City Council Agenda Bill

20063

Bill Number

Subject: **A special Thrusday afternoon worksession to continue committee review of the Waterfront District Sub-Area Plan and related documents.**

Summary Statement: On August 5, the City Council held a public hearing on the proposed Waterfront District Sub-Area Plan, development regulations, design standards, planned action ordinance, development agreement and interlocal agreement for facilities. Council's Downtown/Waterfront Committee held worksessions on August 12, September 9, 16, and 23.

The Downtown/Waterfront Committed will continue discussing issues related to the Waterfront District Sub-Area Plan and related documents as well begin formulating recommendations to the full Council.

Previous Council Action: Public hearing on August 5. DT/WF Committee worksessions 8/12, 9/9, 9/16, and 9/23.

Fiscal Impact: The City has invested over nineteen million dollars for planning, site cleanups, property acquisitions and design and construction of capitial facilities. Additional financial commitments by the City through 2037 are proposed in the Interlocal Agreement for Facilities.

Funding Source: Pending Council discussion and action (options: LIFT, Street, REET, PIF, TBD and grants).

Attachments:

Public Hearing Notice
Written Comment to City Council

Meeting Activity	Meeting Date	Staff Recommendation	Presented By	Time
Committee Briefing Council Direction Requested	26-Sep-2013	Provide Direction to Staff	Various staff	180 min

Council Committee:

Waterfront/Downtown Development
Terry Bornemann, Chair
Cathy Lehman; Jack Weiss

Committee Actions:

Agenda Bill Contact:
Greg Aucutt, Asst. Director, 778-8344

Reviewed By	Initials	Date
Jeff Thomas, PCD Director		9-24-13
Tara Sundin, WD Project Mgr		9.24.13
Legal	GJK	9.24.13
Mayor	KL	9.24.13

Council Action:

BELLINGHAM CITY COUNCIL

210 Lottie Street, Bellingham, Washington 98225
Telephone (360) 778-8200 Fax (360)778-8101
Email: ccmail@cob.org Website: www.cob.org

NOTICE OF SPECIAL MEETING
OF THE BELLINGHAM CITY COUNCIL

Waterfront/Downtown Development Committee

210 Lottie Street
Bellingham, Washington

Notice is hereby given that the Bellingham City Council's Waterfront/Downtown Development Committee will convene for additional worksessions to discuss the Waterfront Sub-area plan and associated documents, in the Council Chambers at City Hall, on the following dates and times:

Date/Time

Thursday, September 26 @ 1:00 PM to 5:00 PM

Monday, September 30 @ 9:00 AM to 12:00 PM

Detailed information can be found at: http://www.cob.org/services/planning/waterfront/index.aspx

Staff Contact: Greg Aucutt, Assistant Director of Planning and Community Development, (360) 778-8344 or gaucutt@cob.org.

NOTE: These Committee Meetings will be aired live on BTV-10 and streamed live on the internet. The meeting videos will be posted on the City's website.

The Public Hearing held on August 5th remains open for written comments until Council makes its final decision. Send your comments in writing to the Council Office, 210 Lottie Street, or email to ccmail@cob.org, or fax to 778-8101. You may also contact Council Members directly, and you may also speak on this issue during the public comment period of the Regular Meetings.

FOR OUR CITIZENS WITH SPECIAL NEEDS, the Council Chambers is fully accessible. Elevator access to the second floor is available at City Hall's west entrance. Hearing assistance is available and a receiver may be checked out through the clerk prior to the evening session. For additional accommodations, persons are asked to contact the Legislative Assistant at 778-8200 in advance of the meeting. Thank you.

Walker, J Lynne L.

From: Anonymous@cob.org on behalf of J._Michael_Newlight@cob.org
Sent: Saturday, September 21, 2013 12:05 AM
To: CC - Shared Department
Subject: Waterfront Development jmnewlight@comcast.net

BELLINGHAM HEART TRANSPLANT

The 147-acre former GP site is the heart of Bellingham, and Bellingham needs a transplant. Ask the well-established merchants and property owners of our downtown, and you will hear a story of a steadily declining quality of life.
Several decades ago, I was part of a downtown task force which formed to generate ideas for 'saving' downtown. I proposed that there were two essential elements to the success of any long term plan: removal of the GP mill, and relocation of the BNSF main line to the Highway 9 corridor. I was deemed, at that time, to be completely daffy.
Now that GP is gone, it is time to move the railroad.
Our world-class waterfront site is potentially comparable to Vancouver's False Creek, or Los Angeles' Marina del Rey.
I propose that the Port of Bellingham grant full development rights and profits thereof to BNSF in exchange for relocation of the switching yard and mainline railroad traffic. The only stipulation being development into high-rise residential with marinas, limited commercial, waterfront small industry, plus public access along the waterfront itself. No height restriction. Would this be granted in perpetuity? For 99 years? I don't know. Perhaps the existing right of way could remain solely for Amtrack.
Let BNSF bring in a world-class developer to master-plan this world-class site.
Let's take the emphasis off developing housing for the homeless, and focus on building a magnet for those with wherewithal, in order to create a tax base sufficient to support our city services (including housing for the homeless) and a vibrant downtown economic environment.
Would the profits to BNSF over the next century be sufficient to support the cost of moving their traffic out of downtown? I don't know. Has anyone asked them?

J. Michael Newlight

Walker, J Lynne L.

From: Wendy Harris <w.harris2007@comcast.net>
Sent: Monday, September 23, 2013 1:49 AM
To: CC - Shared Department
Cc: Grp.PL. Planning Mail (planning@cob.org)
Subject: development of Cornwall

Dear City Council

I understand that you will be reviewing Cornwall Park at tomorrow's work session. I hope you will address my following concerns:

1. Cleanup Standards. The RI/FS reflects a preferred cleanup alternative based on "preliminary cleanup standards." The public needs to know exactly what the cleanup standards will be and what this entails BEFORE the cleanup plan is enacted and before the waterfront district subarea plan is adopted.

