless technologies; and
- Assembly member Jared Huffman has requested the California Council on Science and Technology to advise him on whether the Federal Communications Commission's standards for SmartMeters are sufficiently protective and assess whether additional technology-specific standards are needed for SmartMeters; and
- A response to Assembly member Huffman from the Council on Science and Technology is expected as early as October 15, 2010

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CAPITOLA HEREBY RESOLVES AS FOLLOWS:

The City Council demands PG&E immediately halt the installation of SmartMeters on any and all home, apartment, condominium or business of any type within the City of Capitola, and no equipment related to SmartMeters be installed in, on, under, or above any public street or public right of way within the City of Capitola until concerns regarding the accuracy and safety of the SmartMeters is addressed.

BE IT FURTHER RESOLVED that the City Council finds that freedom of choice is an important fundamental right to the citizens of Capitola. The lack of an opt-out provision in the current PG&E SmartMeter Program is not acceptable. Should PG&E continue to pursue the SmartMeter Program in the City, Council demands that PG&E implement mechanisms to allow residents to both opt-out, and remove SmartMeters from resident's houses who do not want them.

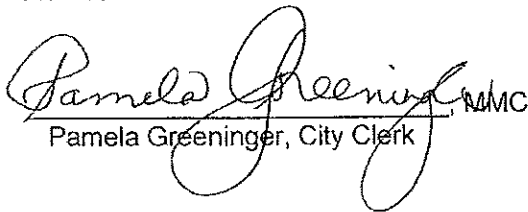
I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Capitola on the 23<sup>rd</sup> day of September, 2010, by the following vote:

- AYES: Council Members Norton, Begun, and Mayor Storey
- NOES: Council Member Nicol
- ABSENT: Council Member Graves
- ABSTAIN: None



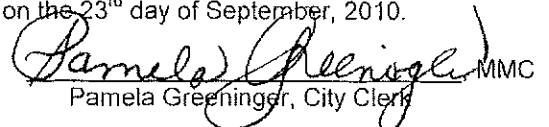
Sam Storey, Mayor

ATTEST:



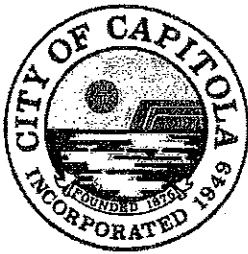
Pamela Greeninger, City Clerk

This is to certify that the above and foregoing is a true and correct copy of Resolution No. 3831 passed and adopted by the Capitola City Council on the 23<sup>rd</sup> day of September, 2010.



Pamela Greeninger, City Clerk





420 CAPITOLA AVENUE  
CAPITOLA, CALIFORNIA 95010  
TELEPHONE (831) 475-7300  
FAX (831) 479-8879

September 27, 2010

Senator Joe Simitian  
State Capitol, Room 2080  
Sacramento, CA 95814

RE: Pacific Gas & Electric SmartMeter Program

Dear Senator Simitian:

The City Council of the City of Capitola is deeply concerned about the protecting the public health of City residents and visitors to our community. Council has received disturbing testimony regarding the public health impacts of the SmartMeters Pacific Gas and Electric is installing throughout Northern California.

I am writing you to request that your office orders a thorough analysis of the environmental and health effects of this technology.

Based on our City Council's well founded concerns regarding public health, on September 23, 2010 the Council passed the enclosed resolution which demands PG&E halt the installation of SmartMeters within the City of Capitola until concerns regarding accuracy and safety are addressed. The resolution goes on to further state that should PG&E continue to pursue the SmartMeter program in the City, PG&E must implement mechanisms to allow residents to both opt-out, and remove SmartMeters from resident's houses who do not want them. Your office's support in investigating the environmental health effects of this technology would be vital in addressing those safety concerns.

We look forward to hearing from you regarding this matter of public importance.

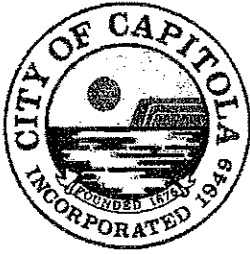
Sincerely,

CITY OF CAPITOLA

Sam Storey  
Mayor

Enclosure

cc: Council Members  
Jamie Goldstein, City Manager



420 CAPITOLA AVENUE  
CAPITOLA, CALIFORNIA 95010  
TELEPHONE (831) 475-7300  
FAX (831) 479-8879

September 27, 2010

Assemblymember Bill Monning  
27<sup>th</sup> District  
State Capitol  
P.O. Box 942849  
Sacramento, CA 94249-0027

RE: Pacific Gas & Electric SmartMeter Program

Dear Assemblymember Monning:

The City Council of the City of Capitola is deeply concerned about the protecting the public health of City residents and visitors to our community. Council has received disturbing testimony regarding the public health impacts of the SmartMeters Pacific Gas and Electric is installing throughout Northern California.

I am writing you to request that your office orders a thorough analysis of the environmental and health effects of this technology.

Based on our City Council's well founded concerns regarding public health, on September 23, 2010 the Council passed the enclosed resolution which demands PG&E halt the installation of SmartMeters within the City of Capitola until concerns regarding accuracy and safety are addressed. The resolution goes on to further state that should PG&E continue to pursue the SmartMeter program in the City, PG&E must implement mechanisms to allow residents to both opt-out, and remove SmartMeters from resident's houses who do not want them. Your office's support in investigating the environmental health effects of this technology would be vital in addressing those safety concerns.

We look forward to hearing from you regarding this matter of public importance.

Sincerely,

CITY OF CAPITOLA

Sam Storey  
Mayor

Enclosure

cc: Council Members  
Jamie Goldstein, City Manager



Item #: 4.B.

## CITY COUNCIL AGENDA REPORT

MEETING OF FEBRUARY 10, 2011

FROM: DEPARTMENT OF PUBLIC WORKS  
DATE: FEBRUARY 2, 2011  
SUBJECT: DISCUSSION ON THE CONTINUED INSTALLATION OF SMARTMETERS BY  
PACIFIC GAS AND ELECTRIC COMPANY IN THE CITY OF CAPITOLA

---

**Recommended Action:** By motion and roll call vote take the following action:

- Authorize the Mayor to send a letter of support to Assembly Member Bill Monning for Assembly Bill 37 (Huffman) amending the California Public Utilities Code to include an opt out provision in the California Public Utilities Code for customers who do not want a SmartMeter including the ability to remove SmartMeters already installed.

The Council may also want to consider the following separate action, although it is not recommended by staff:

- By 4/5 vote, adopt an urgency ordinance imposing a temporary moratorium on the installation of PG&E SmartMeters and related equipment in, along, across, upon, under and over the public streets and other places within the City of Capitola until December 31, 2011.
- 

### **BACKGROUND**

On July 22, 2010 and again on September 23, 2010 the City Council held hearings concerning Pacific Gas and Electric Company's (PG&E) installation of SmartMeters in the City of Capitola. At these two meetings the City Council took the following actions:

July 22, 2010

- The City sign onto both the City and County of San Francisco petition and the EMF Safety Network petition to the California Public Utilities Commission (CPUC) and that the City Council reviews its petitions in October of this year.

September 23, 2010

- Staff was directed to request the Legislature, through our local Assembly member Bill Monning and Senator Joe Simitian, to order a thorough analysis of the environmental and health effects of this technology;
- The City Attorney was directed to prepare a letter to the CPUC requesting a halt to the installation of SmartMeters in Capitola until a health, safety and accuracy analysis has been completed. (This letter was prepared for the Mayor's signature and sent by Mayor Storey on October 6, 2010.)

- The City Council adopted Resolution No. **3831**, Resolution of the City Council of the City of Capitola Demanding PG&E Halt the Installation of SmartMeters and related equipment within the City of Capitola.

### **DISCUSSION**

The petitions filed with the CPUC from the City and County of San Francisco and the EMF Safety Network were denied.

California Assembly Members Huffman and Monning requested that the California Council on Science and Technology (CCST) perform an “independent science-based study that would help the policy makers and the general public resolve the debate as to whether SmartMeters present a significant risk of adverse health effect.” The report from the CCST was issued in January 2011. This report in its entirety is included as Attachment 4.

To date several agencies including the Marin County, City of Watsonville, and the County of Santa Cruz have adopted urgency ordinances establishing a moratorium on the installation of SmartMeters. PG&E has continued SmartMeter installation in all these jurisdictions. PG&E is regulated by the CPUC which has exclusive authority over this matter and CPUC has taken the position that local ordinances have no bearing on the PG&E SmartMeter program and that the local laws are pre-empted by State law. If the Council chooses to impose a moratorium, City enforcement would entail an application to the court for an order directing PG&E to cease and desist SmartMeter installation in the City during the pendency of the moratorium. It is questionable, given the preemption issue mentioned above, whether the court would grant such an application. Given that the Council has already voiced its opposition to the installation of SmartMeter by PG&E via the adoption of Resolution No. 3831, staff is does not recommend the adoption of an ordinance given the lack of likely successful enforcement options.

On December 6, 2010 Assembly Member Huffman introduced legislation (AB 37) which would add a section to the Public Utilities Code to require the CPUC to identify alternative options for customers who do not wish to have a wireless SmartMeters installed and allow customers to opt-out of wireless SmartMeter installations, including removing existing installations when requested by the customer. This legislation would also suspend the deployment of SmartMeters until the CPUC met these conditions. On January 24, 2011 this bill was referred to the Assembly Committee on Utilities and Commerce. Staff recommendations include support of the legislation.

In Capitola PG&E continues to install SmartMeters on new accounts and meter replacements. Full conversion to SmartMeters is expected by 2012 as directed by the CPUC.

### **CEQA Findings**

The adoption of an urgency ordinance is not subject to CEQA pursuant to Section 15060(c)(2) – the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

### **FISCAL IMPACT**

Should the City Council choose to adopt a moratorium ordinance there may be unknown costs associated with enforcement, including legal fees.

**ATTACHMENTS**

1. Draft ordinance
2. Draft letter to Assembly Member Monning
3. Assembly Bill 37 – introduced draft
4. California Council on Science and Technology report on the Health Impacts of Radio Frequency from Smart Meters dated January 2011
5. Minutes and Agenda Report (without attachments) from July 22, 2010
6. Minutes and Agenda Report (without attachments) from September 23, 2010
7. City of Capitola Resolution No. 3831 adopted September 23, 2010
8. Letter from Mayor Sam Storey to Senator Joe Simitian dated September 27, 2010
9. Letter from Mayor Sam Storey to Assembly Member Bill Monning dated September 27, 2010
10. Letter from Mayor Sam Storey to Paul Clanon, Executive Director of California Public Utilities Commission dated October 6, 2010

**Report Prepared By:            Steven Jesberg  
   Public Works Director**

**Reviewed and Forwarded  
By City Manager:**

---

**RESOLUTION NO.**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA  
ADOPTING THE CAPITOLA BICYCLE TRANSPORTATION PLAN,  
APPROVING THE NOTICE OF EXEMPTION, AUTHORIZING THE SUBMITAL OF A  
BICYCLE TRANSPORTATION (BTA) GRANT APPLICATION FOR \$147,500 FOR THE  
PURCHASE AND INSTALLATION OF VIDEO DETECTION SYSTEMS AND BICYCLE  
PARKING AND AUTHORIZING AND DIRECTING  
THE CITY MANAGER TO SUBMIT THE PLAN TO THE STATE DEPARTMENT OF  
TRANSPORTATION FOR CERTIFICATION**

WHEREAS, the City of Capitola recognizes its responsibility to plan for bicycle transportation in implementing the City General Plan; and

WHEREAS, the Bicycle Transportation Plan sets forth City policies that will direct City action toward the provision of bicycle facilities and programs in the community; and

WHEREAS, Section 891.2 of the Highway Code of the State of California sets forth the requirements for the preparation and adoption of the Bicycle Transportation Plan; and

WHEREAS, a Notice of Exemption was prepared for the plan pursuant to sections 15301 and 15304 of the California Environmental Quality Act; and

WHEREAS, consistent with CEQA, it was determined that: and

WHEREAS, the Bicycle Transportation Plan has been developed through the participation and recommendations of the City's Planning Commission, Capitola Commission on the Environment, and Santa Cruz County Regional Transportation Commission Bike Committee; and

WHEREAS, the City Planning Commission held a public hearing on August 5, 2010 and recommended that the City Council approve the Bicycle Transportation Plan with incorporated comments from the Planning Commission and the public; and

WHEREAS, the City of Capitola's Bicycle Plan has identified the installation of video detection systems at our signalized intersections and Village Bicycle Parking as an important component to providing greater bicycling safety; and

WHEREAS, video detection systems are the most effective way to detect bicyclists at signalized intersections and bicycle parking is limited along the esplanade; and

WHEREAS, the Bicycle Transportation Account (BTA) provides State funds for city and county projects that improve safety and convenience for bicycle commuters; and

WHEREAS, the Bicycle Transportation Account (BTA) requires a local agency to provide a minimum of 10% of the total project cost.

WHEREAS, the City Council held a public hearing on February 10, 2011; and

WHEREAS, the City Council now finds:

1. The proposed plan is deemed to be in the public interest. Availability of bicycle facilities and programs is an issue of local and regional importance. The Bicycle Transportation Plan makes adequate provisions for the existing and projected bicycle facilities city-wide. The Bicycle Transportation Plan is also in the public interest since it addresses community safety, air quality and transportation alternatives.
2. The proposed Bicycle Transportation Plan and goals, policies and projects therein are consistent and compatible with the City General Plan and 2010 Santa Cruz County Regional Transportation Plan.
3. The potential impacts of the proposed plan have been assessed and have been determined not to be detrimental to the public health, safety, or welfare. It is intended to promote the bicycle transportation needs of the community, including the maintenance of existing facilities, addition of new facilities and support of studies and programs that increase the safety of bicycle riders in the city.
4. The Bicycle Transportation Plan was prepared in accordance with California State Highway Code Section 891.2 and reviewed by the Santa Cruz County Regional Transportation Commission to ensure compliance with State law. A Notice of Exemption was prepared per the requirements of CEQA.

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

1) The City Council of the City of Capitola hereby approves the Notice of Exemption, attached as Exhibit A hereto and made a part hereof, and has determined the actions resulting from the implementation of the Capitola Bicycle Transportation Plan fall within the Categorical Exemptions put forth in sections 15301(c) and 15304(h) of the California Environmental Quality Act; and

2) That the City Council of the City of Capitola agrees to provide matching funds in the amount of \$14,750 (10% of project cost) to be used as the local match for the grant should the BTA Grant Application be approved; and

2) The City Council of the City of Capitola hereby adopts the Capitola Bicycle Transportation Plan dated February 2011; and

3) The City Manager is hereby authorized and directed to submit the Capitola Bicycle Transportation Plan to the Santa Cruz County Regional Transportation Commission for final certification.

I HEREBY CERTIFY that the above and foregoing resolution was passed and adopted by the City Council of the City of Capitola at its regular meeting held on the 10<sup>th</sup> day of February, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Dennis R. Norton, Mayor

ATTEST:

\_\_\_\_\_, MMC  
Pamela Greeninger, City Clerk



**EXHIBIT A**



**NOTICE OF EXEMPTION**

TO: CITY OF CAPITOLA CITY COUNCIL  
FROM: COMMUNITY DEVELOPMENT DEPARTMENT  
ATTACHMENT: City of Capitola Bicycle Facilities Map

Based on a preliminary review, the implementation of the City of Capitola Bicycle Transportation Plan will result only in projects and activities determined to be exempt from further environmental review requirements of the California Environmental Quality Act (CEQA) of 1970, as defined in the State Guidelines for the implementation of CEQA.

**Case No.: #XX-XXX**

**Location:** City-Wide; Urban Area Inside and Outside of the Coastal Zone and Appeals Jurisdiction

**Project Title:** City of Capitola Bicycle Transportation Plan

**Project Description:** The Capitola Bicycle Transportation Plan proposes minor improvements to and maintenance of existing infrastructure, feasibility studies to improve safety or expand existing bikeways, and programs to improve bicycle safety and encourage ridership. The projects are located in various parts of the city

**Exempt Status:** (Check one)

Ministerial

Statutory

**Categorical Exemption §15301 (c), 15304 (h), and no possibility of significant effect**

Emergency Project

No Possibility of Significant Effect

**Cite specific CEQA Guideline Section:** Sections §15301 (c), 15304 (h)

**Reasons to support exemption findings:**

Please see the attached impact discussion for the proposed amendment on the following pages.

\_\_\_\_\_  
Department Representative

\_\_\_\_\_  
Date

Note: A copy must be filed with the County Clerk of the Board after project approval and posted by the Clerk of the Board for a period of 30 days to begin a 35 day statute of limitations on legal challenges.

\_\_\_\_\_  
Date File of County Clerk

**Impact Discussion**

Section 15301 (c) of the CEQA Guidelines consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing highways and streets, sidewalks, gutters and bicycle and pedestrian trails, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The key consideration is whether the project involves negligible or no expansion of uses.

Section 15304 (h) of the CEQA Guidelines consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes such as the creation of bicycle lanes on existing rights-of-way.

In accordance with the above cited sections of the CEQA Guidelines, the creation, minor alteration or maintenance of bicycle lanes or trails within existing rights-of-ways shall be exempt from further environmental review.

**Discussion:**

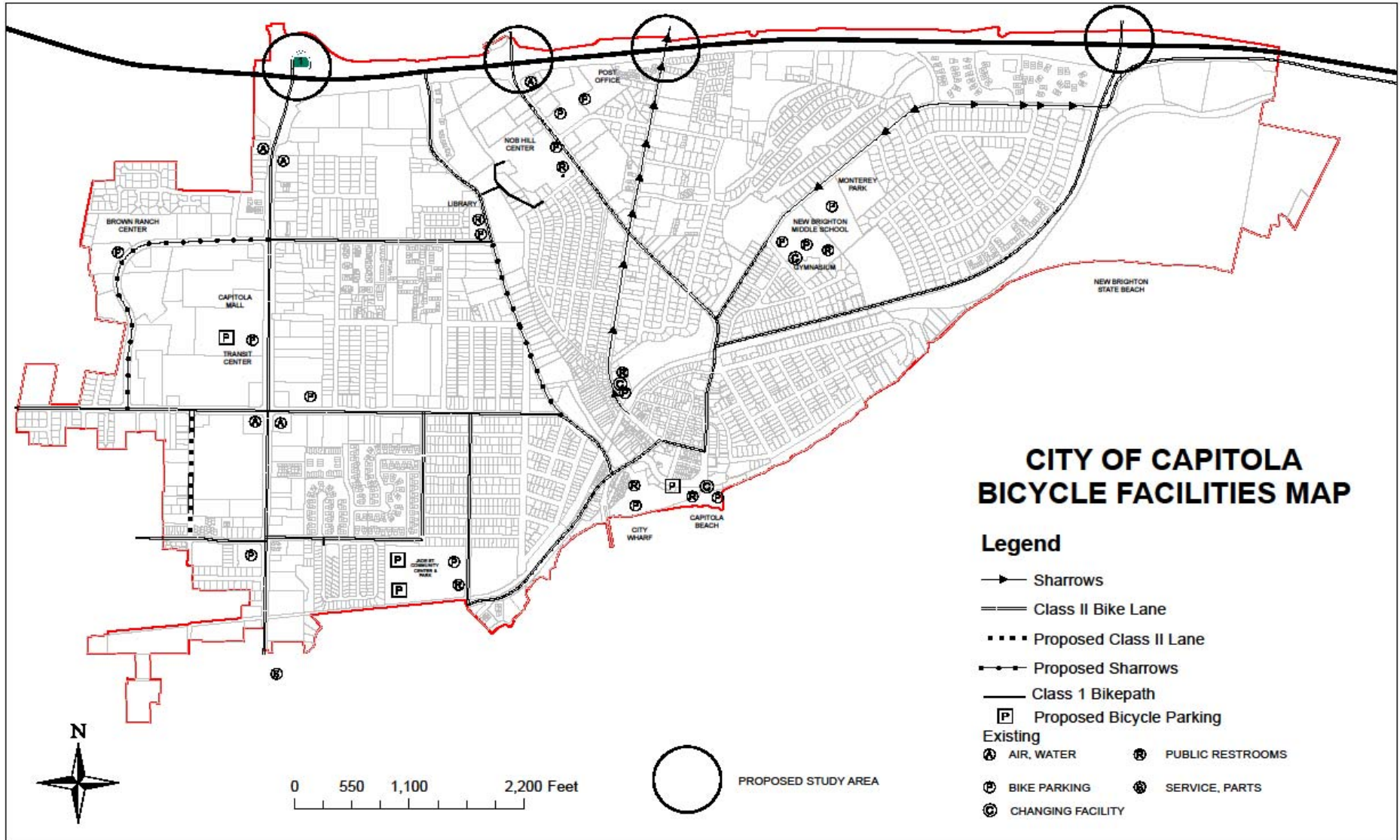
The Bicycle Transportation Plan was prepared in accordance with California State Highway Code Section 891.2 and reviewed by the Santa Cruz County Regional Transportation Commission to ensure compliance with State law. The proposed projects listed in the Capitola Bicycle Transportation Plan are consistent with the Capitola Municipal Code and the Capitola General Plan.

The Capitola Bicycle Plan proposes to install, reposition, restripe and re-stencil bicycle lanes and sharrows on existing streets within the City of Capitola boundaries. The plan also proposes to add bicycle parking in the Capitola Village, Jade Street Park and Capitola Mall Transit Center. The maintenance of existing bicycle facilities is addressed in the language of Section 15301 (c) of the CEQA Guidelines, and the provision for the creation of bicycle lanes on existing rights-of-way is included in Section 1504 (h) of the CEQA Guidelines. The addition of bicycle parking is a minor alteration to existing public right-of-way and will not result in the removal of healthy, mature or scenic trees.