2. Coordinated, comprehensive ecosystem-based planning for cleanup, habitat restoration and land use and zoning are reflected in the Bellingham Bay Conservation Strategy, developed from the Pilot Project, but it is not reflected in the city and port's approach for Cornwall Beach, or the waterfront in general. Site-specific planning is easier and quicker, but it is not the most effective means of restoring the waterfront. A large number of waterfront plans have already been funded and/or approached peicemeal. It is important to remember that the GMA and the SMA were enacted to limit the harm resulting from uncoordinated peicemeal planning.

3. Beneficial Reuse. Dioxin contaminated sediment is being used as capping material. The public was NOT advised that the Squalicum Harbor Gate 3 sediment being used for the interim action contained dioxin. Now, the draft waterfront plans include provisions for additional beneficial use throughout the waterfront. We need to have a community discussion about whether or not this is appropriate. Beneficial reuse is a very controversial proposal in most communities and yet, most city residents are unaware of its proposed applicabilty for the waterfront.

4. I am struggling to reconcile the fact that we are being told that on-site containment of garbage with a dioxin contaminated cap is safe in the face of geological hazards such as high seismic risk, along with liquefaction and lateral spreading, erosion and flooding, yet it is not safe to plant trees on the site because the tree roots could pierce the cap. There will also be risk of piercing when the cap as a result of private construction in the mixed use section, and it does not appear there will be anyone policing the private developers. The port itself has established a poor track record with the interim action, unearthing the garage it was supposed to be burying, and allowing accidental spills when transporting the dioxin sediment to the Cornwall site.

5. The Cornwall Park has consistently been regarded as the highest habitat area in the waterfront, yet any existing habitat value or potential value will be destroyed by the intensity of shoreline development that is planned. Beach access is planned at the toe and the heel of the Cornwall site, there will a shoreline trail, upland park, and a likely hand-launch area. Where will the seabirds and the seals go when the lose this habitat? The city proposes no compensatory mitigation to offset the development on this site.

6. The overwater walkway, which lands at the Cornwall site, has been stalled for 2 years due to the city's failure to reach agreement with Lummi Nation regarding treaty rights. Now the Lummis have submitted a comment opposing the preferred cleanup alternative on the site. How will this effect development of Cornwall Beach, and Bellingham Bay generally? It would certainly be a smarter approach to reach settlement on Lummi treaty rights before moving forward with development of this site.

7. It is not the case that the residents are restless for the waterfront to move forward. The people at the public hearing I heard voiced strong support for slowing the process down for better planning and more public input. Bad planning should not be the basis for submitting the plan for approval.

Sincerely,
W.S. Harris

Walker, J Lynne L.

From: Kate Blystone <kate@futurewise.org>
Sent: Monday, September 23, 2013 11:29 AM
To: CC - Shared Department
Subject: Blue Green Waterfront Coaltion Comment Letter and exhibits 1 of 3
Attachments: final-BGWC-ltrtoCC-waterfrontredev-092313.pdf

Please see attached comments from the Blue Green Waterfront Coalition. This coalition is made up of RE Sources for Sustainable Communities, Northwest Washington Central Labor Council, Jobs with Justice and Futurewise Whatcom.

Exhibits will follow in two other emails.

Thank you,

Kate Blystone
Futurewise
Whatcom Chapter Director

email: kate@futurewise.org
web: www.futurewise.org

1155 N State Street, #310
Bellingham, WA 98225
p 360-306-5708

Futurewise works throughout Washington State to create healthy livable communities, protect our working farmlands, forests and waterways, and ensure a better quality of life for present and future generations.

BLUEGREEN WATERFRONT COALITION

RESources futurewise

Waterfront Development Committee
Bellingham City Council
210 Lottie Street
Bellingham, WA 98226

September 23, 2013

RE: Comments on the proposed Waterfront District Draft Sub-Area Plan and accompanying development regulations, design standards, and planned action ordinance.

Waterfront Development Committee Members,

Thank you for accepting comment on the Waterfront District Draft Sub-area Plan, the Proposed Waterfront District Development Regulations, the Proposed Waterfront District Design Standards, and the Proposed Planned Action Ordinance for the Waterfront District.

The Blue Green Waterfront Coalition is made up of RE Sources for Sustainable Communities, the NW Washington Central Labor Council, AFL-CIO, the Whatcom Chapter of Washington State Jobs with Justice, and the Whatcom Chapter of Futurewise. We believe the development of the Bellingham Waterfront provides an opportunity to clean up toxic material that was left behind, turn the waterfront into an asset for the entire community, provide jobs, and increase our tax base. We have come together to advocate for a waterfront that characterizes the values we support as a community: a clean environment, economic justice for workers and sustainability.

We begin our letter with a response to the changes proposed by the planning commission, and then some general comments about the documents and finally turn to our comments to specific recommendations for changes to each document.

Planning Commission Recommendation

We appreciate the time and care that the planning commission took to review the proposed documents and support some of their suggested amendments to the plan. Specifically, we support:

- Added language supporting additional trails and public access to the site.
- Language included to specify that the proposed street designs are conceptual and alternative standards could be considered as part of the review process.
- **Additional language relating to sea level rise, although we have some concerns about the impact of this language (explained below).**
- **Addition of language pertaining to supporting marine-trades related, living-wage jobs.**
- **Amendments to the FAR table that hold developers to a higher standard for higher FAR bonuses.**
- Changes to decrease the amount of parking required for developments, with further reductions allowed by the Planning Director.

The comments in the remainder of the document are largely the same as the comments that we presented to the Planning Commission in May. The changes we support, bolded in the bullets above, were in that initial letter. You will note that we have some concerns about language relating to sea-level rise. That is addressed in our "general comments" below.