Several projects consist of the study of intersections and creation of plans to improve the safety of bicyclists in certain areas of the city. The implementation of these projects will result in a study or plan and therefore does not require environmental review. When a study is prepared, it will include appropriate environmental review for any proposed action consistent with CEQA Guidelines.

The potential impacts of the proposed plan have been assessed and have been determined not to be detrimental to the public health, safety, or welfare. The Capitola Bicycle Transportation Plan is intended to promote the bicycle transportation needs of the community, including the maintenance of existing facilities, addition of new facilities and support of studies and programs that increase the safety of bicycle riders in the city. Furthermore, the expected increase in bicycle ridership resulting from the implementation of the plan may reduce vehicle trips. The reduction of vehicle trips means a reduction of greenhouse gas emissions which contribute to air pollution and anthropogenic climate change. Therefore the cumulative effect of the proposed projects will have a positive impact on the environment rather than a negative impact.

CITY OF CAPITOLA BICYCLE FACILITIES MAP





# DRAFT CITY OF CAPITOLA BICYCLE TRANSPORTATION PLAN



Adopted  
February 2011

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## CHAPTER 1|INTRODUCTION

The City of Capitola Bicycle Transportation Plan (BTP) assesses commuter needs, identifies funding sources and directs the future development of bicycle facilities in the City. It also seeks to carry out the Five Es used by the League of American Bicyclists to identify and rank Bicycle Friendly Communities. The five Es are Evaluation, Engineering, Education, Encouragement and Enforcement. Listed below are questions that define each category.

Evaluation	<ul style="list-style-type: none"><li>•How well does a community evaluate its own bikeway network and systematically plan to improve it?</li></ul>
Engineering	<ul style="list-style-type: none"><li>•Is the physical bicycle infrastructure well connected, accessible , safe and well maintained?</li></ul>
Education	<ul style="list-style-type: none"><li>•Are cycling educational programs available to bicyclists and motorists of all ages?</li></ul>
Encouragement	<ul style="list-style-type: none"><li>•Does the community support and promote bicycling through special events, clubs and recreational programs and facilities?</li></ul>
Enforcement	<ul style="list-style-type: none"><li>•Do well enforced laws exist which improve bicycle safety?</li></ul>

Communities which support bicycling through the simultaneous achievement of the 5 Es are considered to be Bicycle Friendly Communities. The goals and objectives of the Capitola Bicycle Transportation Plan were created with the 5 Es in mind in order to realize the vision of a pro-bicycle city. The Capitola Bicycle Transportation Plan was created as a result of community input, and reflects the needs of bicycle commuters in the City of Capitola and the greater region. By meeting the 5 Es criteria and engaging members of the community, the implementation of the Capitola Bicycle Transportation Plan will result in a safer, more convenient, and more pleasurable place to bicycle.

### SECTION 1.1 PURPOSE OF THE PLAN

The Capitola Bicycle Transportation Plan sets goals and objectives for the purpose of increasing the safety and convenience of bicycle commuting in the area. The BTP is an update of the 2005 City of Capitola Bicycle Transportation Plan. It includes or expands upon the goals and objectives put forth in 2005 to improve network connectivity, address dangerous or hazardous areas, and increase education and bicycle resources. In addition to remaining consistent with major City planning documents, the 2011 Bicycle Transportation Plan implements the policies and programs of the Circulation Element of the General Plan. The BTP is intended to aid City of Capitola planners and engineers in prioritizing bicycle improvement projects with the goal of increasing bicycle commuting, recreation, tourism and safety.

As traffic congestion, air pollution, obesity, and energy costs have become more serious problems, bicycling has become a practical alternative mode of transportation. Comprehensive planning efforts will help the bicycle reach its full potential as a viable transportation mode for commuting and shopping as well as for recreation. The Bicycle Transportation Plan defines goals, objectives, policies, and implementation programs involved in the planning, design, and construction of an integrated system of regional bicycle facilities. The BTP defines a network of bikeways, with an emphasis on commuter routes, which coordinate with and compliment other routes in Santa Cruz County.



## SECTION 1.2 HISTORY OF BICYCLES

The bicycle was originally developed as a transportation vehicle and gained prominence 100 years ago as a sporty alternative to the horse drawn carriage. With the emergence of the motor vehicle, however, the situation quickly changed. Unlike in Europe, where automobiles took decades to supersede cycling, American cyclists never had the chance to coexist with the automobile community. As a result, when the exchange of transportation modes occurred, bicycles experienced a rapid drop in status from high-class fashion to mere child's toy. No merging of these two modes was made. From there the bicycle's popularity fluctuated with the relative availability of cars and fuel costs, and was considered at best a working class mode of transportation.

Cycling began its great comeback after the postwar urban sprawl. More and more young people turned to bicycles as their only transportation to and from the suburbs and this, in turn, encouraged the development of more suitable bicycles. Then other groups began catching on: open road lovers, fitness enthusiasts and recreational riders. Enrollment in cycling clubs grew rapidly, and new and inexperienced members brought with them their childhood-taught "fear of motor vehicles." This viewpoint placed cyclists and motorists in competition with each other instead of encouraging cooperation and mutual respect. This viewpoint, predominant at the time, led to the bicycle path trend of the 1970's. Bicycle paths created at that time physically separated the two types of vehicles so that there could be no competition. They also reinforced the "fear of motor vehicles" viewpoint by keeping cyclists off the road. Experience with separated bicycle paths proved that they alone could not meet the needs of bicyclists. Firstly, bicyclists will not use poorly designed bicycle paths, due to inconveniences and safety problems. Well designed separated paths function well for some trip purposes and poorly for others. When riding for recreational purposes or commuting to only one destination, separated paths can be useful to bicyclists. The issue of access arises



when a trip destination is off of the bicycle path and can only be reached by a street network shared by motorized vehicles. The two apparent solutions to the issue of access are to create separated bicycle paths that run throughout the city, or encourage motorists, cyclists and pedestrians to share the road.

Today the cycling trend is to "share to road." This viewpoint promotes the integration of motorists and cyclists by improving existing roadway systems to accommodate bicycles. Bicyclists then share the roadway along with general motor vehicle traffic. Not only does this conserve funds, but it also unites the two groups under one set of rules of the road for better cooperation and safer operation. Unfortunately, "share the road" signs have not been entirely successful as automobile drivers sometimes take "share the road" to mean that bicycles should not take the lane and slow down motorized vehicle traffic. To reflect State law which states that bicycles have a rightful place on the road the City of Capitola has installed several "Bicycles may use full lane" signs on streets lacking bicycle facilities.



### SECTION 1.3 BENEFITS OF BICYCLE TRANSPORTATION

Bicycle riding not only improves physical health through exercise, and the environment by offsetting green house gas emissions, but it requires less expensive operational and infrastructure maintenance than driving an automobile. Investment in bicycle infrastructure has also proven to benefit local economies by attracting environmental and bicycle tourism (Flusche, 2009). It is difficult to realize the daily cost of driving an automobile, as not all costs are direct such as a bus fare, and many costs are subsidized or hidden. In order to help people quantify the financial and environmental impacts of driving, the Santa Cruz Regional Transportation Commission created an online interactive tool which calculates the "True Cost of Driving" (<http://www.commutesolutions.org/calc.htm>). The tool counts direct costs such as fuel, maintenance, insurance and parking in cents per mile. What is unique about the calculator is that it also includes indirect costs which are often overlooked such as infrastructure improvements and maintenance, air and water pollution, land use impacts, noise and congestion costs. By inputting the number of miles driven annually, the calculator can tally the costs and assign a dollar value to the amount of driving an individual does in a year. According to Commute Solutions.org, the true cost of driving is \$1.36/mile. Therefore, a person who drives 5 miles to and from work each day spends approximately \$3,000 each year. Most people drive to places other than work, which means that \$3, 000 per year is a low estimate, and for many the total cost of driving will exceed this amount.

Increasing the bicycle mode share and improving bicycle facilities can also reduce automobile congestion. Bicyclists will often choose different routes than automobiles, and physically take up less space on the road which reduces the traffic load on major arterial streets. Bicycles also take up less space than an automobile when parked, which frees up land for other uses.

Approximately 8 to 10 bicycles can fit in the space of one car parked on the street. A standard curb parking space is 8 feet by 22 ft or 176 ft<sup>2</sup>. If businesses could meet a portion of their parking requirements by providing bicycle facilities instead of car parking, it could potentially free up a substantial amount of land for uses other than parking in the future. Bicycles also increase the accessibility of public transit which reduces congestion by transporting more occupants than a car. Congestion caused by parents driving their children to school can be reduced by encouraging children to walk or ride their bicycles.

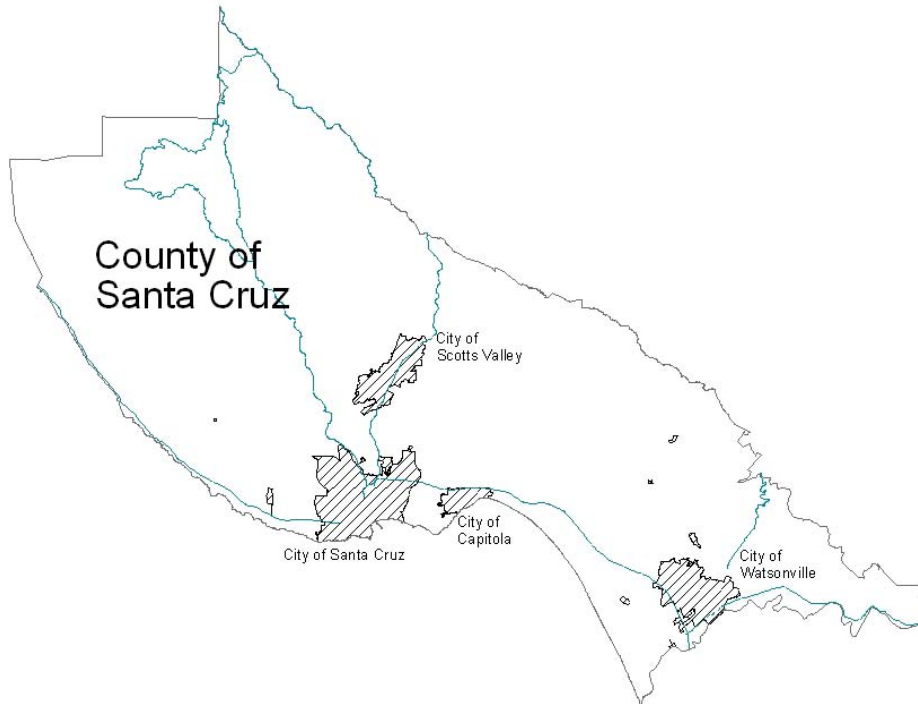
Another benefit of bicycling is that it increases the mobility and independence of non-drivers such as youth under age 16, low income groups who cannot afford automobiles, and the elderly and disabled. In Capitola approximately 16% of the population is younger than 16 years old and 14% is over the age of 65. There is no specific age at which a driver's license is revoked, so there are individuals who are legally allowed to drive past the age of 65. However, there are 8 million people in America over the age of 60 who no longer have a driver's license (Gotschi, 2008). As the Baby Boom population ages, it is expected that the number of senior citizens living in Capitola will increase, creating a demand for alternative transportation modes. For some, loss of balance or diminished capacity for physical activity becomes a limiting factor in regards to their mobility. Tricycles and electric bicycles mitigate such problems, and make it easier for those with disabilities or health issues to get around safely. The County of Santa Cruz offered an electric bicycle subsidy program which has been discontinued. However, there are several retailers in Santa Cruz County that offer electric bicycles at affordable prices. Electric bicycles are helpful to some, although unnecessary for many individuals, as bicycles are the most efficient means of human powered transportation (Wilson, 1973).

## SECTION 1.4 SETTING

The City of Capitola is a small city of 10,015 people located on the Monterey Bay Coast in Santa Cruz County (Figure 1-1). With an area of two square miles, the compact nature of the city, mild weather, and mostly flat terrain make Capitola an ideal place for bicycling. The City is connected by a network of bikeways to the City of Santa Cruz, a "Silver" Bicycle Friendly Community (League of American Bicyclists) and other parts of the county. The historic Capitola Village is a popular tourist destination over the summer months, and its narrow streets encourage bicycling and walking.

The Union Pacific railroad runs through the southern portion of the city along the Monterey Bay National Marine Sanctuary. The Union Pacific railroad is currently being purchased by the SCCRTC although as of February, 2011 escrow has not closed. Freight service will continue on the rail line. The possibility of constructing bicycle and pedestrian facilities alongside the railroad tracks will be considered as part of the planning effort for the transportation network. Such facilities would provide access to major commercial areas, beaches and parks within Capitola.

Figure 1-1 Map of Santa Cruz County



## SECTION 1.5 PLANNING PROCESS

The 2011 Capitola Bicycle Transportation Plan is the result of community input and staff recommendations. A public meeting was held before the Capitola Planning Commission on August 5, 2010 to receive comments and suggestions from members of the public. The plan was written in coordination with the public works department in order to insure the efficiency and cost-effectiveness of bicycle facility improvement projects. The Santa Cruz County Regional Transportation Commission's Bicycle Advisory Committee reviewed the draft BTP in October to confirm the plan was consistent with the Regional Transportation Plan and State Highway Code Section 891.2. In February 2011, the Capitola City Council adopted the Bicycle Transportation Plan and Notice of Exemption by resolution. The Capitola Bicycle Transportation Plan was approved by the Santa Cruz County Regional Transportation Commission in February 2011.

## SECTION 1.6 PLAN ORGANIZATION

The Plan is organized in the following chapters:

CHAPTER 1	Introduction
CHAPTER 2	Goals, Policies and Objectives
CHAPTER 3	Existing Conditions
CHAPTER 4	Needs Analysis
CHAPTER 5	Bicycle Plan Projects
CHAPTER 6	Bicycle Safety and Education Programs
CHAPTER 7	Funding Sources

## SECTION 1.7 BTA COMPLIANCE

The Bicycle Transportation Account (BTA) was created to implement the California Bicycle Transportation Act, Streets and Highway Code Sections 890-894 (1994). BTA money may be used for infrastructure projects aimed at improving bicycle commuting and safety. Only projects which are listed and described in the local Bicycle Transportation Plan are eligible to receive BTA funding. The Capitola Bicycle Transportation Plan is consistent with the criteria stated in the California Streets and Highways Code section 891.2 listed in Appendix C: Bicycle Transportation Plan Checklist. Therefore, the projects listed within the Bicycle Transportation Plan are eligible for BTA funding.

## CHAPTER 2 GOALS AND OBJECTIVES

This chapter introduces the goals and objectives of the 2011 Capitola Bicycle Transportation Plan, and discusses the consistency of the Plan with other City and Regional planning documents. Bicycling currently falls into four general use categories: commuting/utility, recreational, touring, and racing. The goals and objectives of the Capitola Bicycle Transportation Plan focus primarily on improving bicycle facilities and programs for commuters. Commuting/utility riders are those who regularly travel to and from a specific destination, usually as quickly and directly as possible, for very practical purposes, such as to purchase or transport goods and services or to travel to and from work, school, or events. Many people commute by bicycle for environmental or economic reasons, exercise and for the pleasure of riding.

Recreational cyclists include those who take day-long local excursions and are generally riding for pleasure or fitness. The Pacific Coast Bicycle Route, a California designated facility promoted by CT and the Adventure Cycling Association traverses through the City of Capitola and facilitates tourist activities. Off-road mountain bicycling is a very popular recreational activity. Touring, on the other hand, extends over longer periods of time. Touring requires more planning since the destination and routes are important factors. Racing is a specialized sport and race courses may use public roadways with appropriate public agency approval and permits.

To accommodate all cycling types, route systems should be accessible and frequent enough to be within a few blocks of all residents. They should be understandable and have adequate signs and graphics to make clear where routes are, and where they are going. Route systems should be safe, visible, relatively flat, and have adequate lane width. In addition, it is important to keep in mind that excessive motor vehicle traffic volume and speed make bicycling less safe and less fun. There is a need to design transportation systems that provide more balance between modes, a more efficient use of energy in the movement of people, and a more harmonious interaction between transportation and the environment. The goals and objectives of this plan address the aforementioned needs and seek to improve the bicycle infrastructure in Capitola for commuters and other cycling enthusiasts.

### SECTION 2.1 CITY OF CAPITOLA PLANNING DOCUMENTS

The City of Capitola General Plan Circulation Element includes objectives, policies and programs to develop a safe and efficient bikeway system. The Element supports the improvement and expansion of bikeways and bicycle facilities (Policies 30, 31, 32, 33 and 34). The preparation and implementation of a Bicycle Plan facilitates achieving these objectives by developing an action plan that can be used as part of the County, regional, and statewide funding and grant programs. The Bicycle Plan is in support of the following City of Capitola General Plan Circulation Element Policies and Programs:

Policy 30	<ul style="list-style-type: none"> <li>• Support the development of the bikeway system as planned.</li> </ul>
Policy 31	<ul style="list-style-type: none"> <li>• Make every effort to provide for bicycles along all arterials and minor arterials. The desired objective is a Class II bikeway.</li> </ul>
Policy 33	<ul style="list-style-type: none"> <li>• Require bicycle parking or storage facilities at new private and public developments where appropriate.</li> </ul>
Policy 34	<ul style="list-style-type: none"> <li>• Bicycle facilities are not recommended on collector streets unless traffic volumes are close to the limits of collector street standards and/or bicycle traffic is estimated to be high or related to school or park access.</li> </ul>

**SECTION 2.2 SANTA CRUZ COUNTY REGIONAL TRANSPORTATION PLAN**

The Santa Cruz County Regional Transportation Plan (RTP) was adopted by the Santa Cruz County Regional Transportation Commission in June 2010. The 2010 RTP contained only minor changes to the 2005 RTP, thus many of the goals and objectives from 2005 have been continued in the 2010 plan. Similarly to the Capitola Bicycle Transportation Plan, the 2010 Regional Transportation Plan (RTP) also seeks to increase bicycle travel, reduce conflicts between bicycles and other modes of travel and increase the potential of combining bicycle travel with other modes of transportation. The RTP seeks to develop bikeway systems, including bicycle lanes, which provide for safe bicycle travel. The Bicycle Plan is consistent with RTP bicycle planning policies that seek to update bikeway plans and implement projects to close gaps in the bikeway network and provide safe and convenient bicycling facilities (Figure 2-1).

**Figure 2-1: List of Consistent Policies**

**2010 Santa Cruz County Regional Transportation Plan Policies**

- 1.4.1** Encourage signal standardization and signal timing improvements, with respect for pedestrian mobility and bicycle access, and discourage unwarranted stops on streets.
- 1.5.4** Retain and/or enhance existing sidewalks, bikeways and bus turnouts in road improvement projects incorporating “Complete Streets” concepts.
- 1.6.2** Reduce bicycle and pedestrian collisions by reducing the potential for conflicts between bicycles and autos and between pedestrians and autos.
- 1.6.3** Minimize adverse impacts on bicyclists and pedestrians during construction and maintenance activities by prompt repair, sweeping, and avoiding longitudinal seams on all road edges and curb areas including bicycle lanes and by following current best practices.
- 1.6.4** Encourage law enforcement agencies to take a more active role in the enforcement of laws governing the operation of bicycles and of motorists who are at fault in bicycle-motor vehicle accidents.
- 1.6.5** Encourage driver instruction about sharing the road with bicycles and encourage bicyclists to attend safety education programs; support continuation of bicycle traffic school for bicyclist offenders.
- 1.6.9** Improve bicyclists’ safety by eliminating impediments along all streets and bikeways, including but not limited to conducting regular street and pathway sweeping, bike lane repainting, trimming vegetation, and implementing traffic signal detection of bicycles.
- 2.1.1** Consider the needs of the non-motorized traveler in all programming, planning, maintenance, construction, operations, and project development activities and products. Whenever feasible, the incorporation of pedestrian, bicycle, and transit facilities should be incorporated in all capital projects.
- 2.7** Increase percentage of work trips done by bicycle to five percent of all trips and 20 percent of all work trips by 2035; do so by prioritizing bikeway projects based on: 1) increased safety or access; 2) complete gaps in the regional bicycle network; 3) high-demand, high-density areas and commute routes; 4) along popular recreational routes. Develop a program to measure and monitor growth rates.
- 2.7.1** Construct and mark bikeways on roads and bridges consistent with state standards.
- 2.7.2** Locate bikeways as bicycle lanes on roads unless a more direct bike path can be provided.
- 2.7.3** Maintain adequate outside travel lane width (14 feet) when no bicycle lane can be accommodated.
- 2.7.4** Support promotion and transportation safety programs to encourage safe and frequent use of alternative transportation modes.
- 2.7.5** Ensure that the public is informed about safe bicycling routes and options.
- 2.7.6** Support programs which deter bicycle thefts.
- 2.7.7** Facilitate cooperation among adjacent jurisdictions, both in-county and with adjacent counties, to install continuous bikeways and bike routes; Support programs to increase access to bicycles such as bike-sharing; discounts for bikes, helmets and other accessories; free bikes; inexpensive bike loans or rentals.
- 2.8.1** Provide bicycle racks and/or lockers that are consistent with best practice design guidelines at park and ride lots, transit centers and bus stops; bicycles on transit and pedestrian connections to transit; and potential inter-connections with future uses of the rail line within Santa Cruz County.
- 3.4.2** Encourage showers/lockers in new commercial and industrial development.
- 3.4.3** Encourage new recreation/visitor-serving development to include transit and bicycle improvements.
- 3.4.4** Provide alternative transportation information as well as adequate and secure bicycle parking at special
- 3.4.6** Limit the number of driveways in new commercial developments to reduce auto/bike conflicts.
- 3.7.2** Encourage safe routes to schools by providing improved bicycle and pedestrian facilities, improved transit service traffic-calming measures, and bicycle rider training programs for students.

## SECTION 2.3 GOALS AND OBJECTIVES

The Capitola Bicycle Transportation Plan identifies goals and objectives which seek to improve bicycle transportation in the City. The goals and objectives serve to guide bicycle transportation projects and programs from 2011 to 2016.

### GOALS

- 1 / *Improve bicycle circulation, connectivity and access*
- 2 | Increase bicycle ridership and replace motor vehicle trips with bicycle trips. Achieve a city-wide goal of 5% of all trips and 20% of work trips made by bicycle by 2020.
- 3 / *Improve bicycle safety*
- 4 / *Design a city-wide multi-modal transportation system that accommodates bicycles*
- 5 / *Maintain new and existing bicycle infrastructure*

#### *GOAL 1 Improve bicycle circulation, connectivity and access*

- Objective 1.1|** Construct and mark bicycle routes in conformance with the County-wide Bicycle Route Signage Program and state standards, as outlined in the Manual of Uniform Traffic Control Devices (MUTCD) and the California Supplement.
- Objective 1.2|** Locate bikeways as bicycle lanes adjacent to the main traveled way unless a more direct and useful separated bicycle path can be provided. Where bicycle lanes are not possible due to right-of-way restrictions, etc., include a wide curb lane, or shared lane pavement marking
- Objective 1.3|** Coordinate with other jurisdictions to adopt a system of bikeways that complements the County system.
- Objective 1.4|** Coordinate the planning, design and construction of bikeway facilities with all implementing agencies.
- Objective 1.5|** Install in all existing and proposed signalized intersections inductive loop sensors or video sensors (devices to trigger traffic signal phasing) that are positioned to detect bicycles, and are appropriately stenciled.



- Objective 1.6|** Design regional bicycle routes to connect residential areas with major activity centers (employment, educational, civic, etc.) by including bikeway network development as part of the Capital Improvements Program to prioritize construction or retrofits for completion of specific routes.
- Objective 1.7|** Build all bridges with enough width to safely accommodate bicycle travel. Comply with or exceed the Caltrans standard requirement of a 4-foot (1.2m) minimum bicycle lane, or a 5-foot lane if a gutter is present.
- Objective 1.8|** Where possible exceed the minimum lane width for Class II bicycle lanes to allow more bicycle traffic and separation from parked cars and automobile traffic.
- Objective 1.9|** Improve the flow of bicycle traffic through the Capitola Village.

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*GOAL 2 Increase bicycle ridership and replace motor vehicle trips with bicycle trips. Achieve a city-wide goal of 5% of all trips and 20% of work trips made by bicycle by 2020.*

- Objective 2.1|** Require that event sponsors provide safe bicycle access and secure bicycle parking at special events
- Objective 2.2|** Encourage employers to offer incentives to employees who ride a bicycle instead of driving a car to work.
- Objective 2.3|** Encourage the provision of bicycle racks, showers, lockers, and other storage facilities at destinations, where practical and economically feasible, when reviewing discretionary permits for major activity centers and new developments.
- Objective 2.4|** Plan a bikeway network to integrate with other modes of transportation (train or transit stations and Park and Ride lots, etc.) in order to encourage and support the use of bicycling and reduce the use of motor vehicles.
- Objective 2.5|** Provide convenient, secure bicycle parking at private and public facilities and commercial districts through parking ordinance requirements.
- Objective 2.6|** Provide bicycle parking stands (facilities) at all primary public access points and at appropriate neighborhood access points.
- Objective 2.7|** Identify several street parking spaces located in front of commercial and retail stores to be converted into bicycle parking.
- Objective 2.8|** Increase modal split of Capitola employee commuter trips to 25% of all trips made by bicycle, transit, walking or carpool by 2020.
- Objective 2.9|** Replace Capitola vehicle fleet trips with bicycle trips when feasible.
- Objective 2.10|** Work with New Brighton Middle School and local Bicycle advocacy groups to establish a year-round incentive and tracking program for students to encourage active transportation.

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*GOAL 3 Improve bicycle safety*

- Objective 3.1** Support bicycle rider safety training programs for elementary and middle school students.
- Objective 3.2** Encourage establishments that teach driver education to include lessons on sharing the road and the rights and responsibilities of bicyclists according to the California Vehicle Code.
- Objective 3.3** Continue to support stable funding for local bicycle safety and education programs.
- Objective 3.4** Require that contractors and utility companies doing roadside work maintain the road edge in the best possible condition during construction and adhere to the “Guidelines to Protect the Safety of Bicyclists, Pedestrians, and Disabled Travelers during Road Construction” in Appendix F.
- Objective 3.5** When feasible, avoid lengthwise concrete seams in bicycle lanes and require prompt repair (including pavement) and restriping of bicycle lanes before the project is considered complete.
- Objective 3.6** Limit on-street parking on arterial and collector streets, encourage parking alternatives, pursue off-street parking development as methods to provide Class II bicycle lanes and do not eliminate joint bicycle lanes/parallel shoulder parking unless the new bicycle lanes are effectively as wide or wider.
- Objective 3.7** Limit the number of driveways when planning new commercial and multiple-family residential developments in order to reduce automobile-bicycle conflicts.
- Objective 3.8** Maintain adequate outside travel lane width (14 feet) when no bicycle lane can be accommodated.
- Objective 3.9** Encourage bicyclists to take the lane on Class III bikeways by exceeding the minimum standard distance sharrows shall be placed from the curb as defined in the Manual of Uniform Traffic Control Devices (MUTCD) Section 9C.07.
- Objective 3.10** Encourage car parking arrangements which increase the visibility of pedestrians and bicyclists. Consider reverse angled parking.
- Objective 3.11** Remove bolts dots from streets during scheduled road maintenance.

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*GOAL 4 Design a city-wide multi-modal transportation system that accommodates bicycles*

- Objective 4.1** Encourage other modes of transportation (buses, trains, etc.) to plan for, and provide space for carrying recreational and commuting bicyclists on public

transportation systems. Include secure bicycle parking facilities with development of transit shelters incorporating Santa Cruz County Transit District design approval.

- Objective 4.2** Include bicycle access in all fixed guideway planning and design.
- Objective 4.3 Make provisions for bicycle commuter facilities in any and all future planning documents regarding the Capitola Mall and Transit Station.
- Objective 4.5** Require new recreation and visitor-serving developments in the Coastal Zone to support alternative transportation to the beaches and other tourist destinations.
- Objective 4.6** Ensure that all major corridors provide a choice of transportation modes and are designed with multi-modal amenities such as bus stops, turnouts and shelters, and bicycle lanes and sidewalks.

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*GOAL 5 Maintain new and existing bicycle infrastructure*

- Objective 5.1** Ensure that bicycle facilities remain in a usable condition through regular maintenance and sweeping.
- Objective 5.2** Retain all existing bikeways along with roadway improvement projects.
- Objective 5.3** Secure a portion of local and State funding for bikeway maintenance.
- Objective 5.4** Maintain bicycle parking facilities.

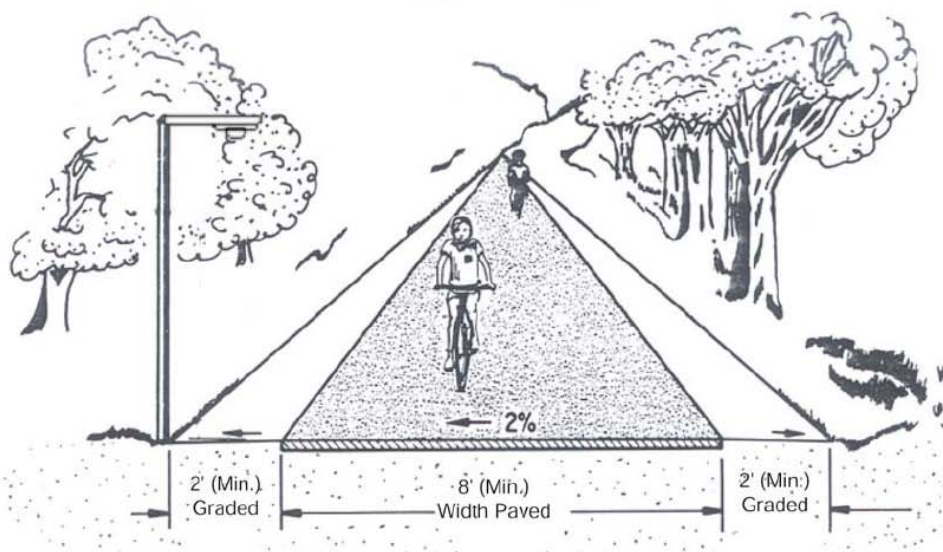
SECTION 3.1 EXISTING BICYCLE FACILITIES

The California Department of Transportation recognizes three types of bikeways, Class I, Class II and Class III. The City of Capitola bicycle network is composed of a combination of all three. Each Class of bikeway is distinguishable by its structural design and location in relation to the road. Descriptions of Class I, Class II and Class II bikeways are as follows:

**Class I Bikeway (Bicycle Path)** is typically grade-separated from motor vehicles, providing two-way bicycle and pedestrian travel on a single wide path. Bicycle paths work best in areas with few crossings (i.e., along edges, such as river fronts). Where bicycle paths do cross motor vehicle routes, extreme care must be taken to make the crossing for bicyclists as safe as possible. Caltrans minimum width is 8 feet or 2.4 meter (4 feet {or 1.2 meters} each way, with a stripe down the center), with a 2 foot or 0.6 meters graded shoulder on each side. A Class I bicycle path is conceptually illustrated in Figure 3-1. The bicycle/pedestrian bridge over Soquel Creek between Wharf Rd and Peery Park is currently the only Class I bicycle path in Capitola.

Figure 3-1: Class I Bikeway

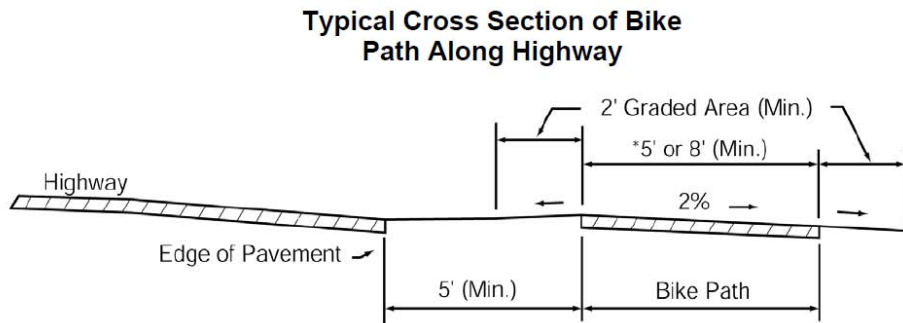
Two-Way Bike Path on Separate Right of Way



Note: For sign clearances, see MUTCD, Figure 9B-1.

(Caltrans, 2009)

**Figure 3-2: Class I Bikeway Section**



NOTE: See Index 1003.1(5)

\*One - Way: 5' Minimum Width  
Two - Way: 8' Minimum Width

(Caltrans, 2009)

**Class II Bikeways (Bicycle lanes)** are striped lanes on roadways that are marked by signage, pavement striping, and/or stencils (Figure 3-3). The Caltrans minimum recommended width against a curb is 5 feet or 1.5 meters. Where parallel auto parking occurs against a curb, Caltrans recommends a minimum of 12 feet or 3.6 meters from curb to lane stripe, producing a bicycle lane width of approximately 4 feet or 1.2 meters, but only one foot when a car door is open. Where practical, a wider and safer lane width is suggested, however, with a total width of 13 feet or 4 meters for auto parking and bicycle lane space combined. This will accommodate bicycle trailers as well as opening doors. Class II bicycle lanes are located on arterial streets and major collector streets in accordance with the City of Capitola General Plan.

**Figure 3-3: Class II bikeway (41<sup>st</sup> Avenue)**



**Class III Bikeways (Bicycle Routes)** are shared with motorized vehicle traffic and are characterized by signs that help guide bicyclists on recommended routes to certain locations. They are used on streets where auto traffic volume and speed do not warrant other facilities. Signing streets as bicycle routes does not necessarily make streets any safer for bicyclists to use. The purpose is mainly to guide bicyclists on recommended routes. The minimum auto/bicycle lane width when adjacent to the curb should be 14 feet or 4.2 meters. Where a shared lane is present adjacent to parallel auto parking, the lane width (including parking lane) may be 18 feet or 5.4 meters greater.

A Bicycle Boulevard is an enhanced route for cross-town bicycle travel (traffic signals or 4-way stops at all arterial crossings are essential), which also prevents or discourages motor vehicles from also using the street as a thoroughfare. Successful bicycle boulevards have low volumes of auto traffic and slow auto speeds, and therefore do not require striped bicycle lanes. The primary way to prevent the street from being used as an auto thoroughfare (which the recommended traffic controls at arterial crossings would otherwise encourage) is to use "traffic-calming" devices to slow down traffic. Traffic-calming devices include speed humps, bulbouts, mid-street islands with trees or foliage, and narrow traffic lanes.

The City of Capitola has several narrow arterials and major collector streets that require the use of shared lane pavement markings, aka "sharrows". Sharrows are used to indicate to bicyclists and motorists the appropriate footprint for bicycle travel away from the dangerous open or opening doors of cars parked on the street (Figure 3-4).

**Figure 3-4: Sharrow**



The City of Capitola currently has approximately 14.41 miles of Class II paths and 0.17 miles of Class I paths (Table 3-1). By the end of 2011, there will be an additional 0.23 miles of Class II paths and 0.72 miles of Class III paths for a total of 15.53 bikeway miles (Appendix A-2, Capitola Bicycle Facilities Map).

**Table 3-1: Santa Cruz County Bikeway Miles 2009**

	Bi-directional		Centerline		
Jurisdiction	Miles	Type	Miles	Type	TOTAL
Capitola	14.41	Class II	0.17	Class I	14.58
Santa Cruz	47.90	Class II	9.42	Class I	57.32
Scotts Valley	15.26	Class II	1.00	Class I	16.26
Watsonville	18.10	Class II	9.10	Class I	27.20
Unincorporated	91.73	Class II	4.13	Class I	95.86

UCSC	2.07	Class II	1.30	Class I	3.37
Santa Cruz County Total	189.47	Class II	25.12	Class I	214.59
Source: (Santa Cruz County Regional Transportation Commission, 2009)					

A comprehensive bikeway map of Santa Cruz County is produced by the Santa Cruz County Regional Transportation Commission and provided to the community free of charge. The map provides a detailed look at existing bicycle lanes and paths within the City of Capitola and throughout Santa Cruz County, informational items on bicycling tips and laws, and local bicycle resources.

There are several Class II paths in the City which are scheduled for maintenance in 2010-2011. The arterials and major connectors which require bicycle lane repair or maintenance are:

- 41<sup>st</sup> Avenue
- Brommer Street
- Gross Road
- Park Avenue
- Bay Avenue
- Monterey Avenue
- Wharf Road

**Figure 3-5 Brommer Street**



## SECTION 3.2 EXISTING LAND USE

Land use and housing density are directly related to transportation systems. Certain transportation modes such as train or light rail depend on medium to high density populations in order to be successful. Conversely, low-density development is dependent upon the automobile. Bicycle transportation can be successful in both high-density downtown areas as well as low-density suburban development, provided that adequate infrastructure exist.

It is important that bikeways and bicycle paths connect residential neighborhoods to commercial and entertainment areas and employment zones. The City of Capitola is split roughly down the center by Soquel Creek. The dominant land use to the east of Soquel Creek

is single-family residential neighborhoods with several moderately sized commercial areas near the creek. The majority of commercial land lies to the west of the creek and includes the Capitola Mall, a regional shopping center. Residential zones are connected to commercial zones primarily by Class II and Class III bikeways, however, the Class I bikeway also connects the two sides of the City. The City of Capitola Zoning Map can be found in Appendix A-1 for a detailed illustration of land use patterns in the City.



## CHAPTER 4|NEEDS ANALYSIS

The need for bicycle transportation does not exist solely on the local level, but on the State and National level as well. This chapter will discuss the issues that can be addressed through increased bicycle travel, current local bicycle commuter trends and statistics, and commuter needs.

Perhaps the greatest issue which is applicable on the local, State and National levels, is a heavy dependence on fossil fuels for transportation, energy and agriculture amongst other things. Not only does the burning of fossil fuels pollute the environment, but its limited accessibility and national supply can leave consumers vulnerable to fluctuating prices. Because housing development and land use have centered on the automobile over the past 50 years, an increase in gas prices can have a significant financial impact on commuters. This is evidenced by the fact that in many households in the U.S., transportation is the second greatest household expense after housing. Gas prices and driving are inversely related; when gas prices are low more people drive. Conversely, in 2008 the price of gas increased to \$4 per gallon and the total Vehicle Miles Travelled (VMT) in the United States decreased by 57.8 billion miles from 2007 (Flusche, 2009). Although high gas prices can be devastating especially to low income working families or those who commute great distances by car, they can also be an opportunity for change. When fuel is expensive and fewer people drive, alternative modes of transportation should be promoted and improved to increase and sustain ridership.

In response to the problems caused by the burning of fossil fuels, the State of California passed Senate Bill 375: Redesigning Communities to Reduce Greenhouse Gasses. The bill requires that local jurisdictions plan for alternative modes of transportation and stop urban sprawl amongst other strategies to reduce harmful emissions. Although SB 375 is aimed at reducing emissions and not necessarily reducing fossil fuel consumption, the two are intrinsically connected, and therefore the latter may also be addressed in the implementation of the bill. Bicycling as a mode of transportation is not only greenhouse gas emission-free, but it allows more freedom in time of travel than public transit, and allows for travel of greater distances than walking. The bicycle has built in incentives and is widely applicable, as it is an inexpensive alternative to the automobile that is viable in low-density or high-density neighborhoods alike. Because of this, increasing bicycle ridership through programs and small infrastructure improvements is a relatively quick and affordable way for local jurisdictions to reduce greenhouse gas emissions.

### SECTION 4.1 TRIP GENERATORS

Trip generators are popular destinations that are regularly frequented. They include popular parks and public buildings, beaches, regional shopping centers, schools and tourist attractions. Because these places attract more people, they are good candidates for public transit service and alternative modes of transportation. Alternately, traffic congestion, large parking lots and the presence of many cars can detract from the charm, attractiveness or accessibility of a place.

One benefit to bicycling is that often times it is possible to park much closer to the desired destination than with other modes of transportation. In order to encourage individuals to choose to ride a bicycle instead of drive, it is important to have ample and secure bicycle parking at popular destinations. The most popular trip destinations in the City of Capitola, in no particular order are as follows:

Capitola Beach  
Capitola Village  
Capitola Mall  
New Brighton Beach State Park  
Jade Street Community Center  
Capitola Library  
New Brighton Middle School  
Capitola Mall  
Brown Ranch Marketplace  
Kings Plaza  
City Hall

## SECTION 4.2 COMMUTE PATTERNS AND COMMUTER NEEDS

It is important to analyze commute patterns when addressing climate change and pollution, as the majority of commuter trips are taken by automobile and 45% of greenhouse gas emissions in Santa Cruz County are attributed to transportation. The modal split is a useful indicator as to whether or not a transportation network adequately accommodates multiple modes of transportation. In the case of commuting, the modal split is the percentage of employees that travel by each mode of transportation to and from work. An uneven modal split may indicate a transportation system that favors one mode of transportation over others. The modal split for City of Capitola employees commuting to work in 2008 was:

- 63% drove alone
- 5% used a bicycle, public transit, carpooled or walked
- 32% split their commuting methods between driving alone and carpooling

The overwhelming percentage of automobile trips made by City employees suggests that the transportation system in the City of Capitola and surrounding areas favors the automobile. This theory is strengthened by the fact that the majority of employees live within 5 miles of the workplace, a distance that is within the range of alternative modes of transportation such as bicycling, walking and transit. The result of an automobile-dominant mode split is poor air quality, traffic congestion and a large portion of land devoted to parking. City employee commute trips accounted for 8% of the overall emissions due to City government operations, or 66 metric tonnes of CO<sub>2</sub> (AMBAG, 2009). In order to reduce greenhouse gas emissions, the City will lead by example and strive for a modal split for commute trips of:

- 43% drive alone
- 25% use a bicycle, public transit, carpool or walk
- 32% split their commuting methods between driving alone and carpooling

This goal will be achieved if the above modal split is accomplished by 2020. In order to increase bicycle ridership the City will offer incentives to those who do not drive to work. Some incentives may include monetary compensation, bicycle commuter facilities, discounted transit passes, zero interest bicycle loans and emergency ride home services. The City will also analyze vehicle fleet trips, which account for 35% of greenhouse gas emissions due to government operations. Bicycles will be added to the City fleet, and when feasible, fleet vehicle trips will be replaced with bicycle trips.