RE Sources for Sustainable Communities
2309 Meridian Street
Bellingham, WA 98225

NW Washington Central Labor Council
1700 North State Street
Bellingham, WA 98225

Washington State Jobs with Justice
3049 S 36th St #201
Tacoma, WA 98409

Futurewise Whatcom
1155 North State Street #310
Bellingham, WA 98225

General Comments

As we discuss in the beginning of this letter, we believe there is a tremendous opportunity in front of us with redevelopment of the waterfront. It is rare that a community gets this kind of opportunity to take back access to their waterfront after it has been industrialized. That said, we remain concerned about the toxicity of the site, the impact of sea level rise on future development at the site, and the dangers posed by the liquefaction hazard. As a group, we wrestled with how safe the area was for workers let alone families living in the new district. Specifically, we are concerned about uses described in the development regulations that are predominantly utilized by children and families as they will be the ones harmed during an earthquake or by contaminants.

We are happy that the Port of Bellingham (the Port) has adopted an "unrestricted" clean up standard for all 237 acres of the site. We think that such a cleanup will go a long way towards ameliorating the hazard posed by the contaminanrs on the site. We remain concerned, bowever, that since people will be living, working and playing in this development it is imporrant that cleanup is as thorough as possible. With that in mind, we urge the City to implore the Port to go above and beyond this unrestricted standard. Once the site is developed, it will be impossible to go back and clean up the site further. We have a responsibility to future generations to do this clean up properly.

As we mention above, the planning commission made some changes to the plan based on community concern about sea level rise. Tbese changes are proposed for inclusion on page 19 of the plan in a new section called "Sea Level Rise." We think that the language is light-years ahead of where the plan was on this issue in the draft the planning commission was reviewing. We believe, however, that simply acknowledging thar sea level rise could amount to as much as 50 feet more water does not go far enough to ensure this development will stand the test of time. Further, we are concerned about linking the amount of guarding against sea level rise to the investment in the structure. Surely the City believes thar the entire site should be developed to last 100 years and longer. As such, we believe the language should be revised to require adequate protection for all structures in the District.

Recently, we have learned that there is some movement toward using zoning to ensure living wages. In the experience of the planners and living-wage experts on our team, we have not seen a successful use of zoning as a method to ensure living-wages. Living wages are certainly not ensured with the current zoning as written and if the intention is to utilize zoning to ensure living wages, the code will have to be revised to achieve that outcome. We suggest that Council ask staff for specific examples of how a living-wage is ensured by zoning. Staff began to address this question during the Waterfront Committee's September 9 meeting and it appeared that they believe that simply placing industrial zoning in the district will ensure living-wage jobs. Jobs with Justice and NW Washington Central Labor will provide the Council with additional information about average wages for industrial jobs. Futurewise's letrer will address the limitations of zoning.

Finally, we remain concerned that the only use described for the ASB across all documents is a "clean ocean marina" and that no other potential re-uses are considered or mentioned. This is especially troubling in the sub-area plan because such a plan should serve as a vision that includes a range of uses. In fact, a range of uses is considered for every redevelopment area except the ASB in the document. We urge the City Council to change this throughout the document, and indicate that a range of uses will be studied for the ASB.

General recommendations

1. Direct staff to include language that specifically requires adequate prorection against sea-level rise and tsunami hazards for all areas within the district and across all documents under city council consideration.

2. Include an implementation policy that ensures issues related to sea level rise, liquefaction and toxicity will be addressed in advance of establishing uses in the area.

3. Revise all documents to express a broader vision for the ASB that includes options beyond a marina. Specifically, we suggest including an option for stormwater treatment in the ASB.

The Waterfront District Draft Sub-area Plan Comments and Recommendations

General Comments

As we mention earlier in this letter, the sub-area plan should include a range of options for the Waterfront; other uses beyond a marina should be considered for the ASB. We believe strongly that the ASB may have other uses and only considering a marina throughout this document will narrow the City and the Port's options in the future. The document should be amended to include other uses for the ASB such as stormwater treatment, especially given the infrastructure already in place to transmit stormwater to the ASB.

Also, throughout the document, policies are bulleted rather than numbered. This may seem like a small item, but it becomes very important during the development process. In order for the City, the Port, developers and the public to more easily refer to specific policies without confusion, all policies in the document should be numbered.

Chapter 2

We appreciate the direction that the Port and the City took with this chapter. As it should be a vision for redevelopment, it was important to include the results of all of the hard work that went into crafting this plan. We are concerned that while section 2.6 represents the applicants' objectives, nowhere in Chapter 2 are the community's objectives reflected. We believe a section 2.7 should be included to reflect the community's vision for the site. Specifically, this vision should include language about a preference for living wage jobs in the district, written verification that site cleanup will be to the Department of Ecology's "unrestricted" standard, and adopting a community benefits agreement (CBA) in conjunction with the other agreements being considered for the site. Such an agreement would ensure the needs and vision of the public are met during redevelopment of this site.

We have enclosed a handbook on CBAs produced by Good Jobs First (see Exhibit A) as an example of the types of agreements that could be adopted. We have also attached a copy of an agreement with Bates Technical College (see Exhibit B) that could be a template for a public benefit agreement.

We recognize that adopting a CBA would take time. It will require reaching out to the public and reconnecting with them on their vision for the waterfront, ensuring that the benefits they desire are included. In an attempt to allow the adoption process to continue without holding it up for the CBA, we suggest adopting the following policy in the sub-area plan:

> *Before development of any part of the Waterfront Sub-Area, the Port and the City will conclude a Community Benefits Agreement with affected community groups and unions. The Community Benefits Agreement shall encompass the whole Sub-Area, or a series of agreements tailored to each development area. At a minimum, the agreement(s) will include a preference for living wage jobs, protections for habitat on the site and the adjoining bay, and other public benefits identified during an outreach process conducted after adoption of this plan but prior to adoption of the agreement(s).*

Adopting this policy will commit the parties to working on a CBA while clean-up occurs on the site and before any buildings are constructed, while not holding up the adoption of the entire sub-area plan and related documents. We believe this is a reasonable approach, but the City and Port must work together on this CBA as soon as possible to ensure that it is in place in advance of applications for development.