**Table 4-1: City of Capitola Commuter Mode Split**

	Commuters	Percent of Total
<b>Car, Truck or Van</b>		
Drove Alone	4394	80.5%
Carpooled	517	9.5%
<b>Alternative Transportation</b>		
Walk	298	5.5%
Bicycle	92	1.7%
Bus	74	1.4%
Other means	57	1.0%
Motorcycle	25	0.4%
<b>TOTAL</b>	<b>5457</b>	<b>100%</b>
<b>Source: (U.S. Census, 2000)</b>		

In 2000, only 92, or 1.7% of all commuters who lived in Capitola rode their bicycles as their main mode of transportation to work (Table 4-1). In terms of alternative transportation to the automobile, walking was the most popular with 242 people, followed by bicycling, and the third most popular mode was the bus with 74 riders. These figures are most likely lower than actual ridership, as the U.S. Census only counts the primary mode of transportation to work. According to this method of counting, an individual who primarily drives alone to work but rides a bicycle once or twice a week would only be counted for “drove alone”. Additionally, if an individual rides a bicycle to the bus or transit, transit will be counted for the trip. In order to obtain more accurate bicycle commuter data, the City will install bicycle sensors on several popular bicycle commuter routes and conduct bicycle counts (Appendix D: Proposed Projects List). Bicycle commuters typically ride at 10 miles per hour, which is often more time efficient than driving a car for distances of 3 miles or less, especially during peak hours of travel (League of American Bicyclists, 2000-2010). Yet an overwhelming number of workers “drove-alone” even though 50% of workers commuted less than 20 minutes away. The uneven mode split suggests that there are factors other than distance which deter people from commuting on bicycle. The most common barriers to bicycle commuting are concerns about safety, hygiene, distance and the ability to run errands after work or reach family quickly in an emergency ([michianabiketowork.org](http://michianabiketowork.org); Voiland, 2008). Local jurisdictions are working to break down these barriers by offering incentives and programs such as Ecology Action’s Sustainable Transportation Employer Membership which offers bicycle loans, discounted transit passes and an “Emergency Ride Home Service”.

**Table 4-2: Travel time to Work**

Travel Time to Work	City of Capitola	% of Commuters
<b>Less than 15 minutes</b>	1,787	32.7%
<b>15 to 29 minutes</b>	1,691	31%
<b>30 to 44 minutes</b>	501	9.2%
<b>45 to 59 minutes</b>	762	14%
<b>60 minutes or more</b>	716	13.1%
<b>Total</b>	5,457	100%
<b>Source: US Census 2000. Summary File 3, QT-P23: Journey to Work.</b>		

In 2000, roughly one third of all commuters in Capitola had a less than 15 minute trip to work, which suggests that the distance travelled was likely less than 9 miles if driving at 35 mph, 2.5 miles if bicycling, or 1.25 miles if walking briskly (Table 4-2). All of these trips are achievable on a bicycle in less than one hour. By breaking down barriers to bicycle commuting especially to those who live within 9 miles of work, the City of Capitola will strive to achieve 5% of total trips and 20% of commuter trips by bicycle by the year 2020.

### SECTION 4.3 COLLISION ANALYSIS

According to the California Highway Design Manual, car/bicycle collisions are most likely to happen at an intersection (Highway Design Manual, 2006). This is the case in Capitola, Nearly 60% of bicycle collisions from 2005 to 2009 occurred at an intersection. Fortunately, there have been no fatalities as a result of collisions involving bicycles in the City of Capitola, however there have been 26 injuries from 2005 to 2008 (Table 4-3: Bicyclists Injured and Killed 2000-2008). The majority of collisions involving a bicycle have occurred at the following intersections:

41st Avenue x Gross Rd (3)
41st Avenue x Brommer Street (3)
Bay Avenue x Capitola Avenue (2)
Bay Avenue x Highway 1 (2)
Monterey Avenue x Bay Avenue (2)
Park Avenue x McGregor Drive (2)
41st Avenue x Capitola Road (1)
Capitola Road x 38th Avenue (1)
Capitola Road x 42nd Avenue (1)
Clares Street x 42nd Avenue (1)
41st Avenue x Jade St (1)

Several collisions involving bicycles have occurred along 41<sup>st</sup> Avenue which is known to have high volumes of automobile traffic throughout the day due to the regional shopping center and access to Highway 1. Future City plans will specifically address bicycle infrastructure surrounding the Capitola Mall and the 41<sup>st</sup> Avenue corridor. Restriping and bicycle infrastructure improvements along 41<sup>st</sup> Avenue have been scheduled for 2010-2011.

Collisions between bicycles and cars are not always the fault of the car. In fact in approximately half of the accidents involving cars and bicyclists in Capitola from 2005-2009, the bicyclist was at fault usually because they were riding on the sidewalk which is illegal in Capitola. Riding on the sidewalk is hazardous for bicyclists and pedestrians. Bicyclists travel at higher speeds than pedestrians, thus leaving less time for each party to react if a conflict emerges, and increasing the likelihood of a collision. Drivers backing out of driveways will also not expect to see a bicyclist riding on the sidewalk, and have less time to react due to the travel speed of the bicyclist. In order to prevent such collisions in the future, the City will concentrate on bicycle education, enforcement and improvement of bicycle infrastructure so that bicyclists feel comfortable riding on the street rather than on the sidewalk.

**Table 4-3: Bicyclist Injuries and Fatalities for Santa Cruz County**

<b>Bicyclists Injured and Killed 2000 - 2008</b>									
<b>Injured</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
Capitola	11	8	10	11	20	7	5	6	8
Santa Cruz	60	59	58	77	63	71	82	64	91
Scotts Valley	2	4	4	4	6	2	0	14	4
Watsonville	17	22	20	7	17	12	13	3	16
Unincorporated	65	58	61	67	56	59	54	63	70
<b>S.C. County Total</b>	<b>155</b>	<b>151</b>	<b>153</b>	<b>166</b>	<b>162</b>	<b>151</b>	<b>154</b>	<b>150</b>	<b>189</b>
<b>Killed</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
Capitola	0	0	0	0	0	0	0	0	0
Santa Cruz	1	0	0	1	0	0	0	1	2
Scotts Valley	0	0	0	0	0	0	0	0	0
Watsonville	0	1	0	0	0	0	0	0	0
Unincorporated	0	1	0	0	0	1	1	1	0
<b>S.C. County Total</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>2</b>

(Bicyclist Injuries and Fatalities for Santa Cruz County, 2008)

The Community Traffic Safety Coalition compiles data from the Statewide Integrated Traffic Records System (SWITRS) each year regarding bicyclist injury and death rates. SWITRS collects fatal and non-fatal traffic accident data from CHP areas and police departments across California. The Santa Cruz County Bicycle Injuries and Fatalities 2000-2008 data, put out by the Community Traffic Safety Coalition, can be found in Table 4.3. The data from these reports is used to inform local jurisdictions within the county of collisions involving bicyclists, so that appropriate measures can be taken to improve safety.

## CHAPTER 5|BICYCLE PLAN PROJECTS

The City of Capitola seeks to provide bikeways for commuting and connections that will provide greater access between residential, employment, and educational centers. The development of new bikeways is prioritized by the criteria listed below in the following order:

1. High density, high demand areas and school routes
2. Low density areas where cyclist's safety is a concern (neighborhoods)
3. Recreational routes in low density, low demand areas

Critical needs that are met with each project also are identified in the Proposed Project List (Appendix D) to enable planners and decision-makers to prioritize funds as they become available.

The Planning and Design Chapter of the Caltrans Highway Design Manual provides specific detail on design speeds, signing, striping, and other related bikeway design issues as does the U.S. Manual on Uniform Traffic Control Devices for streets and highways (MUTCD).

The high priority bicycle plan projects include the completion of bicycle lanes on existing streets, on-street bicycle safety improvements and studies, a bicycle safety and education program for students, and the installation of bicycle detector loops or video sensors at signalized intersections and replacement of antiquated or ineffective infrastructure. These projects have the clear benefit of providing greater convenience and safety for bicyclists. Other projects that improve bicycle facilities and encourage cycling include bicycle lane maintenance, parking facilities, and inter-modal connections, as well as studies to address unsafe areas for bicyclists. Proposed bicycle projects are described in this chapter; existing bicycle safety and education programs are discussed in Chapter 6. The implementation of the proposed bicycle projects is expected to achieve 10% of work trips and 2.5% of all trips taken by bicycle by 2016. This will keep the City of Capitola on track to reach the goal of 20% of work trips and 5% of all trips taken by bicycle by the year 2020.

### SECTION 5.1 PROPOSED BIKEWAYS

#### **Bicycle Path (Class I)**

Class I bicycle paths can be useful to bicyclists for commute or recreational purposes. Because bicycle paths are separated from motor vehicle traffic and have few intersections, they are safer than Class II or Class III bikeways. If designed and situated appropriately, Class I bikeways can be a safe and convenient route for inexperienced or young bicyclists. A bicycle path can also create opportunities for individuals to experience the natural features of their community in a unique way. The current Class I bikeway in Capitola allows bicyclists to enjoy Soquel Creek and the historic Rispin Mansion site. If the path was extended north to Soquel Elementary School alongside Soquel Creek, it would create a safe alternative to the Bay Avenue Highway 1 intersection for children riding to and from school, and allow all cyclists the opportunity to enjoy the flora and fauna in the riparian area. A study will be conducted to determine the feasibility of extending the path north along Soquel Creek toward Highway 1 (Appendix D: Proposed Project List).

### **Bicycle lanes (Class II)**

A 0.23 mile Class II bicycle lane will be installed on 38<sup>th</sup> Avenue between Capitola Road and Brommer Street in 2011 (Appendix A-2: Bicycle Facilities Map).

### **Bicycle Routes (Class III)**

In addition to re-stenciling existing sharrows, the City plans to add sharrow markers on Clares Street near the Brown Ranch Shopping Center, and on Wharf Rd between Clares Street and Grace Street (Appendix A-2: Bicycle Facilities Map). The City will also identify future bicycle and pedestrian improvements in the General Plan update and specific plans for the area.

For a comprehensive list of proposed bikeways refer to Appendix D: Proposed Project List and the Capitola Bicycle Facilities Map in Appendix A-2.

## **SECTION 5.2 BIKEWAYS AND ROAD MAINTENANCE**

California Vehicle Code requires bicyclists to ride in a bicycle lane if provided. Bicyclists are permitted to ride outside of the bicycle lane if there is an obstruction or unsafe conditions. If not maintained, Class II paths can collect debris and crack making them unfit for the use of bicyclists. The City of Capitola and the Regional Transportation Commission have recognized that to facilitate bicycling, bikeways must be maintained. Traditionally, two types of projects have continued to be funded. Maintenance funds go primarily to sweeping bicycle lanes according to a set schedule, restriping faded lane markings, patching potholes, and cutting overhanging vegetation.

The City plans to use maintenance funds to eliminate root intrusion on Park Avenue and restripe numerous Class II and Class III bikeways over the next five years (See Appendix D: Proposed Projects). "Conflict bikeway" funds go to spot improvements to bring existing bikeways up to current standards. Such maintenance and improvements are important for the right edges of all streets, as bicycle travel is not limited to those roads with bicycle lanes.

Construction activities typically occur in the portion of the road where cyclists travel, so it is important that such activities maintain a safe environment for bicyclists. Through the encroachment permit process, the City of Capitola will work with contractors and utility companies to insure that roadway standards are maintained during and after construction projects are completed. To this end, the City supports and upholds the recommended guidelines for construction areas put forth by the Santa Cruz County Community Traffic Safety Coalition (Appendix F).

Maintaining the integrity of bikeways during construction is an appropriate use of conflict bikeway funds. Such funds can also be used to remove hazardous fixed objects, which include features of existing infrastructure. The Class II bike lane northbound on Wharf Road, north of the Capitola library is narrow and confined further by cone barriers. The cones were placed on the left side of the bike lane to protect bicyclists from motorists. In reality, the cones create an unnecessary hazard for bicyclists, and confine them to a narrow lane. The



City will remove the cones and widen the bike lane if feasible. The City will also remove bottle dots from the southern portion of Wharf Road (Appendix D: Proposed Projects).

## SECTION 5.3 BICYCLE PARKING AND SUPPORT FACILITIES

There are several additional components to a successful bicycle network besides bicycle lanes. Facilities and amenities that support and encourage bicycling include secure and convenient bicycle parking facilities, employee shower and changing facilities, bicycle sensitive signals at intersections, and intermodal connections.

Providing convenient and secure bicycle parking is a good way to increase bicycle ridership. Several cities in California and across the Country have converted street parking spaces into permanent bicycle parking in commercial areas. Although there was an initial concern that removing a space for car parking would be detrimental to local businesses, it was soon realized to be the opposite. Ten to twelve bicycles can be parked securely in place of one car, thus the number of potential patrons of local businesses increases dramatically when spaces are converted to bicycle parking.



A common myth is that individuals who ride their bicycle to commercial areas do not spend as much money at retail stores as individuals who drive. A 2010 study conducted by San Luis Obispo Regional Rideshare, shows that drivers do not spend more money downtown than bicyclists on average. Although drivers spend more money per trip, bicyclists take more trips downtown than drivers. Bicycle parking requirements are established in the City of Capitola Zoning Ordinance for new development. Rates vary according to the type of use. The bicycle parking standards will be updated to specify the number of bicycle racks required, where they should be located and basic design requirements. The City will consider increased bicycle parking in certain commercial or recreational areas including the conversion of parking spaces into bicycle corrals (Appendix D: Proposed Project List).

The Santa Cruz County Regional Transportation Commission also administers a program to help fund the installation of secure bicycle racks and lockers in commercial and public facility areas. Since 1993, the "Bicycle Secure" program has provided inverted u racks or subsidized bicycle lockers for agencies and businesses resulting in the installation of over 2000 new bicycle parking spaces.

The following locations in the City of Capitola have been constructed through this program:

1. Capitola Village streetscape – 12 spaces
2. Capitola Community Center – 8 spaces
3. Capitola City Hall – 6 spaces
4. Brown Ranch Marketplace, 3335 Clares Street –10 spaces

Currently, there are few public places for changing and storing bicycle clothes and equipment. Changing areas are limited to public restrooms and or locker rooms at City Hall, Capitola Beach and New Brighton Middle School (although only used by students). To encourage commuter bicycling use, some jurisdictions have adopted ordinances, which require new employment-generating uses to provide onsite bicycle parking, lockers, and facilities for showering and changing clothes. These types of requirements for new or expanded development provide incentives for employees to use bicycling as a commuting alternative. City-wide site design requirements for worksites have not been adopted. If considered in the future, ordinances should include requirements for bicycle storage, showers, and clothes lockers to further encourage bicycle commuting.

([www.cycle2city.com.au](http://www.cycle2city.com.au))



## SECTION 5.4 BICYCLE DETECTORS AND COUNTERS

The City of Capitola has ten signalized intersections. Currently none of the intersections are equipped with sensors that can detect bicycles. As a result, a bicyclist must wait for a car to drive up to trigger the green light. Traffic signals that are triggered by inductive loop sensors or video sensors can significantly increase the convenience of bicycle commuting. Both types of sensors also encourage bicyclists to position themselves in the correct location on the road. Push-button sensors can also be useful if situated properly. Unfortunately, it is often times that case that push-button sensors are located on the sidewalk or far over to the right-hand side of the bicycle lane, which ultimately decreases the visibility of bicyclists on the road. For the strengths and weaknesses of loop detectors and video detectors see Table 5-1.

### Loop Detectors

Inductive loop detectors are commonly used to sense the presence of vehicles (including bicycles) at intersections for the purpose of triggering traffic signals. Loop detectors are installed below the surface of the road and are activated by the metal in motorized vehicles or bicycle spokes when positioned above. Although loop detectors encourage bicyclists to position themselves in the safest location on the road, they are difficult to install correctly, repair and maintain, and are unreliable. Local jurisdictions and Caltrans are moving away from the use of loop detectors to overhead traffic detectors which use Video Image Processing Systems (VIPS) to sense and control vehicle traffic (UC Davis Department of Mechanical and Aeronautical Engineering, 2007).

### Video Detectors

Given good weather conditions and proper installation and maintenance, video detectors can be more than 95% accurate (US Department of Transportation, 2006). Video detectors are often mounted on existing traffic signals or other infrastructure and can detect multiple lanes and zones. If mounted over a street, it may be necessary to close the road for maintenance however, video detectors can be mounted on the side of the roadway to avoid inconvenience. Unlike loop detectors, video cameras are subjected to weather and other environmental factors which may require more frequent maintenance. Nevertheless, video detectors tend to be more reliable and more accurate than inductive loop sensors.

Both loop detectors and video detectors are capable of sensing the presence of vehicles, triggering traffic actuated signals, counting vehicles and measuring the speed of vehicles. Unlike loop detectors, video detectors can be used for multiple lanes or detection zones. This can be useful to bicyclists who may need to position themselves outside of the bicycle lane, to make a left turn for instance. The City of Capitola will install inductive loop detectors and/or video sensors at ten signalized intersections to collect data on bicyclist trips and enable bicyclists to trigger traffic signals. The eight signalized intersections are all located within the Community Commercial zone district, at the following locations:

- 41<sup>st</sup> Avenue and Clares Street
- 41<sup>st</sup> Avenue and Capitola Mall
- 41<sup>st</sup> Avenue and Capitola Road
- 41<sup>st</sup> Avenue and Brommer Street
- Capitola Road and 38<sup>th</sup> Avenue
- Capitola Road and Clares Street
- Capitola Road and 30<sup>th</sup> Avenue
- Clares Street and Capitola Mall

**Table 5-1: Sensor Technologies, Strengths and Weaknesses**

Technology	Strengths	Weaknesses
<b>Inductive Loop</b>	<ul style="list-style-type: none"> <li>• Flexible design to satisfy large variety of applications</li> <li>• Mature, well understood technology.</li> <li>• Large Experience base.</li> <li>• Provides basic traffic parameters (e.g., volume, presence, occupancy, speed, headway, and gap).</li> <li>• Insensitive to inclement weather such as rain, fog, and snow.</li> <li>• Provides best accuracy for count data as compared with other commonly used techniques.</li> <li>• Common standard for obtaining accurate occupancy measurements</li> <li>• High frequency excitation models provide classification data</li> </ul>	<ul style="list-style-type: none"> <li>• Installation requires pavement cut.</li> <li>• Improper installation decreases pavement life</li> <li>• Installation and maintenance require lane closure.</li> <li>• Wire loops subject to stresses of traffic and temperature.</li> <li>• Multiple loops usually required to monitor a location</li> <li>• Detection accuracy may decrease when design requires detection of a large variety of vehicle classes</li> </ul>

Technology	Strengths	Weaknesses
<b>Video image processor</b>	<ul style="list-style-type: none"> <li>• Monitors multiple lanes and multiple detection zones/lane.</li> <li>• Easy to add and modify detection zones.</li> <li>• Rich array of data available.</li> <li>• Provides wide-area detection when information gathered at one camera location can be linked to another</li> </ul>	<ul style="list-style-type: none"> <li>• Installation and maintenance, including periodic lens cleaning, require lane closure when camera is mounted over roadway (lane closure may not be required when camera is mounted at side of roadway)</li> <li>• Performance affected by inclement weather such as fog, rain, and snow; vehicle shadows; vehicle projection into adjacent lanes; occlusion; day-to-night transition; vehicle/road contrast; and water, salt grime, icicles, and cobwebs on camera lens.</li> <li>• Reliable nighttime signal actuation requires street lighting.</li> <li>• Requires 30 to 50 ft camera mounting height (in a side-mounting configuration) for optimum presence detection and speed measurement.</li> <li>• Some models susceptible to camera motion caused by strong winds or vibration of camera mounting structure.</li> <li>• Generally cost effective when many detection zones within the camera field of view or specialized data are required.</li> </ul>
(US Department of Transportation, 2006)		

## SECTION 5.5 TRANSIT AND INTERMODAL FACILITIES

There is a need to design transportation systems that provide more balance between modes, a more efficient use of energy in the movement of people, and a more harmonious interaction between transportation and the environment. This can be achieved by requiring that all users be considered when planning new transportation infrastructure. For example, bicycle parking should be required along with automobile parking for new development.

Capitola is serviced by Santa Cruz Metro for regional bus transportation. Santa Cruz Metro makes an effort to be “bicycle friendly” by offering bicycle racks mounted on the front of each bus, bicycle lockers at the Metro Center in downtown Santa Cruz, and allowing folding bicycles on board the buses. By combining bicycle and bus, bicyclists are able to travel further distances without the use of an automobile.

The closest Metro Center to the Santa Cruz Metro Center is located in front of the Capitola Mall, the only regional shopping center in Santa Cruz County. The Capitola Mall stop currently offers uncovered bicycle parking, but no bicycle lockers. The location of the bus stop is not easily or safely accessible, as pedestrians and bicyclists must travel through a large parking lot with no bicycle or pedestrian facilities to get there. Future plans for the Capitola Mall Area will address the lack of bicycle and pedestrian access to the transit center and the mall and require all users be kept in mind in the design of any new development that occurs.

## SECTION 5.6 SAFE ROUTES PLANNING AND RESEARCH

### **Safe Routes to School**

Safe Routes to School is a state and federal funding program as well as a local education program. Safe Routes to School funding can be used for infrastructure improvement projects and bicycle and pedestrian facilities as well as educational programs. It is important for children to be encouraged to ride bicycles and walk to school, and be educated on bicycle and pedestrian safety from a young age. Not only will such encouragement and knowledge result in safer cyclists and pedestrians, eventually, those children will become drivers who are more conscious of bicyclists and pedestrians. It is equally important to provide safe and accessible routes and secure parking facilities for children travelling to and from school and local activity centers. The programs that have been generated and maintained by Safe Routes to School and local funds are listed in Chapter 6. The City of Capitola supports Safe Routes to School programs and projects, and is committed to work with the Soquel Unified School District, Ecology Action, the Santa Cruz County Department of Health and Safety, and other organizations with programs that meet the goals of Safe Routes to School.