Chapter 3

Chapter 3 on environmental considerations of the sub-area plan focuses on cleanup and habitat restoration, both vital components to our waterfront development plan. We support an unrestricted cleanup standard throughout the area to prorect workers, families and wildlife. We also want to ensure that enough area is devoted to recreation and habitat so that these components are integral and truly a functional part of our waterfront.

Buffers and setbacks are one way to help ensure adequate space for recreation and habitat. Collectively, we agree that reducing buffers and setbacks per the allowance in the Shoreline Master Program (BMC 22.11.30F) is not warranted. We ask that the maximum buffers and setbacks be applied throughout the waterfront district, and that application for minimum buffers not be requested.

The log pond area, which has been redesignated as an industrial mixed use area from a recreational area is a viable habitat currently; it is colonized with eelgrass and used as a seal haul out. In recent years, the log pond has also been touted as a new park and reercational area. Our coalition agrees that the redesignation to an industrial mixed use area is acceptable if the buffer at the log pond is increased to 150' from 50' ro allow for both habitat and recreational uses in this area. The fate of the GP wharf at the log pond is uncertain and dependent on potential use. If the wharf is used, all loading and offloading sbould be limited to the Whatcom Waterway side of the wharf and not extend into the habitat area on the shore-side of the wharf, in order to avoid disruption of habitat or of the cap covering log pond contamination.

Throughout the sub-area plan, habitat and public access are phrased together almost as if they are the same thing, with a few notable exceptions. To clarify where habitat and public access should be located, a study of proposed habitat and public access areas should be conducted to assess where they should co-occur and where access should be limited due to habitat sensitivity. We believe that the most valuable habitat opportunities will be found at the log pond, under Central Avenue, at the C street stormwater outfall, and at G street, north of the ASB lagoon.

Chapter 4

This chapter focuses on the character of development in the waterfront. The additions we propose for this chapter will enhance the built environment while respecting the needs of our workers and people who will live in the district in the future. Overall, we believe this section of the plan lays out a desirable vision for our new district and we are excited about the Leadership in Energy and Environmental Design (LEED) Neighborhood Development (ND) standards being explored.

We believe more emphasis should be placed on encouraging uses that are not available in downtown to ensure the area adds to the vitality of our central business district and does not draw business away from downtown. We commend the implementation strategy on page 38 that states rhat environmental impacts, economic impacts and community benefit should be part of the evaluation process for development. We also believe that this is a good location for a policy related to living wage jobs and adoption of a community benefits agreement. Finally, we believe that bullet four in the left column on page 31 should include standards for noise, light and glare in addition to setbacks, screening and landscaping. Suggested policy language is listed in the recommendations section below.

Finally, the Blue Green Waterfront Coalition supports adaptive reuse, where appropriate, of the existing structures on the site. We believe the Johnson study listed in the plan is now out of date and the numbers and recommendations should be updated to reflect 2013 conditions. We are also concerned about the meaning of "temporary hold" and the process, or lack-thereof, which the Port will have to go through to remove this designation from buildings if they wish to demolish them. We believe that while some of these structures may not be usable, we should be certain about the costs and benefits associated with all options before choosing one course of action. Further, we believe the City and the Port should know and share with the public the

cost of maintaining these structures as they are today. Such information will help all parties make an informed decision about the fate of these structures.

Chapter 6

We have already expressed how important it is to consider other alternatives for the ASB. We are particularly concerned the discussion of stormwater on page 58 of the plan as it describes how the ASB already processes "most of the stormwater generated in the Downtown Waterfront, Log Pond and Marine Trades areas." The section goes on to describe how the ASB will be taken off-line prior to clean up and redevelopment and new stormwater systems will be installed. We believe it is unwise to abandon such an important and useful piece of infrastructure that is already in place in favor of a marina. Further, we are concerned that the new stormwater facilities will be built at the public's expense in an effort to accommodate a marina that will only benefit boaters. Again, we urge the city council to amend this plan to include all viable uses for the ASB, including stormwater treatment.

Chapter 7

We are inspired by the number and acreage of parks improvements planned for our new Waterfront District. We believe access to the shoreline is important and the parks planned for the District reflects our community vision. We would like to remind the city council that while this plan indicates parks will be built in certain areas, the zoning for these areas reflects a wider range of uses and does not guarantee that a park will be built where it is shown on the sub-area plan maps. The only way to ensure such public benefits is to establish parks zoning on areas identified for parks improvements. We suggest that if the intent is to ensure parks in the areas identified, parks zoning should be established in these areas. Without this zoning in place, park placement is not a certainty.

Further, we remain concerned about the lack of connectivity in the trail system between the Wharcom Waterway and Cornwall Beach. If the intent is that this district be walkable, people must have safe routes through the district to points within downtown and connections to the trail system headed to Fairhaven. We do not want pedestrians to be traveling in unsafe areas while moving through the district and trails are a great way to keep pedestrians and cyclists safe.

Chapter 8

We believe this chapter lacks detail. Many infrastructure improvements and clean-up activities will need to occur in association with this redevelopment. We believe the numbers in this chapter are likely too low and do not appear to match up with reported figures.

Further, the chapter does not describe in detail the improvements and what they entail. For example, "Interim Central Avenue" is listed as a $2.5 million project but the improvements planned are not described, nor is the timeline for those improvements, nor is the project to turn "Interim Central Avenue" to "Central Avenue" listed. This could be because Central Avenue is slated to become a trail in the future but that improvement is not listed either. Such improvements should be described in greater detail in this section.