### **New Brighton Middle School Active Transport Tracking Program**

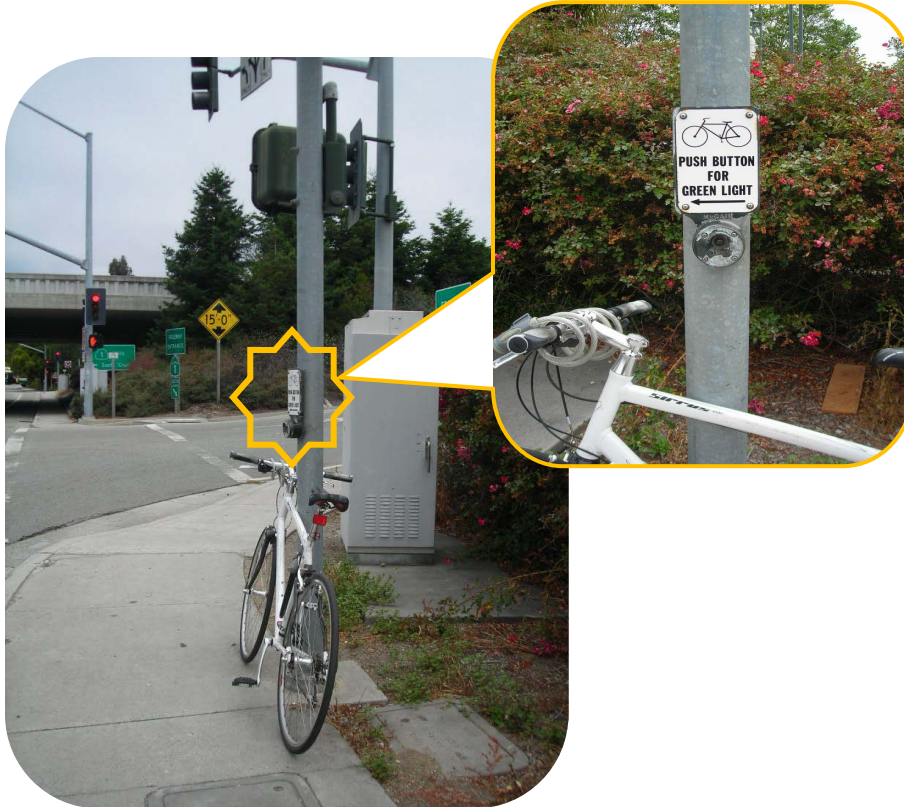
New Brighton Middle School is the only school located in the City of Capitola. Out of 676 students only about 30 students ride their bicycles to school and the majority arrives by car. The entire school participates in Bike to School day and 6<sup>th</sup> graders also participate in Bike Smart workshops. During such events New Brighton Middle School experiences high levels of participation. Unfortunately, ridership returns to low levels after the events have ended. In order to sustain increased ridership, the City of Capitola will work in cooperation with New Brighton Middle School to establish and support an on-going incentive program to encourage active transportation.

### **Porter St-Bay Ave/Highway 1 underpass study**

Bay Avenue is a four-lane arterial street in Capitola and is a major route for commuter and recreational bicyclists alike. Importantly, Bay Avenue is one of the only routes for school children who live in Capitola and attend Soquel Elementary or children who live in Soquel and attend New Brighton Middle School. Currently the intersection of Porter Street/Bay Avenue and Highway 1 is not bicycle friendly. On the northbound side of the street, motorized vehicles cut off bicyclists riding in the bicycle lane as they turn right onto the Highway 1 on-ramp. The same problem is true for southbound bicyclists on Porter Street just before the Highway 1 underpass. The intersection is equipped with push buttons which allow bicyclists to trigger the demand-actuated traffic signal, however, the push buttons are located

on the far end of the sidewalk so a bicyclists must get off of their bike to change the light (see Figure 5-1).

**Figure 5-1: Push button on Bay Avenue & Highway1**



### **Bicycle improvements on Capitola Ave/Highway 1 overpass**

Capitola Avenue is a two-lane arterial that overpasses Highway 1. The overpass is too narrow for a Class II bikeway, and currently does not have a Class III bikeway. The overpass is in the project area for the proposed Highway 1 widening, and the development of pedestrian and bicycle facilities should be considered as conditions of the project. A study will be conducted to determine the cost and preferred design of such facilities, as well as identify short term solutions.

### **Bicycle improvements on 41<sup>st</sup> Avenue and Highway 1 overpass and Gross Road intersection**

41<sup>st</sup> Avenue is a major 6-lane arterial street that runs through the major commercial/retail portion of the City of Capitola. The Capitola Mall, a regional shopping center is located on 41<sup>st</sup> Avenue as well as two other large shopping centers. These popular destinations generate

traffic congestion which in turn leads to unsafe conditions for cyclists. The intersection at Gross Road is difficult for bicyclists to maneuver due to congestion, right-turning traffic and low visibility of cyclists and pedestrians.

### **Bay Avenue-Capitola Ave Roundabout study**

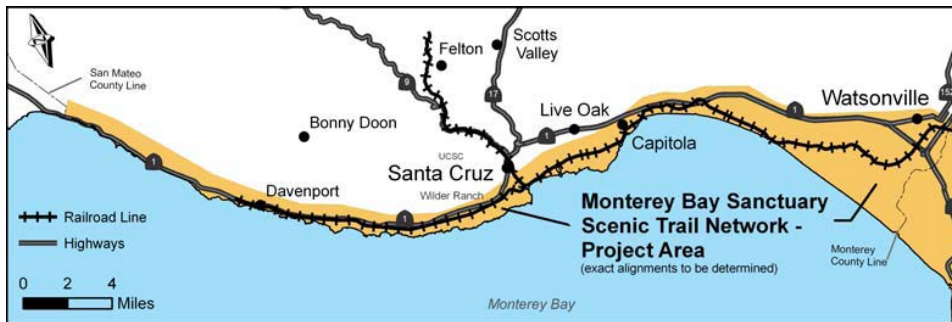
Bay Avenue and Capitola Avenue are both 4-lane arterials which meet at a four-way stop. Due to the size and angles of the streets, it is sometimes difficult for drivers and cyclists to tell which vehicle has the right-of-way when crossing the intersection. One solution to this problem that the City of Capitola is considering is to transform the intersection into a roundabout. No engineering studies have been conducted thus far however, when a study is conducted special attention will be paid to the safety of bicyclists in the design.

### **Future planning efforts (Mall area, Esplanade parking design)**

The City of Capitola General Plan update process will begin in 2010 and incorporate the principles of sustainability into all goals, policies and programs therein. Specific areas may be focused on as a part of the update such as the 41<sup>st</sup> Avenue corridor and the Capitola Village. The promotion of sustainable transportation will be a key consideration in the future development of these areas and throughout the entire city.

## **SECTION 5.7 MONTEREY BAY SANCTUARY SCENIC TRAIL**

The Santa Cruz County Regional Transportation Commission (SCRTC) has programmed \$6.8 million to date to develop the Monterey Bay Sanctuary Scenic Trail (MBSST) Network. The multi-use trail is envisioned to be a recreational, interpretive and transportation facility for bicyclists and pedestrians that will span the county's coastline. Previous projects such as the Rail Trail and the Coastal Trail Network have been consolidated into the MBSST Network project as they all share the goal of developing new accessible bicycle and pedestrian trail facilities on or near the coast. Once the RTC completes purchase of the Santa Cruz Branch rail line, the rail right of way will be evaluated through a Master Planning process for the possibility of accommodating such a trail adjacent to the active rail line. The 32 mile rail right of way spans the length of most of the county, is often very near the coast, and offers a perfect gradient for an accessible bicycle and pedestrian facility. The City of Capitola will coordinate with the trail efforts listed above to ensure an effective and efficient bicycle facilities system.





The Santa Cruz County Regional Transportation Commission is currently evaluating options for implementing passenger rail service from the City of Santa Cruz to Davenport. In planning for the Monterey Bay Sanctuary Scenic Trail Network and potential commuter rail service, consideration should be given to provision of the following bicycle facilities:

- Bicycle parking at rail/transit parking lots/stops
- Provision for allowing bicycles on trains; and parallel bicycle routes within the right-of-way
- Establishment of bicycle paths along railroad right of way
- Bicycle and pedestrian access from multi-user trail to important destinations within the City



Figure 5-2 MBSST rendering at Monterey Avenue and Park Avenue

## CHAPTER 6|BICYCLE SAFETY AND EDUCATION PROGRAMS

The City of Capitola has an abundance of safety and education programs, as well as advocacy groups, at its disposal. Bicyclists need to know the vehicle laws and they also need to develop good cycling skills, so that they can coexist safely with motorists. Motorists need to know that cyclists have a legal right to the roadways and they need to learn coexistence strategies, as well. Education programs can provide motorists with valuable information they need and bicyclists with on-bicycle training. The safety benefits of helmets and other protective measures also need to be stressed. The bicycle education and safety programs and resources are listed in the following sections of this chapter.

### SECTION 6.1 ORGANIZATIONS AND EDUCATION AND SAFETY PROGRAMS

Bicycle education is a critical piece of bicyclist safety. Programs that teach individuals the importance of safety equipment and bicycle maintenance, as well as road etiquette and bicyclist rights and responsibilities, save lives every year. There are several education and safety programs available to bicyclists in Capitola. In addition to educating bicyclists, it is also important to reach out to automobile drivers who may not be familiar with the legal rights of bicycles on the road. The California Department of Transportation currently does not require bicycle education as a part of the permitting and licensing of automobile drivers, so it is up to local organizations and government to inform the public. The following organizations offer bicycle safety training, education and bicycle support to Capitola residents:

**Santa Cruz County Regional Transportation Commission** - Plans for, funds, and supports numerous bicycle projects. A SCCRTC Transportation Planner serves part-time as a Bicycle Coordinator and staff person for the Bicycle Advisory Committee; handles bicycle hazard reporting (of potential or existing hazards on roadways or bikeways), applications for Bikes Secure, providing bicycle parking at private lots, vanpools and other locations (<http://www.sccrtc.org/>). The SCCRTC also produces the Santa Cruz County Bikeways Map which is distributed free to the public.

*Commute Solutions* - A rideshare program that provides callers with commute information, such as carpool and vanpool matching, transit schedules, bicycle commuter brochures, bikeway maps, and route suggestions, amongst other resources (<http://www.commutesolutions.org/>).

*Bicycle Advisory Committee* – advises the Santa Cruz County Regional Transportation Commission (SCCRTC) on bicycle planning and policy related issues. The Committee provides technical review of proposed bicycle projects and funding applications as well as theft prevention, bicycle parking programs, education and safety, and other bicycling related issues (<http://www.sccrtc.org/ros-bike.html>).

**Ecology Action** – a non-profit environmental consultancy that offers bicycle education and safety programs, technical support, and incentive programs to encourage active transportation.

Ecology Action works closely with local jurisdictions, schools and businesses, and is an active presence in the community (<http://www.ecoact.org/Programs/Transportation/index.htm>).

*Bike to Work/School Program* - Offers two County-wide Bike to Work/School Day events per year as well as the Spring Bike Week. These events are fun, inclusive, and educational, and encourage, support, and promote more people to bicycle for transportation.

*Bike Smart* – A Safe Routes to School program run by the Transportation Division of Ecology Action, a local non-profit organization. Bicycle safety training is done in the classroom and outside where youth of all ages participate in “Bicycle Rodeo” obstacle courses.

*Cabrillo College Go Green (Partnered with Ecology Action)* – Offers up to \$500 no-interest loan to purchase a bicycle for commuting to and from school and/or work. The College also hosts a bicycle co-op and offers bicycle lockers and secure bicycle parking.

**Community Traffic Safety Coalition** - a public safety organization representing over 30 community and government organizations, funded by a grant from the State Office of Traffic Safety. Some of its activities include: "Share the Road" with bicyclist signs, low-cost helmet distribution, outreach and education of enforcement agencies, Latino Community outreach, night-riding education (<http://www.sctrfficsafety.org/>).

*Ride n' Stride Bicycle and Pedestrian Safety Program* – Teaches elementary school children to safely ride their bicycles and walk. The program covers traffic and safety laws including helmet use and proper street crossing.

*Bicycle Traffic School* – A program aimed to hold bicyclists who receive traffic violations responsible for illegal behavior and educate them so the behavior is not repeated. Bicycle traffic safety classes are offered to individuals who receive traffic violation tickets in lieu of paying the fine.

**People Power** - a grass-roots advocacy group that monitors and advocates for positive bicycle associated issues (<http://peoplepowersc.org/>).

## CHAPTER 7|FUNDING SOURCES

There are a variety of funding sources on the Federal, State and local levels available for bicycle facilities and programs. As the opportunity arises the City of Capitola Public Works Department will apply for such funding. A detailed list of current funding options is included in Appendix E of this Plan. Adoption of this Bicycle Plan by the Capitola City Council will enable the City of Capitola to apply for Bicycle Transportation Account (BTA) funding offered by the State of California.

### SECTION 7.1 FEDERAL FUNDING SOURCES

- Safe Routes to School Program (SRTS)
- Section 402 – State and Community Highway Safety Program
- Federal Lands Highway Funds
- Recreational Trails Program
- Federal Highway American Recovery and Reinvestment Act (ARRA)
- Transportation Enhancement (TEA)

### SECTION 7.2 STATE FUNDING SOURCES

State funding sources:

- Bicycle Transportation Account (BTA)
- Wildlife Conservation Board Public Access Program
- California Conservation Corps
- California Safe Routes to School (SR2S)
- State Transportation Improvement Program (STIP)
- Environmental Enhancement and Mitigation (EEM)

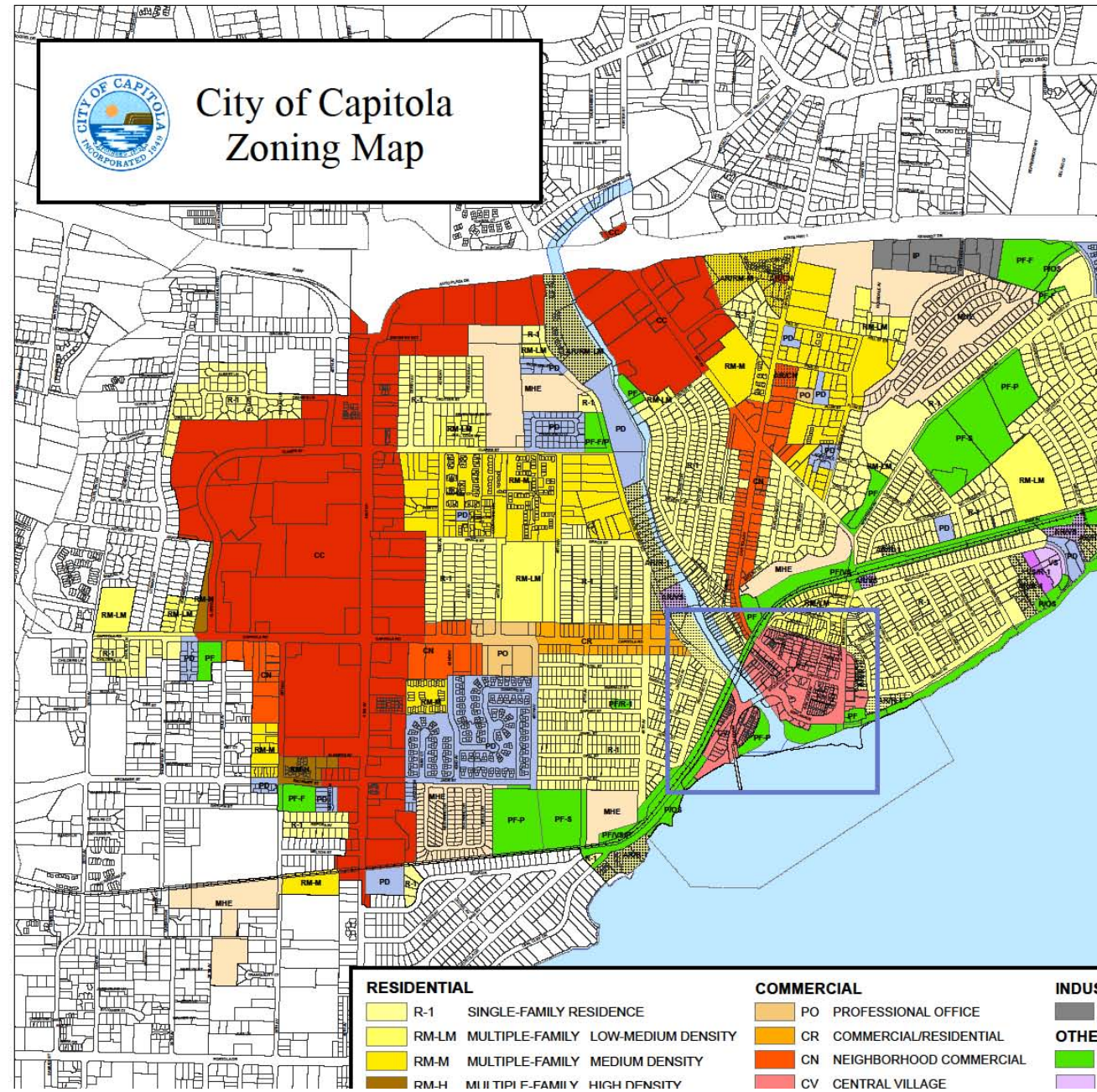
### SECTION 7.3 LOCAL FUNDING SOURCES

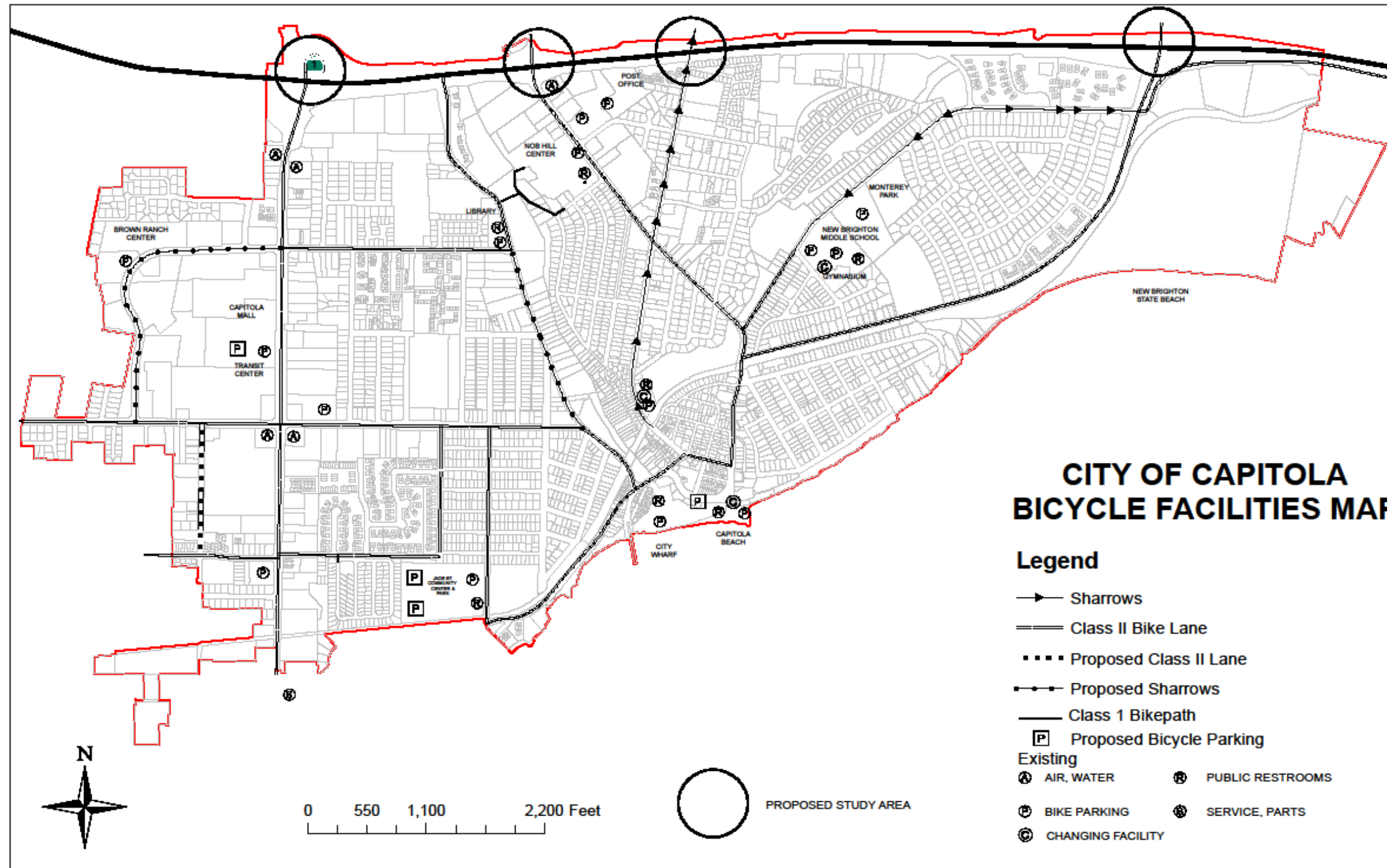
Local funding sources:

- Transportation Development Act (TDA)
- Vehicle Registration Surcharge Fee (AB 2766)
- City Sales Tax

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APPENDIX B | PAST EXPENDITURES AND FUTURE COSTS

Completed 2005 Bicycle Plan Projects	
Project	Cost
Install bicycle lane/ sharrows use on Wharf Rd, from Clares St to Grace St.	\$2,000
Monterey Ave sharrows, Park to Capitola Avenue Southbound	\$1,000
Install sharrows, on Capitola Ave from Stockton Ave	\$5,000
Install bicycle lanes on Monterey Ave southbound bicycle	\$3,000
Restripe Class II bikeways; reposition and re-stencil sharrows on 41 <sup>st</sup> Ave, Clares St, Brommer St, Monterey Ave and Bay Ave; Stripe left hand turn pocket on Bay Ave at Center Ave	\$9,300
Stencil Sharrows on Clares Ave by Brown Ranch Shopping Center	\$1,700
<b>Total Cost of 2005 BTP Projects</b>	<b>\$22,000</b>
<b>Total Projected Cost of 2011 BTP Projects</b>	<b>\$509,000</b>



## APPENDIX C | BICYCLE TRANSPORTATION PLAN CHECKLIST

Requirement	Location
(a) The estimated number of existing bicycle commuters in the plan area and the estimated increase in the number of bicycle commuters resulting from implementation of the plan.	Chapter 4   Table 4-1   pg 21
(b) A map and description of existing and proposed land use and settlement patterns which shall include, but not be limited to, locations of residential neighborhoods, schools, shopping centers, public buildings, and major employment centers.	Appendix A-1   pgs 18-20
(c) A map and description of existing and proposed bikeways.	Appendix A-2   pgs 14-17, 25-35
(d) A map and description of existing and proposed end-of-trip bicycle parking facilities. These shall include, but not be limited to, parking at schools, shopping centers, public buildings, and major employment centers.	Appendix A-2   pgs 27-28
(e) A map and description of existing and proposed bicycle transport and parking facilities for connections with and use of other transportation modes. These shall include, but not be limited to, parking facilities at transit stops, rail and transit terminals, ferry docks and landings, park and ride lots, and provisions for transporting bicyclists and bicycles on transit or rail vehicles or ferry vessels.	Appendix A-2   pg 31
(f) A map and description of existing and proposed facilities for changing and storing clothes and equipment. These shall include, but not be limited to, locker, restroom, and shower facilities near bicycle parking facilities.	Appendix A-2   pg 28
(g) A description of bicycle safety and education programs conducted in the area included within the plan, efforts by the law enforcement agency having primary traffic law enforcement responsibility in the area to enforce provisions of the Vehicle Code pertaining to bicycle operation, and the resulting effect on accidents involving bicyclists.	Chapter 6   pg 26-27
(h) A description of the extent of citizen and community involvement in development of the plan, including, but not limited to, letters of support.	Chapter 1   pg 5
(i) A description of how the bicycle transportation plan has been coordinated and is consistent with other local or regional transportation, air quality, or energy conservation plans, including, but not limited to, programs that provide incentives for bicycle commuting.	Chapter 2   pg 7-8
(j) A description of the projects proposed in the plan and a listing of their priorities for implementation.	Appendix D
(k) A description of past expenditures for bicycle facilities and future financial needs for projects that improve safety and convenience for bicycle commuters in the plan area.	Appendix B

APPENDIX D | 2011 PROPOSED PROJECTS LIST

Project	Priority	Existing Conditions	Goal(s) Achieved	Projected Cost	Potential Funding
<b>1) Monterey Bay Sanctuary Scenic Trail Network</b>	H	Existing Railroad Right-of-way; Existing Coastal Route	<b>Goal 1</b> - Circulation, Connectivity and Access <b>Goal 2</b> - Increase Ridership	N/A	RTC/BTA/Local/ STIP/TEA/Coastal Conservancy/Federal appropriations
<b>2) Install inductive loop sensors or video sensor at signalized intersections to detect bicycles</b>	H	Existing model of wire loop actuated signals work for cars but not bicycles	<b>Goal 2</b> - Increase Ridership	\$380,000	BTA/Local
<b>3) Install bicycle sensors in several locations around the City to collect ridership data or develop and implement a bicycle count program</b>	H	Limited Capitola-specific bicycle ridership data	<b>Goal 1</b> - Circulation, Connectivity and Access		BTA/Local
<b>4) Safe Routes to School planning; work with New Brighton Middle School to establish a year-round bike to school incentive and tracking program</b>	H	Limited safe routes to New Brighton Middle School	<b>Goal 1</b> – Circulation, Connectivity and Access <b>Goal 2</b> – Increase Ridership <b>Goal 3</b> - Safety	\$40,000	SR2S (State)
<b>5) Conduct a feasibility study for the extension of the Class I bikeway from Soquel Elementary to Perry Park</b>	H	Limited safe routes to Soquel Elementary and New Brighton Middle School. Only 0.17 miles of Class I bikeway in the City of Capitola	<b>Goal 1</b> - Circulation, Connectivity and Access <b>Goal 2</b> - Increase Ridership	\$15,000 to \$20,000	SR2S, Local
<b>6) Porter-Bay underpass study</b>	H	Current bicycle infrastructure makes bicyclists vulnerable to right-hook turns; route used by students	<b>Goal 3</b> - Safety	\$15,000 to \$20,000	Local

Project	Priority	Existing Conditions	Goal(s) Achieved	Projected Cost	Potential Funding
<b>7) Conduct a study to further improve the bicycle route on Clares St around Brown Ranch Shopping Center</b>	H	Lacking bicycle infrastructure, narrow right of way; Sharrows stenciled in 2010	<b>Goal 1</b> - Circulation, Connectivity and Access	\$15,000 to \$20,000; \$1700	BTA/Local
<b>8) Eliminate root intrusion on Park Avenue; resurface, repave and restripe</b>	H	Tree roots raise pavement creating a hazard for cyclists	<b>Goal 5</b> - Maintenance	\$3,000 to \$4,000	BTA/Local
<b>9) Add bicycle racks along the Esplanade and near the stage; create bicycle corrals for short term and long-term bicycle parking; consider space for a loading zone for bicycle-based businesses</b>	H	Lack of secure bicycle parking	<b>Goal 2</b> - Increase Ridership	\$5,000 - \$10,000	BTA/Local
<b>10) Install racks at Jade Street Park</b>	H	Lack of secure bicycle parking	<b>Goal 2</b> – Increase Ridership	\$500/rack	BTA/Local
<b>11) Install bike lockers at the Capitola Mall Transit Station</b>	H	Lack of secure bicycle parking	<b>Goal 4</b> - Multi-modal	\$3,000	BTA/Local
<b>12) Participate in the County-wide Bicycle Route Signage Program</b>	H	Lack of way-finding signage on popular bicycle routes	<b>Goal 1</b> - Circulation, Connectivity and Access	\$200/sign	RTC/Local
<b>13) Update Bicycle Parking ordinance; create a bicycle facilities ordinance</b>	H	Existing development standards for bicycle parking are out of date	<b>Goal 1</b> - Circulation, Connectivity and Access <b>Goal 2</b> - Increase Ridership		Local
<b>14) Bicycle improvements on Capitola Ave/HWY 1 overpass; short-term solutions and consideration in future plans</b>	H	Lacking bicycle infrastructure, unsafe conditions for bicyclists	<b>Goal 3</b> - Safety		Local/BTA/Caltrans

Project	Priority	Existing Conditions	Goal(s) Achieved	Projected Cost	Potential Funding
<b>15) Conduct study to make bicycle infrastructure improvements on 41<sup>st</sup> Ave and HWY 1 Overpass and Gross Rd intersection</b>	H	Unsafe route and intersection for bicyclists	<b>Goal 3 - Safety</b>		Local/BTA/Caltrans
<b>16) Bicycle design and safety component of Bay Ave-Capitola Ave Roundabout study</b>	H	Busy 4-way stop intersection	<b>Goal 1 - Circulation, Connectivity and Access</b> <b>Goal 3 - Safety</b>	\$5,000	BTA/Local
<b>17) Install warning signs where bicycle bridge path exits on to Wharf Rd. Install signage to distinguish between the two bridge paths.</b>	M	Lack of signage notifying autos that bicycles are exiting onto roadway	<b>Goal 3 - Safety</b>	\$200/sign?	Local
<b>18) Include plans to develop a bicycle commuter facilities at the Capitola Mall Transit Station in the General Plan Update/future area plans</b>	M	Insufficient commuter facilities for Capitola Mall employees and transit riders	<b>Goal 4 - Multi-modal</b>		Local
<b>19) Create plans to improve parking design along the Esplanade</b>	M	Existing parking results in low visibility for drivers which is hazardous for bicyclists and pedestrians	<b>Goal 3 - Safety</b>	\$15,000 - \$20,000	Local
<b>20) Work with senior centers to create a program that promotes senior bicycle ridership</b>	M	Seniors have limited transportation options, and many are afraid to ride bicycles even if they are physically able	<b>Goal 2 - Increase Ridership</b>		Local
<b>21) Work with Capitola Chamber of Commerce and hotels to create a bicycle rental program</b>	L	Limited transportation options for tourists	<b>Goal 2 - Increase Ridership</b>		Local

APPENDIX E| FUNDING MATRIX

Grant Source	Due Date	Administering Agency	Annual Total	% Match Required	Eligible Applicants	Comments
FEDERAL SOURCES						
Congestion Mitigation and Air Quality Improvement (CMAQ)		SCTA/MTC				Funds may be used for bicycle facilities and programs. Website: <a href="http://www.mtc.ca.gov/funding/STPCMAQ">www.mtc.ca.gov/funding/STPCMAQ</a>
Transportation, Community and System Preservation Program (TCSP)		FHWA				Focuses on improving the efficiency and accessibility of the transportation system through planning and implementation.  ( <a href="http://www.fhwa.dot.gov/tcsp/pi_tcsp.htm">www.fhwa.dot.gov/tcsp/pi_tcsp.htm</a> )
Highway Safety Improvement Program		Caltrans		10%		The HSIP provides funding for bicycle safety improvement projects. ( <a href="http://www.dot.ca.gov/hq/localprograms/hsip.htm">www.dot.ca.gov/hq/localprograms/hsip.htm</a> )

Grant Source	Due Date	Administering Agency	Annual Total	% Match Required	Eligible Applicants	Comments
Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETY-LU)		RTPA & Caltrans	varies	11.47%	Federally certified Jurisdictions	SAFETY-LU is the major federal funding source for surface transportation funding. The majority of funds are meant for capital improvement projects, however, 10% of funds may be used for safety and education programs.
Surface Transportation Program (STP)	varies	RTPA/MPO/ Caltrans/FHWA	Approx. \$200 million to state	11%-20% non federal	Federally Certified jurisdictions	Contact RTPA. Funds can be used for a wide variety of projects. STP is exchanged every year. After exchange, money belongs to RTPA's. ( <a href="http://www.mtc.ca.gov/funding/STPCMAQ">www.mtc.ca.gov/funding/STPCMAQ</a> )

Grant Source	Due Date	Administering Agency	Annual Total	% Match Required	Eligible Applicants	Comments
Transportation Enhancements (TE)		FHWA			Municipality, County, State agency, University, Federal government, or Non-profit. Only state and federal agencies can apply for ITIP TE.	Surface transportation related bicycle infrastructure projects and education programs are eligible for funding.
Section 402 – State and Community Highway Safety Grant Program		DOT Traffic and Safety				Funding may be used for bicycle safety and education programs, educational materials and/or safety equipment (helmets).

STATE SOURCES

Grant Source	Due Date	Administering Agency	Annual Total	% Match Required	Eligible Applicants	Comments
<p><b><i>State Transportation Improvement Program (STIP) Related Programs. The statewide four-year Capital Improvement Program adopted biennially by the California Transportation Commission, which included all major transportation projects funded by state or federal funds. These projects are submitted by the local jurisdictions through the RTPA's RTIP/STIP budget process.</i></b></p>						
Regional Share (Major Projects \$300,000 and up.)	July 1 odd years to RTPA	CTC, RTPA	varies	11.47% for transit only	RTPAs	Emphasis is on reducing traffic congestion & increasing capacity. RTPA determines projects for the region within CTC guidelines. Must be adopted into RTIP by Dec. 1 of odd # years.  (Except 12/98)
Bicycle Transportation Account (BTA)	December 1 to Caltrans District 5	Caltrans	\$7 million/yr	n/a	Cities, County	Contact Caltrans. State account designated to fund bicycle facilities. Local jurisdictions must have a Bicycle Plan approved by RTPA & State. Project requests must not exceed \$170,000.
State Highway Account (SHA)	Summer in odd # years	Caltrans, RTPA	\$360,000	n/a	Caltrans District Offices	Contact Caltrans. Must be associated with State Highway and be able to provide for enhanced safety. Funds available to districts for bicycle facilities on state right of way.



Grant Source	Due Date	Administering Agency	Annual Total	% Match Required	Eligible Applicants	Comments
Minor A/B programs	Ongoing, Approve by April, odd years	Caltrans	n/a	Approx.\$4 mil/yr to Dist. 5	Local Jurisdictions & special districts	Contact Caltrans. For projects (\$107,000-\$750,000) Minor A program; Minor B for projects up to \$107,000.
Habitat Conservation Fund Grant Program		California State Parks & Recreation	varies	50% non-state match	Local Jurisdictions & special districts	Contact CA Parks & Rec. Projects that attract people to park and wildlife areas. Fund will last until 2020. Must comply w/ CEQA, NEPA, & must demonstrate land ownership.
Environmental Enhancement and Mitigation Program (EEM)		State Resources Agency	\$10mil/yr	0%, but favored	Nonprofit agencies, local, state, and federal agencies.	Contact State Resources. Projects that enhance or mitigate existing or future transportation projects. Will be available until year 2000. \$500 K is the maximum allocation for a project. Must be above and beyond what CEQA requires for traffic-generating project. The Resources agency makes final recommendations to Caltrans.
Safe Routes to School		Caltrans	\$22 million/yr	10%, \$450k max	Local Jurisdiction	Contact Caltrans

Grant Source	Due Date	Administering Agency	Annual Total	% Match Required	Eligible Applicants	Comments
Land and Water Conservation Fund		California State Parks & Recreation	varies	50% non state	n/a	Contact Parks & Rec. States must adopt a State Comprehensive Outdoor Rec Plan. For recreational parks facilities.
Recreational Trails Program (RTP)		California State Parks				Supports the development and maintenance of recreational trails.  ( <a href="http://www.fhwa.dot.gov/environment/rectrails/index.htm">www.fhwa.dot.gov/environment/rectrails/index.htm</a> )
Coastal Conservancy		California State Coastal Conservancy				Encourages projects that will increase or improve public access to the coast, rivers and creeks. It also supplies funding for resource conservation projects. ( <a href="http://scc.ca.gov/category/grants/">scc.ca.gov/category/grants/</a> )
LOCAL SOURCES						
Transportation Development Act (TDA), Article 3	ongoing	RTPA	varies	0%	Cities, County	In Santa Cruz County, the funds are allocated annually according to formula. Local Jurisdiction proposes projects to the Bicycle Committee and the Regional Transportation Commission for final approval. Article 8 funds are used in Santa Cruz primarily for bicycle and pedestrian projects.

Grant Source	Due Date	Administering Agency	Annual Total	% Match Required	Eligible Applicants	Comments
Vehicle Registration Surcharge Fee (AB 2766)	April	MBUAPCD	Est. over \$1 million/yr district wide	0%, but preferred	Private and Public agencies	Contact MBUAPCD. For projects that contribute to the reduction of motor vehicle air pollution emissions in the MBUAPCD District (3 counties are included: Santa Cruz, San Benito, and Monterey)

**TRANSPORTATION ACRONYMS**

**for Grants Funding Information Matrix**

AMBAG	Association of Monterey Bay Area Governments	A voluntary association of Santa Cruz, and Monterey Counties and the incorporated cities in the two counties. Serves as the federal MPO for transportation planning purposes. San Benito County is included in this Association with respect to transportation planning. Handles interregional issues including transportation planning, water quality, air quality conformity analyses and demographic forecasts.
CEQA	California Environmental Quality Act	Legislation which requires state and local agencies to disclose, consider and mitigate any environmental impacts associated with their projects or actions.

CTC	California Transportation Commission	A nine member board appointed by the Governor (with the Legislature’s confirmation) to oversee transportation funding and project delivery. This board is responsible for review of the Regional Transportation Improvement Programs. This board approves the State Transportation Improvement Program which allocates state and federal funding.
DO	District Office	Shorthand for California Department of Transportation District Offices. The DO for the Central Coast is Caltrans District 5 located in San Luis Obispo.
FHWA	Federal Highway Administration	A branch of the US Department of Transportation. This federal agency has responsibility for review and approval of transportation projects and programs which impact the designated federal interstate system. Also oversees federal transportation planning agencies and MPO requirements.
FTA	Federal Transit Administration	A branch of the US Department of Transportation. This federal agency has responsibility for review and approval of transportation projects and programs which impact transit systems.
MBUAPCD	Monterey Bay Unified Air Pollution Control District	This regional agency holds jurisdiction over the implementation and enforcement of state and federal air quality regulations and guidelines in the three county area which includes Santa Cruz, Monterey and San Benito counties.

MPO	Metropolitan Planning Organization	This agency is designated by the Governor to administer the federally mandated transportation planning processes in metropolitan areas (over 50,000 population). AMBAG is the MPO for our region.
RTIP	Regional Transportation Improvement Program	A state mandated capital improvement program for regional transportation projects which will use federal and / or state funding sources. The Santa Cruz County Regional Transportation Commission (SCCRTC) adopts the Santa Cruz County Regional Transportation Improvement Program (RTIP) which is then forwarded to the CTC for inclusion in the final STIP. A key component of the RTIP is the selection of projects for state “regional share” funds.
RTPA	Regional Transportation Planning Agency	Local agencies designated by the State legislature to conduct state mandated regional transportation planning and programming activities. In Santa Cruz County, Santa Cruz County Regional Transportation Commission (SCCRTC) is the Regional Transportation Planning Agency. The corresponding agency in Monterey County is the Transportation Agency for Monterey County (TAMC). RTPAs often coordinate the distribution of several different state and federal funds such as STP/CMAQ, TEA, TDA & STA.
SAFE	Service Authority for Freeway Emergencies	An authority enabled by state law and established by local jurisdictions to collect a \$1 fee for the purpose of developing and maintaining a highway motorist aid system with the cellular callboy as its main component.

SCCRTC	Santa Cruz County Regional Transportation Commission	SCCRTC is the designated Regional Transportation Planning Agency (RTPA) for Santa Cruz County. It has primary responsibility for development of regional transportation policy and plans and programming of funds within the Santa Cruz County area. SCCRTC is also the congestion management agency, the regional ride share agency (Commute Solutions), and the Service Authority for Freeway Emergencies (SAFE) for Santa Cruz County.
TAMC	Transportation Agency for Monterey County	TAMC is the designated Regional Transportation Planning Agency (RTPA) for Monterey County. It has primary responsibility for development of regional transportation policy and plans and for programming of funds within the Monterey County area.
TDA	Transportation Development Act	A 1971 state law which provides for the collection of a ¼¢ sales tax dedicated for local transportation projects. Revenues are allocated on an annual basis by the Santa Cruz County Regional Transportation Commission (SCCRTC).



## COMMUNITY TRAFFIC SAFETY COALITION

### **Recommended Guidelines to Protect the Safety of Bicyclists, Pedestrians, and Disabled Travelers during Road Construction**

As stated in the California MUTCD (2003 Edition with Revisions Number 1 and 2 Incorporated, December 2007), **“The needs and control of all road users (motorists, bicyclists, and pedestrians within the highway, including persons with disabilities in accordance with the Americans with Disabilities Act of 1990 (ADA) Title II, Paragraph 35.130) through a TTC zone shall be an essential part of highway construction, utility work, maintenance operations, and the management of traffic incidents.”**

#### **THE PROBLEM**

There are three general situations which impact bicyclists, pedestrians, and disabled travelers:

1. Work in the *bikeway*\* or *walkway* which forces bicyclists or pedestrians to compete with motor vehicles in a narrow car lane.
2. Work which is not in the *bikeway* or *walkway* but which puts equipment, debris, or warning signs in the *bikeway* or *walkway*.
3. Work which blocks the direction of travel without a clear, safe, and convenient detour for cyclists, pedestrians, or wheelchair travelers.

In addition, please be aware of these specific hazards for bicyclists, pedestrians, and disabled travelers.

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\* For the purposes of these guidelines, “*bikeway*” will be used to refer to where bicyclists usually travel on a given road, including painted bike lanes, paved shoulders, the right side of a wide travel lane, or the center of a narrow travel lane if there is no bike lane or shoulder. “*Walkway*” will be used to refer to sidewalks, shoulders, and paths where pedestrians and wheelchairs travel.

### Hazards to Bicyclists

- Signs, equipment, or debris in the *bikeway*.
- *Bikeway* blocked without advance warning.
- Rough pavement or gravel without advance warning.
- Poor pavement transitions, especially when parallel to the line of travel (eg: metal plate edges or pavement removal/resurface areas which are not tapered).
- Inadequate time to pass through a signalized one-lane, two-way traffic control.

### Hazards to Pedestrians

- Blocked or hazardous *walkway* which is not marked in a way that is visible in advance, especially at night.
- Alternate route or detour which is not negotiable by wheelchairs, strollers, carts, etc.

### Special Hazards to Visually Impaired Pedestrians

- Blocked or hazardous *walkway* without a barrier which is solid enough to be discernible by guide dog or cane.