We are also concerned that the true-cost of these improvements to the taxpayer is not shown within this section. The Draft Sub-Area Plan and other documents provided have stated that there is no cost to the taxpayer. Yet the infrastructure cost of a new stormwater catchment system and pumping system to replace the ASB is directly a taxpayer cost that has not been properly allocated to the project, and nowhere does the plan state what savings may occur or whether diversion of those development funds to other projects in the new neighborhood might better serve the community. The sources of funds are listed generally in the opening section but are not broken out. We suggest that these costs be more clearly defined and reflective of reality. Further, this section should be updated yearly as projects are added and the true costs of these projects are determined.

Recommendations for amendments to the Sub-Area Plan

General Recommendations

1. Change all references to the marina as the only redevelopment option for the ASB throughout the sub-area plan to include other potential reuses like a stormwater treatment facility.
2. Change all bulleted policies to numbered policies.

Chapter 2 Recommendations

1. Adopt a policy to ensure development of a CBA as follows:
2. Include section 2.7 Community Objectives in Chapter 2 to reflect the community's vision for the Waterfront and include at least the following bullets:
    a. Jobs in the Waterfront District should pay a living wage and include affordable health care insurance.
    b. Before development of any part of the Waterfront Sub-Area, the Port and the City will conclude a Community Benefits Agreement with affected community groups and unions. The Community Benefits Agreement shall encompass the whole Sub-Area, or a series of agreements tailored to each development area. At a minimum, the agreement(s) will include a preference for living wage jobs, protections for habitat on the site and the adjoining bay, and other public benefits identified during an outreach process conducted after adoption of this plan but prior to adoption of the agreement(s).
    c. Prior to, or as a part of, development, the Waterfront District will be cleaned up to the unrestricted standard to ensure future development on the site has maximum flexibility.

Chapter 3 Recommendations

(see Exhibit C for specific language recommendations)

3. State within the subarea plan that unrestricted cleanup standards will be used. These standards are the only ones that are compatible with the uses described in the recreation, commercial mixed use, and industrial mixed use designations.
4. State within the subarea plan that the maximum buffers per the Shoreline Management Plan will be used.
5. Ensure that the buffer at the log pond be increased to 150', with the 50' closest to the shore reserved for habitat. An additional 100' is desired for trail placement and recreational use. The 50' closest to shore should include shrubs, vegetative screens, and porentially vertical separations to separate trail users from habitat, with some overlook points. The outer 100' should include the trail and some clumps of trees to provide perching habitat and to dissuade geese.
6. Ensure that any use of the GP wharf occurs in the Whatcom Waterway itself, such that habitat or the contaminant cap within the log pond are not disturbed.
7. Prior to designating areas as habitat and public access, complete an environmental assessment to determine which areas should remain primarily habitat, screened from public access. This assessment should include pocket beaches south of Cornwall Landfill, at Cornwall Cove, at the log pond, under Central Avenue, at the C street stormwater outfall, at G street/ north of the ASB lagoon, and at the I& J Waterway.

Chapter 4 Recommendations

8. Adopt a policy encouraging uses that are not currently available in the downtown area such as: "Encourage uses in the Waterfront District that are not currently occupying the adjacent downtown district."

9. Adopt a policy related to encouraging living-wage jobs such as: "Encourage businesses within the Waterfront District that offer predominantly living wage jobs."

10. Include a policy about adopting a community benefits agreement such as: "The Port and the City will enter into a community benefits agreement to ensure that the greater Bellingham community's needs and vision will be met by the Waterfront redevelopment." This is also stated in new section 2.7.

11. Amend bullet 4 on the left column on page 31 to include considerations for noise, light, and glare.

Chapter 6 Recommendations

12. Contemplate within the plan that utility master planning may result in public development and maintenance of certain innovative systems to treat or recycle wastewater or stormater run-off, rather than only privately developed and maintained utility infrastructure, on page 57.

13. In reviewing storm water management, review and determine the savings to the City of not closing out current stormwater treatment within the ASB.

Chapter 8 Recommendations

14. Amend chapter 8 to include short descriptions of each project on the list. Also include a breakdown of Port cost, City cost, developer cost and other for each project listed.

15. Include a policy in chapter 8 ro update projects and costs yearly.

Proposed Development Regulations Comments and Recommendations

Comments on allowed uses

After reviewing the uses allowed in the Waterfront District, we have only a few concerns that we ask the city council to review. First, we believe that a Hazardous Waste Treatment and Storage Facility (Industrial Use, 4, Pg 6) is not appropriate for the waterfront and should, at a minimum, be a conditional use in the Mixed Use Industrial Zone.

We also believe that Recycling and Refuse Collection Center should be broken into two uses. Recycling is traditionally less dirty than a facility that collects refuse. We do not wish to re-contaminate our recently cleaned site with new toxins. Recycling collection should be a permitted use in the Mixed Use Industrial Zone and permitted in the Mixed Use Commercial and Institutional zones. Refuse collection should be a Conditional use in all zones for Mixed Use Commercial and Institutional Zones. In the current code, refuse and recycling collection would not include imports of these materials to the District and we support that caveat.

Comments on heights

As we mentioned before, we are concerned about the liquefaction hazard on this site. We are particularly concerned about this hazard when partnered with the maximum heights proposed for this district. We are also concerned that while the Waterfront District should be unique among Bellingham districts, it should also be in character with the surrounding neighborhood. We believe a 200-foot height limit is not in keeping with the neighborhood's character. Further, we are concerned that taller structures will require more below-ground stabilization and threaten the caps we will have in place to secure contaminated soils.

This concern was reconfirmed at the Waterfront Committee's Septemher 9 meeting as the methods described for building stahilization would require below-ground struetures. We were surprised that the Council did not

question whether below-ground structures would interfere with the contained sediments and urge the Council to do so at their next opportunity.

We suggest a maximum height limit of 100 feet with an allowable 50-foot increase if certain public benefits, such as open spaces and affordable housing units (whether within or outside of the Sub-Area), and utilization of apprenticeship training as an on the job training strategy and the use of public labor exchange (WorkSource) and other public amenities, are provided.

Comments on bonuses for FAR

While we agree with allowing bonuses in floor area ration (FAR) if certain public benefits are provided, we are concerned about the bonus allowed for a LEED Silver Certification. We believe that LEED Silver is not challenging to achieve and should be a baseline. Developers wishing to access FAR bonuses with LEED certification should, at a minimum reach LEED Gold to achieve a 0.5 bonus and LEED Platinum status should receive a 1.0 bonus. We request that staff also consider a bonus for living buildings as these may be very common by the time this site develops and should be encouraged in an Eco-District like the Waterfront is intended to be. As we mention earlier in this letter, we support the planning commission's recommendation on this issue.

Comments on interim parking lots

We believe that to encourage quick development of interim parking lots into structures, they should be allowed to remain "interim" for no more than five years, rather than the 10 years allowed in the code. If our intention is to have a vibrant, urban community in our Waterfront District, it does not make sense to allow properties to languish for a decade in parking. Further interim parking lots do not have the same standards for landscaping and design as other uses in the Waterfront District. We should encourage moving them from undeveloped to developed uses as quickly as possible. Five years is adequate and the code should he amended to change all interim parking lots to existing for a maximum of five years.

Recommendations for amendments to the Development Regulations

1. Do not allow Hazardous Waste Treatment and Storage in the Waterfront District.
2. Separate "Recycling" and "Refuse" as two uses in all zones. Allow "Recycling Collection" as a permitted use in all zones with the caveats already listed and allow "Refuse Collection" as a conditional use in the Industrial Mixed Use zone and permitted in the Commercial and Institutional Mixed Uses zones with the caveats already listed in the code.
3. Lower maximum allowed heights to 100 feet with an increase to 150 feet allowed with provision of public benefits.
4. Request specific information about how below-ground stabilization will or will not interfere with capped contaminated sediment and other cleanup mechanisms.
5. Require LEED Gold to achieve a 0.5 FAR bonus and LEED Platinum to achieve a 1.0 FAR bonus in the Waterfront District. Consider allowing other bonuses for living buildings.
6. Limit the length of time an interim parking lot is permitted to five years.

Proposed Planned Action Ordinance Comments and Recommendations

Comments on triggers for further environmental review

We appreciate the approach of utilizing a planned action ordinance to review a range of environmental impacts prior to development of the site. We are concerned about the use of "may" rather than "shall" in places like Page 5 section 2.b: "If proposed development would alter the assumptions and analysis in the EIS, further environmental review ***may*** be required." We believe that the purpose of a planned action ordinance is

to streamline the environmental review process for uses and approaches studied as part of the EIS. If the proposed project is outside of the uses studied, additional review should be required. The language in this section and others suggests, because of the use of the word "may" rather than "shall," that should a project be outside of the scope of the EIS it may not require additional environmental review. We encourage the commission to amend the planned action ordinance to require environmental review for projects outside of the scope of the initial EIS. All sentences that indicate changes to assumptions, analysis and scope of the original EIS should say "further environmental review shall be required" rather than "further environmental review may be required."

We also recommend that the PAO have an expiration date. It appears that the PAO would not expire at any point, even as conditions change. We believe this is an error that should be corrected. Typical expiration dates for PAOs are as long as 20 years from the date of adoption. We suggest that the PAO should have at least a 20-year life but we would feel more comfortable with an ordinance that expires after 10 years. This ordinance should be reviewed and revised as conditions change. Without this provision, the ordinance will not take into account changing circumstances and could allow development that is inconsistent with our current values.

Also, we are under the understanding that the "clean ocean marina" has not yet received environmental review. If this PAO is adopted along with the other sub-area documents, the marina would be allowed to be permitted without adequate review because it is included within the adopted documents. We believe that this is merely an oversight and the best way to remedy this error is to remove the ASB from the subarea plan until it can receive adequate environmental review. Alternatively, the PAO could be revised to require environmental review for the marina by removing it from the planned action area in exhibit A.

Comments on Exhibit B to the Planned Action Ordinance

As we have mentioned previously in this letter, all documents should have some reference to adopting a Community Benefits Agreement (CBA). We believe "13. Community Benefits Agreement" should be added to Exhibit B on page 10. It should require a CBA to be adopted by the City and the Port after clean-up, but prior to any development on the site. For your convenience, we have included a sample CBA (see Exhibit A) from another community for you to consider.

Recommendations for amendments to the Planned Action Ordinance

1. Revise all portions of the Planned Action Ordinance that discuss changes to the assumptions, analysis and scope of the original EIS to say that further environmental review "shall" be required, rather than "may" be required.
2. Include an expiration date of 10 years for the PAO.
3. Specifically require additional environmental review for the marina by temoving it from Exhibit A or jettison it from all planning documents until adequate environmental review may be conducted on the proposal.
4. Include item 13. "Community Benefits Agreement" to Exhibit B on page 10.

Thank you again for providing us with the opportunity to comment on this very important issue. We are all available to answer your questions at the email addresses below.

Sincerely,

Mark Lowry
President
Northwest Washington Central Labor Council, AFL-CIO
bluestreak357@msn.com

Crina Hoyer
Executive Director
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crinah@re-sources.org

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carolejacobson1946@gmail.com

Walker, J Lynne L.

From: Kate Blystone <kate@futurewise.org>
Sent: Monday, September 23, 2013 11:32 AM
To: CC - Shared Department
Subject: Blue Green Waterfront Comment Letter and exhibits 3 of 3
Attachments: Exhibit B - Bates Technical College Agreement.docx; Exhibit C - Chapter 3 Suggestions.pdf

Please see attached exhibits B and C.