### Special Hazards to Wheelchair Travelers

- Signs, equipment, or debris partially blocking the *walkway*.
- Sidewalk blocked with no curb cut or ramp to exit sidewalk, or advance warning to exit at a prior curb cut.
- Rough pavement, grooves, or gravel without advance warning. Rocks of 3” diameter or greater are especially hazardous because they may cause the wheelchair to stop abruptly and eject the occupant

## **THE SOLUTION**

The California MUTCD (Section 5-01-2) includes these “fundamental principles” for bicyclists and pedestrians in construction and maintenance work zones:

1. Bicycle and pedestrian “movement should be disrupted as little as practicable”.
2. “Pedestrians and bicyclists should be provided with access and passage through, or around, the temporary traffic control zone at all times.”
3. Bicyclists and pedestrians “should be guided in a clear and positive manner while approaching and space traversing the temporary traffic control zone.”

In addition, please consider the following specific safety and access measures.



## Detours

- When construction blocks the *bikeway*, accommodations should be made for bicyclists if they are made for motor vehicles, including safe and well marked detours for cyclists when needed. In some situations when motor vehicles are detoured, a safe corridor can be left open for bicyclists. If not possible, post “End Bike Lane” and “Share the Road” (or “Merge Left”) caution signs to encourage cyclists to merge into the through lane. Rather than directing bicyclists to walk their bikes in pedestrian zones, try to provide a rideable alternative.
- If construction or signs must block the *walkway*, establish safe, well-signed detours for pedestrians which are accessible for wheelchairs, strollers, carts, etc.
- When one-lane, two-way traffic control is done by temporary traffic signals, timing should accommodate bicyclists, who will be slower than motor vehicles especially in the uphill direction. Consider push button signals for bicyclists or special bicycle loops, if practical.
- Barriers should include a portion low enough and solid enough to be easily discernible by a cane, guide dog, or child. If necessary, use flaggers to guide pedestrians.

## Signs

- Whenever possible, construction warning signs should be placed out of the *bikeway* and *walkway*, so that the sign itself is not a barrier for bicyclists for wheelchair travelers. Remove construction signs promptly when construction pauses or ends.
- Any construction or sign which blocks the *bikeway* should have sufficient sight distance, including night-time visibility, to allow cyclists time to merge safely into the car lane. Use “End Bike Lane” and “Share the Road” signs.
- Any construction or sign which blocks the *walkway* should have prior warning to allow wheelchairs time to exit the walkway at a prior curb cut.
- For all construction where the *bikeway* or *walkway* is blocked or the lane narrows, post “Share the Road” caution signs to warn motorists to slow down and watch for bicyclists and pedestrians.

## Pavement Surface

- Temporary pavement or metal plates installed during construction should have cold mix asphalt tapered at the edges for bicyclist, pedestrian and wheelchair safety. When locating metal plates, avoid placing edges in the middle of the *bikeway*. Debris in the *bikeway* or *walkway* should be cleared at the end of each workday.
- If no smooth surface is available for bicyclists, pedestrians, or wheelchairs, post signs warning “Rough Surface” or “Uneven Pavement” at the beginning of the work area. Keep signs posted at the end of the workday. Use reflective signage on barricades with flashers for night safety.
- Prior to “sign off” on projects, verify that the pavement in the *bikeway* and *walkway* is even. Overlay should be smoothed at drainage grates, manholes, and gutter pan, and after narrow trenching in the *bikeway*.





Item #: **5.A.**

## CITY COUNCIL AGENDA REPORT

**MEETING OF FEBRUARY 10, 2011**

FROM: DEPARTMENT OF COMMUNITY DEVELOPMENT

DATE: FEBRUARY 1, 2011

SUBJECT: CITY OF CAPITOLA BICYCLE TRANSPORTATION PLAN AND BICYCLE  
TRANSPORTATION ACCOUNT GRANT

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**Recommended Action:** By motion and roll call vote, that the City Council adopt the proposed Resolution Adopting the Capitola Bicycle Transportation Plan, Approving the Notice of Exemption, and Authorizing and Directing the City Manager to Submit the Plan to the State Department of Transportation for Certification.

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### **BACKGROUND**

One objective of the City of Capitola General Plan is to promote bicycling as a viable mode of transportation within the City-wide transportation system. In order to achieve this objective, the City adopted a Bicycle Transportation Plan which implements the objectives and policies of the General Plan. The Capitola Bicycle Transportation Plan identifies issues with existing infrastructure, analyzes the community's bicycle safety and commuter needs, and proposes infrastructure projects and programs to meet those needs. The current Capitola Bicycle Transportation Plan was adopted in 2005 and has reached the end of its five-year planning cycle. By updating the Bicycle Transportation Plan, the City of Capitola will be eligible to receive State funding to assist with capital improvements over the next five years.

### **PROCESS**

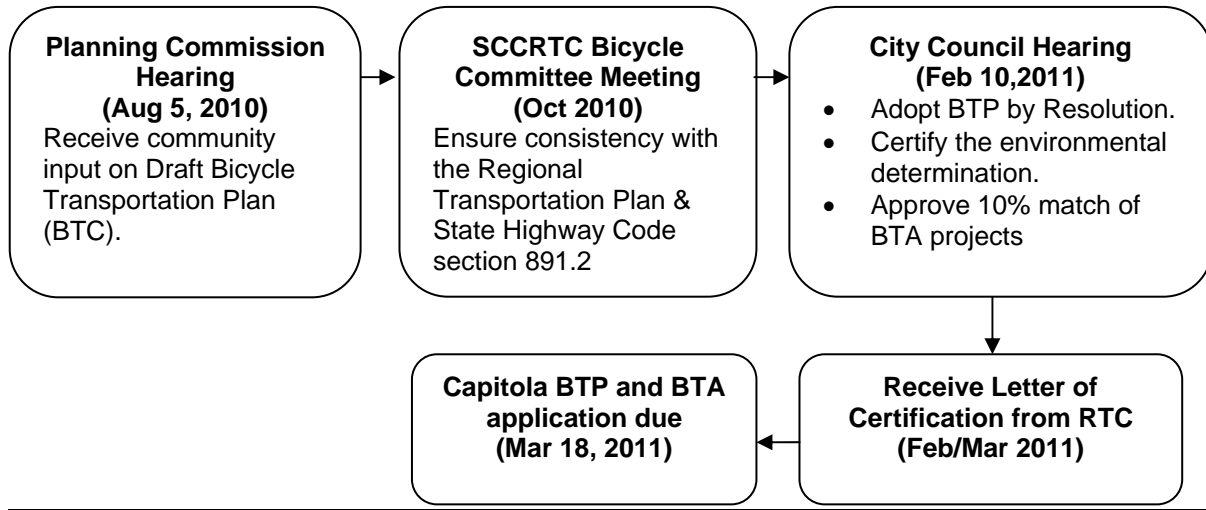
In order to be eligible to receive funds from the Caltrans Bicycle Transportation Account (BTA), the 2011 Capitola Bicycle Transportation Plan, as well as the BTA grant application must be received by Caltrans no later than March 18, 2011.

The process chart on the following page outlines the Bicycle Transportation Plan update process. There have been several opportunities for members of the community to comment on the Capitola Bicycle Transportation Plan:

- Planning Commission: August 5, 2010
- SCCRTC meeting: October 2010
- City Council: February 10, 2011.

The comments and recommendations received from members of the public, Planning Commissioners and SCCRTC Bike Committee members and staff was incorporated into the chapters of the draft Bicycle Transportation Plan.

**2011 Bicycle Transportation Plan Update Process**



**DISCUSSION**

The Capitola Bicycle Transportation Plan (BTP) sets goals and objectives in order to increase the safety and convenience of bicycling in the City. The BTP must be consistent with State Highway Code §891.2 as well as the City General Plan, Regional Transportation Plan and other relevant planning documents. For the specific elements required in the plan, see the **Bicycle Transportation Plan Checklist** in Appendix C of the attached draft 2010 Capitola Bicycle Transportation Plan (Attachment 2).

In addition to analyzing local need and existing infrastructure, the BTP must include a list of proposed projects. The list gives a description of the proposed project, the existing conditions, and the plan goals achieved by the project. It also identifies the projected cost and potential funding sources for each project.

**Overview of the Bicycle Transportation Plan:**

The draft Bicycle Transportation Plan contains seven chapters:

- Chapter 1. Introduction:** The introduction provides a brief history of bicycling, discusses the benefits of bicycle transportation and outlines the organization of the plan and the planning process.
- Chapter 2. Goals and Objectives:** This chapter establishes that the Capitola BTP is consistent with local and regional planning documents and lists the goals and objectives of the plan.
- Chapter 3. Existing Conditions:** In order to improve the bikeway system in Capitola, the existing conditions of bicycle infrastructure in the city must be analyzed. This chapter identifies the location of existing bikeways and the condition of those bikeways. It also identifies current land use which ultimately affects transportation patterns.
- Chapter 4. Needs Analysis:** Chapter 4 analyzes local bicycle commuter patterns, bicycle collisions and traffic accidents, and trip generators and attractors to establish the safety and commute needs of bicyclists in Capitola.
- Chapter 5. Bicycle Plan Projects:** This Chapter contains an overview of the projects identified in the 2005 BTP which have since been completed and a list of proposed projects.

**Chapter 6. Bicycle Safety and Education Programs:** In accordance with State Highway Code Section 891.2, this chapter describes the local bicycle safety and education programs available to members of the community as well as public and private entities that support such efforts.

**Chapter 7. Funding Sources:** This chapter identifies local, regional and State funding sources. It also reviews the cost of past bicycle projects and projected funding needs for future projects.

### **CEQA**

Section 15301 (c) consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. Streets, sidewalks and bicycle and pedestrian trails are listed as "existing facilities" under the exemption.

Section 15304 (h) provides that a project is exempt from CEQA if the project consists of minor public or private alterations in the condition of land, water and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes. The creation of bicycle lanes on existing rights-of-way is listed as an acceptable project under the exemption.

A Notice of Exemption (Attachment 1) has been prepared for the Council's consideration.

### **FISCAL IMPACT**

The Capitola Bicycle Plan lists projects that will be funded locally, or with assistance from the State. Projects that consist of maintenance, repair and creation of bicycle lanes on existing public right-of-way will be financed by the City Gas Tax Fund.

The State provides funding for bicycle projects through the Bicycle Transportation Account (BTA). Once certified, the projects described in the Bicycle Transportation Plan will be eligible to receive funding from the Caltrans Bicycle Transportation Account (BTA). In addition to adopting the Bicycle Transportation Plan by resolution, the City is required to match 10% of BTA funds.

For the 2011-2012 fiscal year, it is recommended that \$14,750 be allocated as a 10% match of BTA funds for Video Bicycle Sensor Systems and Village Bicycle Parking (Projects 2 and 9 in Appendix D, Capitola Bicycle Transportation Plan).

### **ATTACHMENTS**

1. Draft Resolution (includes Notice of Exemption)
2. Draft Bicycle Transportation Plan dated February 2011

**Report Prepared By:** Derek Johnson  
Community Development Director

**Reviewed and Forwarded  
By City Manager:** \_\_\_\_\_



Item #: **5.B.**

## CITY COUNCIL AGENDA REPORT

**MEETING OF FEBRUARY 10, 2011**

FROM: POLICE DEPARTMENT

DATE: FEBRUARY 2, 2011

SUBJECT: REQUEST FROM THE CAPITOLA PUBLIC SAFETY AND COMMUNITY SERVICE FOUNDATION FOR APPROVAL OF A SPECIAL EVENT PERMIT FOR THE 6<sup>th</sup> ANNUAL CAPITOLA ROD AND CUSTOM CLASSIC CAR SHOW IN CAPITOLA VILLAGE ON SATURDAY & SUNDAY, JUNE 11 AND 12, 2011, AND APPROVAL OF A GRANT IN THE AMOUNT OF \$1,406

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**Recommended Action:** By motion and roll call vote:

- 1) Approve the Special Event Permit for the 6<sup>th</sup> Annual Capitola Rod and Custom Classic Car Show to be held in Capitola Village on Saturday and Sunday, June 11 and 12, 2011; including approval of an Encroachment Permit, an Entertainment Permit, and authorization to serve beer and wine to select guests and sponsors (VIP's) on the city property located in Esplanade Park behind the Bandstand during the event, and to sell beer in the parking lot of 109 San Jose Avenue, and to Hang Banners prior to the event; and
- 2) Approve a grant in the amount of \$1,406.00 for permit fees.

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**BACKGROUND**

The Capitola Public Safety and Community Service Foundation, in cooperation with the Capitola Soquel Chamber of Commerce, wishes to host the 6<sup>th</sup> Annual Capitola Rod and Custom Classic Car Show in Capitola Village on June 11 and 12, 2011. The show helps raise funds for the Foundation, which is a non-profit corporation dedicated to promoting public safety and community outreach within Capitola. The Car Show also helps kick-off the Village summer tourist season.

The 6<sup>th</sup> Annual Rod and Custom Classic Car Show is promoted by the Foundation and the Capitola Cam Snappers Hot Rod Club, which has over 500 members within Santa Cruz County. The show is scheduled to take place on Saturday and Sunday, June 11 & 12, 2011 from 9:00 AM through 5:00 PM. on Saturday and 9:00 AM through 2:00 PM on Sunday. In addition, a Disc Jockey will make announcements and play recorded music in Esplanade Park from 11:00 AM to 5:00 PM on Saturday and 10:00 to 2:00 PM on Sunday, with the exception of Saturday Afternoon when a live band will play from 2:00PM to 4:00PM. The two-day event will be staffed by volunteers and members from the Chamber of Commerce, Cam Snappers Hot Rod Club, Police Department, and the Capitola Public Safety & Community Service Foundation.

**DISCUSSION**

Due to the success of this event over the past five years, organizers are requesting that the permit continue to be granted for two-days, although the show on Sunday will conclude at 2:00 PM, and vehicles will be consolidated in the lower Village area on Sunday in an effort to open Capitola Avenue to through traffic as early as possible. Event organizers anticipate 310 vehicles at this year's event and approximately 20-30 vendors. Organizers of this event are requesting to hang banner(s) and allow vendors signage at their booths and a balloon arch at both the Esplanade and Monterey Avenue entrances to the village. During the event 4 parking stalls will be reserved for organizers in the Pacific

Cove Parking Lot. Handicap access parking, which is displaced from the village, will be temporarily replaced by additional handicapped parking located along the 300 block of Capitola Ave.

The anticipated attendance is expected to be about 10,000-15,000 people on Saturday and approximately 8,000-10,000 people on Sunday and as in the past; admission to the show is free. The Esplanade will be posted as a No Parking Zone 72 hours before the event and local merchants and residents will receive a letter and flyer noticing them of the event, restricted parking and road closures at least 10 days before the event. Event organizers will promote the use of the City's shuttle service for spectators in addition to providing a private 15-passenger van to shuttle registered car owners, visitors, and staff in and out of the village. Central Fire paramedics will provide medical assistance to visitors to the village. The Capitola Public Safety and Community Service Foundation in cooperation with the Chamber Of Commerce will secure liability insurance for this event in compliance with the city's standard coverage requirements.

The food and wine court (VIP area) anticipates 75-100 visitors per/day and will be located on the grassy area behind the bandstand. Police and Foundation personnel throughout the event will monitor the Food and Wine VIP Court. Once again, food will be provided in the food court area by Maragitaville's owner and management. Wine is provided and served by local wineries and their staff. No food or beverages will be sold or available to the general public from this location, and all provisions of the ABC Code will be strictly enforced.

This year, the event organizers are requesting to have beer available for sale in the parking lot at 109 San Jose Avenue near Esplanade Avenue ("Beer Garden"). At this time, the Beer Garden portion is tentative pending sponsorship. Identification checks will be conducted on those wishing to purchase beer and the consumption would only be permitted in the parking lot. This is a fenced and gated area that would be monitored by Foundation and Event staff, in a manner similar to the Art and Wine event. The Foundation is applying for a two-day State Office of Alcohol Beverage Control (ABC) permit for this event.

The event is scheduled to close at 5:00 PM on Saturday and the streets are expected to be open and accessible to vehicle traffic by 7:00 PM on Saturday and by 3:30 PM on Sunday.

The Special Events Permit also serves as a permit for the stage in Esplanade Park, Car Show activities, recorded music in Esplanade Park, a live band at the bandstand, as well as a banner request with the following conditions:

- Encroachment permit has been applied for
- Entertainment permit has been applied for
- A Certificate of Insurance indemnifying the City of Capitola has been requested
- Security for the event will be provided by volunteers
- Hours of operation have been clearly established
- No open containers of alcohol in public, except in food-wine court VIP area and "Beer Garden"
- Adequate portable restrooms and trash containers have been secured for the event
- The Fire Marshal will review and approve the event
- Public Works will hang banners as requested
- Abide by all Capitola Municipal Codes

### **FISCAL IMPACT**

The fiscal impact of this event to the City of Capitola is minimal. Volunteer staff from both organizations and the car club will provide clean up and security for the event at no cost to the city.

Public Works will supply the barricades and hang the banner(s). Volunteer staff will place and remove the barricades, post the parking meters and perform all clean up after the event.

The Capitola Public Safety and Community Service Foundation is seeking a waiver from the City for projected costs and for permit fees totaling \$1406.00. The fees are as follows: Special Event Permit \$54, Encroachment Permit \$56, Entertainment Permit Application \$31, Entertainment Permit \$31, Banner Permit \$34, Two Full Day Bandstand Rentals \$1200.00.

**ATTACHMENTS**

1. Special Event Permit Application
2. Map of the Event

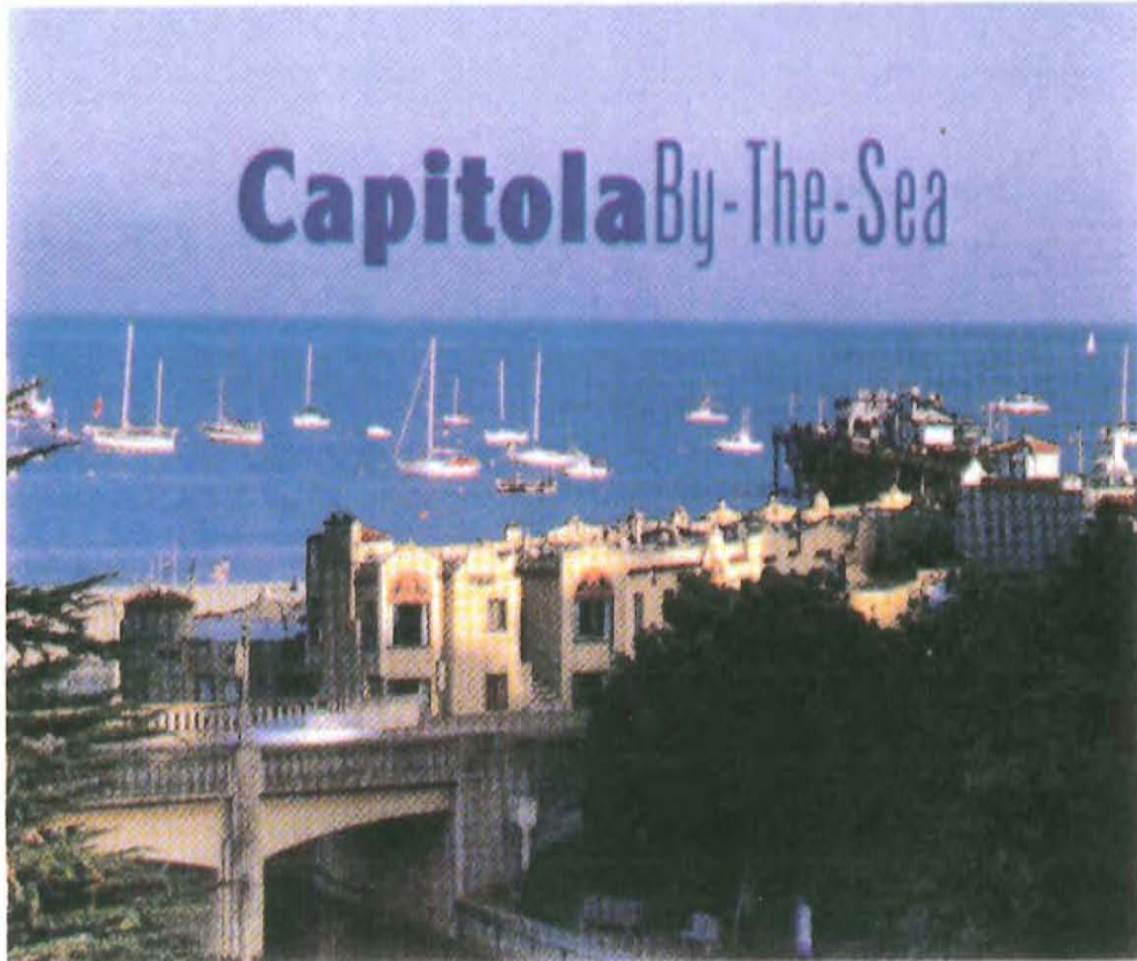
**Report Prepared By:** Tom Held

**Report Approved By:** Mike Card, Chief of Police

**Reviewed and Forwarded  
By City Manager:** \_\_\_\_\_



**GENERAL SPECIAL EVENT  
PERMIT  
APPLICATION**



**CITY OF CAPITOLA**

**CAPITOLA ROD & CUSTOM  
CLASSIC CAR SHOW  
JUNE 11<sup>TH</sup> & 12<sup>TH</sup>, 2011**

## SPONSORING ORGANIZATION AND APPLICANT INFORMATION

- Event Name: Capitola Rod & Custom Classic Car Show
- Event Description: Car Show
- Event Purpose: Community Event and Fundraiser
- Sponsor: Capitola Public Safety and Community Service Foundation
- Sponsor's Address: 716-G Capitola Avenue  

<u>Capitola,</u>	<u>Ca.</u>	<u>street</u>
<u>city</u>	<u>state</u>	<u>95010</u>
		<u>zip code</u>
- Sponsoring Organization's Phone: ( 831 ) 475-6522
- FAX Number: ( 831 ) 475-6530 E-Mail Address: toni@capitolachamber.com
- Contact Person's Name: Toni Castro
- Business Phone: ( 831 ) 475-6522 Cellular Phone: ( 831 ) 359-1803
- FAX Number: ( 831 ) 475-6530 E-Mail Address: toni@capitolachamber.com

Will you be using a professional Special Event Organizer? If yes, please include all foregoing information about the organizer on a separate sheet of paper and attach to your application.

## EVENT INFORMATION

- Type of event:  Run  Festival  Parade  Sale  Motion Picture  Block Party
- Other (specify) Car Show
- Event Location: Capitola Village
- Event Dates: June 11th and 12th 2011 Anticipated Attendance: 10,000
- Web Site Information: capitolacarshow.com E-Mail Address: toni@capitolachamber.com
- Will the public be invited?  Yes  No

Actual hours open to the public or "advertised" event hours:

- Date: 06-11-11 Time: 9:00 AM/PM to 5:00 AM/PM
- Date: 06-12-11 Time: 9:00 AM/PM to 2:00 AM/PM
- Date: \_\_\_\_\_ Time: \_\_\_\_\_ AM/PM to \_\_\_\_\_ AM/PM
- Has this event taken place before?  Yes  No Any changes to this event?  Yes  No
- If yes, what changes? Possible Beer Garden added
- If yes, please attach a copy of your last permit for this event, if available.
- Will this event be promoted, advertised or marketed in any manner?  Yes  No
- Will there be live media coverage during your event?  Yes  No
- If yes, please explain: Possible TV Coverage

- Are admission, entry or vendor participant fees required?  Yes  No
- If yes, explain: Public admission fees: \$ none per person  
 Participant entry fees: \$ 60.00 per person  
 Vendor fees: \$ 200.00 per booth  
 Number of vendors: 20  
 How many vendors are for profit? 15  
 How many vendors are nonprofit? 5
- \$ 31,500.00 Total estimated gross receipts, including tickets, product and sponsorship sales from this event. Explain how this amount was computed. Indicate amount per item.
 

\$ <u>-0-</u>	Admission fees
\$ <u>2,500.00</u>	Product fees
\$ <u>6,000.00</u>	Sponsorship
\$ <u>19,000.00</u>	Participant entry fees
\$ <u>4,000.00</u>	Other (Please specify): <u>vendors</u>
- \$ \_\_\_\_\_ Total estimated expenses for this event.
 

\$ <u>1,500.00</u>	Advertising
\$ <u>-0-</u>	Wages, salaries
\$ <u>-0-</u>	City services (police, fire, street closures)
\$ <u>2,000.00</u>	Insurance
\$ <u>-0-</u>	Business license fee
\$ _____	Other (Please specify): _____
- Is the organization a "tax exempt, nonprofit" organization?  Yes   No
- \$ -0- Projected amount of revenue the Sponsoring Organization(s) will receive as a result of this event.
- Specify the organization(s) to receive funding: Capitola Public Safety Foundation

- City sponsorship requested?  Yes  No If yes, please describe:  
City Fees Waived

**OVERALL EVENT DESCRIPTION**

- Will a staging/setup/assembly location be required?  Yes  No
- If yes, begin day/date: June 11th, 2011 Start time: 5:00  AM/ PM
- Location: Capitola Village
- Description of the scope of the setup/assembly work (Attach additional pages and drawings as needed): Capitola Village will be closed off for car and booth placement

- If yes, dismantle day date: June 12th, 2011 Completion time: 6:00 AM/PM

- List the street(s) requiring closure as a result of this event. Include street names, day, date and time of closing and the time of reopening: \_\_\_\_\_

June 11th, 2011 @ 5:00 AM to 6:00PM, Esplanade from Stockton to Monterey, San Jose and Monterey Avenue up to Park Place & June 12th, 2011 5:00 AM to 3:00 PM

City of Capitola to conduct street closures as needed (cost to be specified)

- List street(s) requiring the posting of “No Parking” signs. Indicate days, dates, and times needed and an explanation of necessity for “No Parking” zone: \_\_\_\_\_

Capitola Village will be posted 72 hours in advance of Car Show,

"No Parking" 4:00 AM June 11, 2011 to 6:00 PM

4:00 AM June 12, 2011 to 3:00 PM

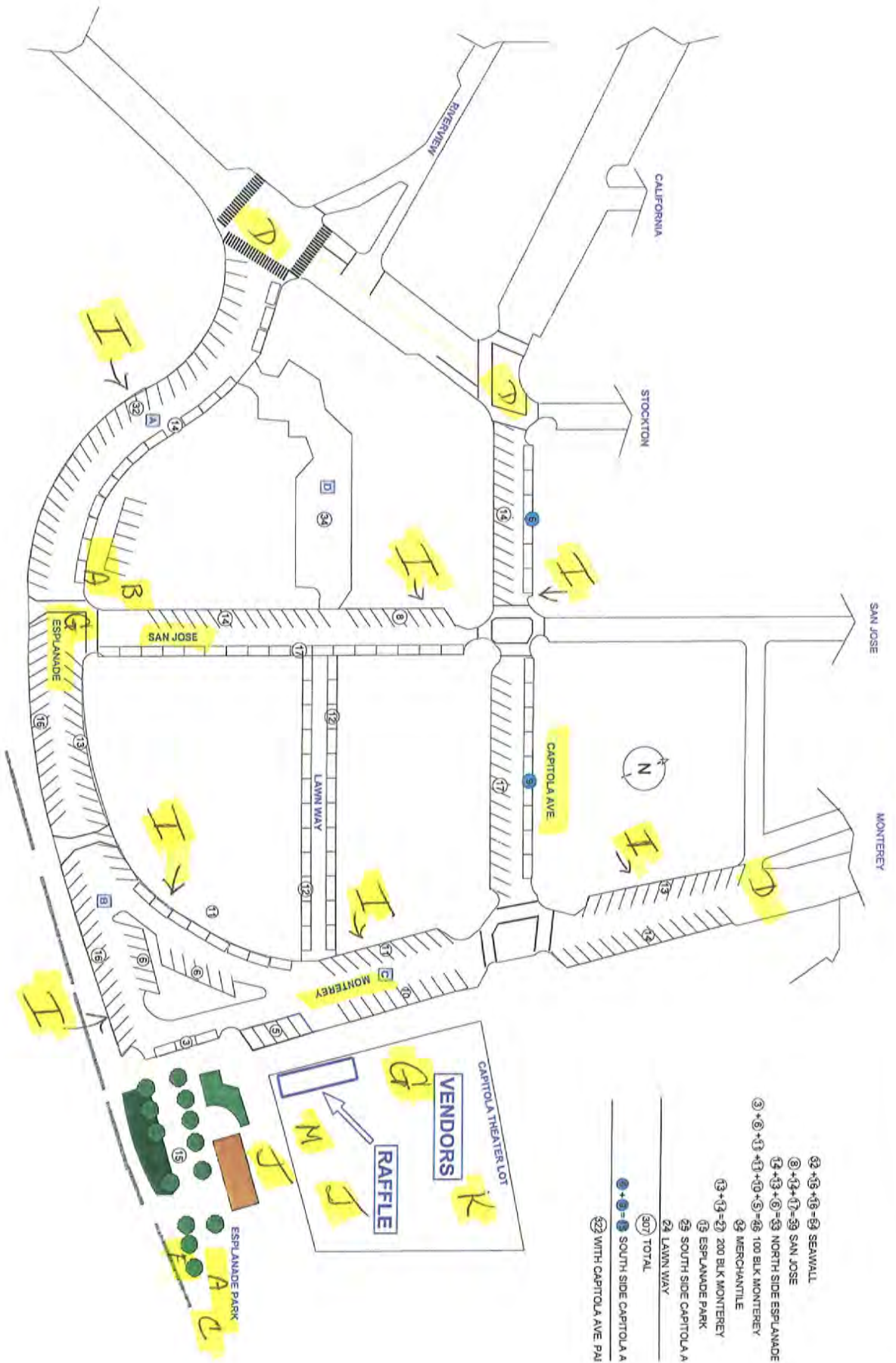
NOTE: “No Parking” signs will be posted twenty-four hours in advance of required days, dates and time. Cost for the posting of “No Parking” signs will be specified upon review of the application by City staff.

### OVERALL EVENT DESCRIPTION (continued)

- Attach a diagram (please try to make diagram reasonably to scale), showing the overall layout and setup locations. Using the letters below, indicate the site for these on your diagram.

- A Alcoholic and nonalcoholic concession
- B First-aid facilities
- C Tables and chairs
- D Fencing, barriers and/or barricades
- E Generator locations and/or sources of electricity
- F Canopies or tent locations
- G Booths, exhibits, displays or enclosures
- H Scaffolding, bleachers, platforms, stages, grandstands, related structures
- I Vehicles and/or trailers
- J Trash containers or dumpsters
- K Non-food vendor locations
- L Food concession and/or food preparation areas
- M Portable toilet locations

CAR SHOW 2010



N Other related event components not covered above (describe separately)

- Please describe how food will be served at the event: Staff from Margaritaville will deliver food from Restaurant to VIP Food Court.
- Will food be cooked in the event area?  Yes  No
- If yes, specify method:  Gas  Electric  Charcoal  Other (specify):  
\_\_\_\_\_
- Does the event involve the sale or use of alcoholic beverages?  Yes  No
- If yes, please describe: Exclusive VIP Wine Court and Beer Garden in Peter Dwares Lot facing Zelda's
- If alcohol is to be sold, how will the alcohol sales be regulated? Car Show Staff will monitor and ID everyone. Beer Garden would be staffed with Committee.

Please attach a copy of your ABC license.

- Will there be items or services sold at the event?  Yes  No
- If yes, please describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- Do the vendors have City of Capitola business licenses?  Yes  No

**OVERALL EVENT DESCRIPTION (continued)**

Portable and/or permanent toilet facilities:

- Number of portable toilets: 3 (Recommended: 1 for every 250 people)
- Number of ADA-accessible toilets: 1 (Recommended: 10% of total toilets)

(NOTE: Unless the Applicant can substantiate the availability of both accessible and non-accessible toilet facilities in the immediate area of the site, the above is required. Portable toilet facilities must be in place 24 hours in advance, cleaned and sanitized daily during the event, and must be removed by 8:00 a.m. the next business day following the event. Location sites for portable toilets must be pre-approved prior to installation.)

- Number of trash receptacles: 10
- Number of dumpsters with lids: 2-1 yard 1 10 yard (Recommended 1 per 400 people)
- Number of recycling containers: 1 (Voluntary)
- Describe the plan for cleanup and removal of waste and garbage during and after the event:

Toni Castro will oversee the Public Safety Board and Car Show Committee with VIPS cleaning up.

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(Note: It is the event organizer’s responsibility to dispose of waste and garbage daily throughout the term of the event, unless otherwise contracted with City staff, which will require a fee. Immediately upon conclusion of the event, the venue must be returned to a clean condition. Street sweeping can be arranged with City crews for an additional fee.)

**PARKING PLAN – SHUTTLE PLAN – MITIGATION OF IMPACT**

- Please provide a detailed description or diagram that indicates the proposed parking plan and/or shuttle plan for the event. Include a description of the parking plan/shuttle plan for the disabled.

ADA PARKING WILL BE MARKED.  
NO SHUTTLE SERVICE

- Describe plan to notify those residents, businesses, churches, etc. that will be impacted by this event.

8 1/2 by 11 flyer and reverse 911 notification 3 days prior

- Does this event involve a moving route of any kind along streets or sidewalks?  
 Yes  No
- If yes, highlight your proposed route on the enclosed map, indicating the directions of travel, and provide a written narrative to explain your route and its impact.

Cars enter Village from Cliff onto Esplanade and Capitola Avenue. Capitola Police, Sheriff's and

- Does this event involve a fixed venue site?  Yes  No
- If yes, highlight the site on the enclosed map, showing all the streets impacted by the event.



**SAFETY - SECURITY**

- Is there a professional security organization to handle security for this event?  Yes  No
- If yes, please name security company: CAPITOLA POLICE DEPT
- If no, do you wish to contract police services from the Capitola Police Dept.?  Yes  No (See fee schedule)
- Security company's address: \_\_\_\_\_  
street
- \_\_\_\_\_ city state zip code
- Security Director's name: \_\_\_\_\_
- Security Director's phone number: ( \_\_ ) \_\_\_\_\_
- Security company's state license number: \_\_\_\_\_
- Security company's business license number: \_\_\_\_\_
- Security company's insurance carrier: \_\_\_\_\_ City or privately secured?
- On-site contact person (security supervisor): \_\_\_\_\_
- Any searches prior to entering?  Yes  No
- Bottle and can check?  Yes  No
- Metal detectors?  Yes  No
- How many security guards at each entrance? \_\_\_\_\_

**Parking Lot Patrol (Private Security):**

- Security company: \_\_\_\_\_
- Contact person (security supervisor): \_\_\_\_\_
- Number of security guards patrolling the parking lot: \_\_\_\_\_

**Lighting:**

- If this is an evening event, please state how the event and surrounding areas will be illuminated to ensure the safety of the participants and spectators.

\_\_\_\_\_

\_\_\_\_\_

**Medical:**

- Indicate what arrangements have been made for providing first-aid staffing:  
Mobile Paramedics provided by Central Fire

## ENTERTAINMENT – ATTRACTION – RELATED EVENT ACTIVITIES

- Is there any musical entertainment or amplified sound related to your event?  
 Yes    No
- If yes, what kind: 60's and 70's Vintage Music and Disc Jockey - Classified Sound  
\_\_\_\_\_
- Contact person's name: Toni Castro Phone number: ( 831 ) 475-6522
- Contact person's address: 716-G Capitola Avenue  
street  
Capitola Ca. 95010  
city state zip code
- Number of stages: 0 Number of bands: 1
- Type of music: 60's 70's Sound amplification?  Yes  No
- If yes, start time: 2:00  AM/ PM Finish time: 4:00  AM/ PM
- Have you applied for a sound permit?  Yes  No (Refer to city ordinance 9.12.040)
- Will sound checks be conducted prior to the event?  Yes  No
- If yes, do you wish to have the city provide the checks?  Yes  No
- Describe sound equipment that will be used: provided by contractor and band  
\_\_\_\_\_
- Will fireworks, rockets or other pyrotechnics be used?  Yes  No
- If yes, name and phone number of pyrotechnic company: \_\_\_\_\_  
\_\_\_\_\_ ( ) \_\_\_\_\_
- Describe (indicate dates, times and locations for launching and fallout areas):  
\_\_\_\_\_  
\_\_\_\_\_
- Has a permit been issued?  Yes  No
- Will there be any type of open flames used?  Yes  No
- If yes, please describe: \_\_\_\_\_
- Will any signs, banners, decorations or special lighting be used?  Yes  No
- If yes, please describe: Capitola Custom Rod and Car Show  
(Refer to city ordinance chapter 17.57)

## INSURANCE REQUIREMENTS

### INSURANCE

Applicant must provide insurance at the following minimal limits: \$1,000,000 (one million) combined single limit. (Two million for the annual Art and Wine Festival). This Certificate of Insurance must name the City as an additional insured throughout the event duration, including setup and breakdown. The Certificate of Insurance, including limits of insurance, must be received by the Special Events Coordinator by \_\_\_\_\_ to finalize this permit.

### HOLD HARMLESS

The Applicant will, at its sole expense, provide the City with evidence of insurance for general liability and Worker's Compensation benefits for accidents or injuries that occur or are sustained in connection with the special event which is the subject of this permit application and contract. The Applicant agrees on behalf of itself and on behalf of its agents and employees that the Applicant will not make a claim against, sue, attach the property of, or prosecute the City or any of the City's agencies, employees, contractors or agents for injury or damages resulting from negligence or other acts, however caused, which might be asserted against the City in connection with actions taken by the City or the City's employees or agents in connection with this Special Event Permit. In addition, Applicant, on behalf of itself and its agents and employees, as well as its successors and assigns, hereby releases, discharges and holds the City harmless from, and indemnifies the City against, all actions, claims or demands Applicant, or Applicant's employees, agents, successors or assigns, or any third person now has or may hereafter have for personal injury or property damage resulting from the actions of the Applicant, the Applicant's employees or agents, or any other person under the control of the Applicant, taken pursuant to this Special Event Permit whether said actions are characterized as negligent or intentional.

Applicant Signature: \_\_\_\_\_

### ADVANCED CANCELLATION NOTICE REQUIRED

If this event is cancelled, notify the Special Events Coordinator at (831) 475-4242.

I certify that the information contained in the foregoing application is true and correct to the best of my knowledge and belief, that I have read, understand and agree to abide by the rules and regulations governing the special event under Capitola Municipal Code, and that I understand that this applications is made subject to the rules and regulations established by the City Council and/or the City Manager or the City Manager's designee. I agree to comply with all permit conditions and with all other requirements of the City, County, state and federal governments and any other applicable entity that may pertain to the use of the event premises and the conduct of the event. I agree to abide by these rules and further certify that I, on behalf of the organization, am also authorized to commit that organization and, therefore, agree to be financially responsible for any costs and fees that may be incurred by or on behalf of the event to the City of Capitola.

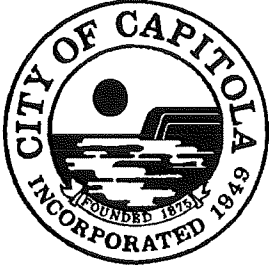
Name of Applicant (print): Capitola Public Safety and Community Safety Foundation

Title: Executive Director

Signature of Applicant: \_\_\_\_\_

Date: JANUARY 26, 2011

**Submit to Capitola PD**



City of Capitola  
420 Capitola Avenue  
Capitola, CA 95010  
(831) 475-7300

**APPLICATION FOR LIVE ENTERTAINMENT PERMIT**  
(Application fee of \$31 must be submitted with completed application.)

BUSINESS NAME CAPITOLA PUBLIC SAFETY & COMMUNITY SERVICE FOUNDATION

ADDRESS 716-G CAPITOLA AVENUE  
CAPITOLA, CA. 95010

BUSINESS PHONE 475-6522

RESPONSIBLE PARTY TONI CASTRO EXECUTIVE DIRECTORS  
(NAME) (TITLE)

HOME ADDRESS 920 CAPITOLA AVE. SPACE #30, CAPITOLA, CA. 95010

HOME PHONE 464-3480 BUSINESS PHONE 475-6522

TYPE OF PERMIT APPLIED FOR (Check One):

- SINGLE EVENT ENTERTAINMENT PERMIT (\$31.00)
- MINOR ENTERTAINMENT PERMIT (\$139.00)
- REGULAR ENTERTAINMENT PERMIT (\$520.00)

NATURE OF ENTERTAINMENT: (Please provide explanation; i.e. live band, disc jockey, etc.)

ONE LIVE BAND - 60'S 70'S  
ONE DISC JOCKEY - CLASSIFIED SOUND

HOURS OF ENTERTAINMENT: 9:00 A.M. TO 5:00 P.M. - SAT. JUNE 11, 2011

DAYS OF ENTERTAINMENT: 9:00 A.M. TO 2:00 P.M. - SUN. JUNE 12, 2011

DATE: JANUARY 26, 2011

[Signature]  
SIGNATURE OF APPLICANT



# CITY OF CAPITOLA

## STREET BANNER PERMIT APPLICATION

DATE: JANUARY 26, 2011

APPLICANT/NONPROFIT CORPORATION: CAPITOLA PUBLIC SAFETY AND COMMUNITY SERVICE FOUNDATION PHONE: 475-6522

DATE OF EVENT: JUNE 11TH & JUNE 12TH 2011

DATE(S) OF DISPLAY: MAY 30TH, 2011 THRU JUNE 13TH, 2011  
(MAXIMUM: 2 WEEKS PRIOR TO EVENT; REMOVED 2 DAYS AFTER EVENT)

LOCATION OF BANNER:  MONTEREY AVENUE POLES  CAPITOLA AVENUE POLES

DESCRIPTION OR PURPOSE OF BANNER: TO ADVERTISE AND PROMOTE EVENT

SIZE OF BANNER: 18' WIDE X 3.5' HIGH  
(MAXIMUM: 18' WIDE X 3.5' HIGH)

BANNER TEXT: CAPITOLA CUSTOM ROD & CLASSIC CAR SHOW

BANNER COLORS AND FABRIC: ORANGE, GOLDEN ROD & BLACK

- SUBMIT A GRAPHIC OR PICTURE OF THE BANNER DESIGN
- REFER TO THE ADMINISTRATIVE POLICY 1-17 FOR DETAILED BANNER INFORMATION
- SUBMIT COMPLETED APPLICATION TO THE CITY OF CAPITOLA PUBLIC WORKS DEPARTMENT, 420 CAPITOLA AVENUE, CAPITOLA, CA 95010

I, THE UNERSIGNED, CERTIFY THAT I WILL COMPLY WITH ALL THE PROVISIONS OF ADMINISTRATIVE POLICY 1-17 OF THE CITY OF CAPITOLA.

SIGNATURE OF APPLICANT: [Signature]

PHONE NUMBER: 475-6522

### APPROVALS:

PUBLIC WORKS: \_\_\_\_\_

CITY MANAGER: \_\_\_\_\_

CITY COUNCIL: \_\_\_\_\_

CAPITOLA ROD & CUSTOM CLASSIC CAR SHOW

JUNE 11TH AND 12TH 2011

GRAPHICS

18' WIDE X 3.5' HIGH

DOUBLE SIDED