Kate Blystone
Futurewise
Whatcom Chapter Director
---
email: kate@futurewise.org
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Bellingham, WA 98225
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Futurewise works throughout Washington State to create healthy livable communities, protect our working farmlands, forests and waterways, and ensure a better quality of life for present and future generations.

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[PROJECT NAME]

PROJECT LABOR AGREEMENT

between

PIERCE COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL

And

_____

TABLE OF CONTENTS

ATTACHMENTS

Commented [A1]: We did not discuss this issue. Is there interest in keeping in the PLA?

[PROJECT NAME]
PROJECT LABOR AGREEMENT

This [Add Project name and Project number) Project Labor Agreement *(hereinafter refered to as ""PLA")* is entered into this ___ day of _____, _____ by and between [Name of Contractor] ("*Contractor*")_____) and THE PIERCE COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL AND SIGNATORY UNIONS *("Unions"), acting on their own behalf and on behalf of their respective affiliates and members whose names ere subscribed hereto*

ARTICLE I
RECITALS/PURPOSES

1.1 The purpose of this PLA is to establish a framework for labor-manegement cooperation and stability, insure that all tha construction work on the [Add Project name and Project #] ("*Project*") under the jurisdiction of the Unions will be covared under this PLA and shall proceed continuously and without interruption, afficiently, economically and with due consideration for the protaction of labor standards, wages and working conditions. Tha parties hereto agree and do astablish and put into practice effective and binding methods for the settlement of all misunderstandings, disputes or grievances that may arise between the Contractor and subcontractors at any tier level, and the Unions, or their members, to the end that the Washington State Department of Enterprise Services ("DES") acting on behalf of the Bates Technical College ("BTC") *(hereinafter referred to jointly as "Owner")*, Contractor end Unions are assured of complete continuity of operation without slowdown or interruption of any kind and that labor-management peece is maintained. The provisions of this PLA shall apply to all on-site, subcontractors of the Contractor at every tier level.

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1.2 This PLA shall apply to all on-site construction work under tha jurisdiction of the Unions on the Project. by the Contractor and subcontractors of any tier.

1.2 1 This PLA shell be subordinate to any and all requirements in the relevent statutes enabling funding for financing of the Project.

ARTICLE II
RECOGNITION

2.1 UNION RECOGNITION. The Contractor and sub-contractors of every tier recognize the signatory Unions as the sole and exclusive bargaining represantatives of all craft amployees within their respective jurisdictions working on the Project within the scope of this PLA. This sub-section shall not alter the pre-existing legal status of any bargaining relationship between any individual Contractor and signatory Union.

ARTICLE III
SCOPE OF AGREEMENT

This PLA shall apply to all on-site construction work managed by the Contractor as determined by the contract batween the Contrector and the Owner (for the construction of the Project located in [Name of City] This PLA shall also apply to engineers performing survey work as defined by Revised Code of Washington ("RCW") 18.43.020.

3.1 This PLA shall apply to on-site construction craft employees represented by any Union signatory hereto, end shall not apply to other fiald personnel or non-manual employees, including but not limited to, executives, engineers, draftsmen, supervisors, assistant supervisors, timekeapers, messengers, office workers. office cleaning service, guards. and other non-construction trade labor which may be identified dunng the course of the Project., including but not limited to:

a. Artists and their installers retained by the Owner, during the course of the Bates Techical College projectProject.

b. Employers and their Employees controlled by the Owner.

c Employees engaged in any work performed on or near, or leading to or into, the Project site bystate, county, city or other governmental bodies, their other reteined contractors, or by public utilities, or by other public agencies.

e. Employees engaged in maintenance on leased equipment and on-site supervision of such work.

f. Employees engaged in warranty functions and warranty work, and on-site supervision of such work:

g. Startup, testing and commissioning personnel employed by the Contractor or the Owner (BTC)

3.2 None of the provisions of this PLA shall apply to the Owner and nothing contained herein shall be construed to prohibit or restnct the Owner, or their employees from performing work not covered by this PLA on the Project site. As areas and systems of the Project ere inspected and construction tested by the Contractor and accepted by the Owner, the PLA shall not have further force or effect on such items or areas, except when the Contrator is directed by the Owner to engage in repairs, modifications, checkout and/or werranty functions required by its contract. .

3.3 The Owner or Contrator, as appropriate. has the absolute right to select any qualified bidder for the eward of contracts on the Project without-reference to the existence or non-existence of any egreements between such bidder and any party to this PLA: provided thet, except as provided under Article IX, Hiring Procedures such bidder shall be willing, ready and able to execute and comply with this PLA should it be designated the successful bidder.

3.4 The provisions of this PLA shall apply to the construction of the Project, notwithstanding the provisions of local, area and/or national agreements which may conflict or differ from the terms of this PLA. Where a subject covered by the provisions of this PLA is also covered by a conflicting provision of a collective bargaining agreement, the provisions of this PLA shall *"prevail"*: otherwise the terms of the respective Collective Bargaining Agreements shall apply except that the work of the INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS on this Project shall be performed under the terms of its NATIONAL AGREEMENT, provided that the provisions of ARTICLE(S) XV-CRAFT JURISDICTION AND JURISDICTIONAL DISPUTES ADJUSTMENT, XX-NO-STRIKE-NO LOCKOUT, and XXII-GRIEVANCE PROCEDURE, of this PLA shall apply to such work.

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ARTICLE IV
UNION REPRESENTATION

4.1 Authorized representatives of the Unions shall have reesonable access to the Project, provided they do not interfere with the work of employees, and further provided that such representatives fully comply with the visitor, safety and security rules established for the Project.

4.2 The Business Representative for each of the Local Unions signatory hereto shall have the right to designate a steward for each subcontractor signetory with that craft type, one (1) working journeyman as Steward for all related craft personnel, who shall be recognized as the Union's representative for a signatory hereto. Such designated Stewards shall be a qualified worker assigned to a crew and shall perform the work of their craft. Under no circumstances shall there be a non-working Staward on the Project.

4.3 The working Steward will be paid at the applicable wage rate for the job classiflcation in which he/she is employed.

4.4 The Union may eppoint a Steward for each shift, should multiple shifts be utilized, however the Project work will be performed within a single daily workshift unless dictated by the Contrator under special arrangement.

4.5 A Steward for each craft of the signatory Unions employed on the Project shall be permitted on the job site at all times consistent with section 4.1 above. They shall not be subjected to discrimination or discharge on account of proper union activities and that the *"Termination notice"* language provisions of the respective local Collective Bargaining Agreement shall apply. The Unions agree that such activities shall not unreasonably interfere with the Steward's work for the Contrators or it's subcontractors.

4.6 It is recognized by the Contrator and the subcontractors of every tier that the employee selected as a Steward shall remain on the job as long as there is work within his craft which he/she is qualified, willing and able to perform. The Contrator and the subcontractors of every tier shall be notified in writing of the selection of each Steward. The applicable subcontractor shall give the Contrator and applicable Union written notice upon discharging a Steward for cause. For purposes of this section "cause" shall mean incompetence, unexcused absenteeism, disobedience of orders, unsetisfactory performance of duties, or violation of Project rules.

4.7 The Steward may not cause or encourage work stoppage, and, if found to have instigated such action, will be subject to action by the Contrator, and/or the subcontractors of every tier, up to and including discharge or removal from the project.

4.8 The Steward's duties shall not include hiring and termination, nor shall he/she cause any interference with work progress.

4.9 The Steward shall be given the option of working all reasonable overtime within his craft and shift providing he/she is qualified to perform the task assigned.

ARTICLE V
MANAGEMENT RIGHTS

5.1 The Contractor and the subcontractors of every tier retain full and exclusive authority for the management of their operations. The Contrator and the subcontractors of every tier shall direct their working forces at their sole prerogative, including, but not limited to, hiring, promotion, transfer, lay-off or discharge for just cause. No rules, customs, or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees. The Contrator and the subcontractors of every tier may, in its sole discretion, utilize the most efficient method or techniques of construction, tools, or other labor-saving devices. The Contractors and the subcontractors of every tier shall schedule work in accordance with applicable local collective bargaining agreements except as otherwise expressly stated in this PLA.

5.2 The foregoing enumeretion of management rights shall not be deemed to exclude other functions not specifically set forth. The Contractor and the subcontractors of every tier, therefore, retain all legal rights not specifically covered by this Agreement.

5.3 Except as otherwise expressly stated in this PLA, there shall be no limitation or restriction upon the Owner or the Contractor's choice of materials or design, nor, regardless of source or location upon the full use and installation of equipment, machinery, package units, pre-casts, tools, or other labor-saving devices. The Owner or the Contractor may without restriction install or otherwise use materials, supplies or equipment regardless of their source. The on-site installation or application of such items shall be generally performed by the craft having jurisdiction over such work. Provided, however, it is recognized that other personnel having special talents or qualifications may participate in the installation, check-off or testing of specialized or unusual equipment.

ARTICLE VI
SUBCONTRACTING

6.1 The Contractor agreas that neither it nor any of its subcontractors will subcontract any work to be done on the Project except to a person, firm or corporation party to this PLA. Any contractor or subcontractor working on the Project shall, as a condition to working on said project, become signatory to and perform all work exclusively under the terms of this PLA.

6.2 If e Building Trades Union that traditionally represents construction employees in the geographic area of the Project chooses not to become signatory to this PLA, the Contractor and the signatory Union shall agree to utilize one or both of the following options to ensure that the work that may be claimed by the non-signatory Union ("claimed work") is completed without disrupting the project

a) The signatory Unions will provide the Contractor and all other contractors and subcontractors who become signatory to this PLA with the appropriate workforce to perform the claimed work. The wage and fringe benefit package for such work shall be set forth in accordance with Article XXIV, Pay-DayWage Scales and Fringe Benefits.

b) The Contractor may utilize any contractor or subcontractor to perform claimed work except that if such contractor or subcontractor is party to an agreement with the non-signatory Union. such Union must agree in writing to abide by the provisions of Article XV Jurisdictional Disputes. for the contractor to be awarded work under this PLA. Such contractor may utilize its existing workforce and wage and fringe benefit package. Such contractors shall be required to agree in writing to be bound to and abide by the provisions of this Article, Article XX No Strike-No Lockout, and Article XV Jurisdictional Disputes. No other provision of this PLA shall apply to such contracrtors unless required by the Contractor.

6.2 It is clearly understood that the provisions of this article shall not apply to the Owner or its consultants.

ARTICLE VII
PRE-JOB CONFERENCES

The Contractor and the subcontractors of every tier shall be required to hold a pre-job jurisdictional mark-up meeting prior to the commencement of construction activities on the Project. The Contractor agrees that all subcontractors will be required to arrange such a pre-job conference through the Contractors designated Labor Relations Representative. The Contractor further agrees that the Contractor's Labor Relations Representative will attend and act as co-chairman with the Secretary of THE PIERCE COUNTY BUILDING AND CONSTRUCTION TRAOES COUNCIL at all such pre-job conferences relative to the Project In addition to the information developed relative to junsdiction of work at the pre-job conference, the Contrator and their subcontractors of every tier will present all information available to tha Contractor regarding starting date for the work, location of the Project, duration of job, estimated peak employment, assignment of work and any other conditions deemed peculiar to the particular contract or subcontract.

ARTICLE VIII
PROJECT ADMINSTRATIVE COMMITTEE

8.1 The parties to this PLA will form a Project Administrative Committee which shall serve in an advisory capacity to assist the parties in their implementation and interpretetion of the PLA. The purpose of the Committee shall be to promote harmonious relations on the Project, to ensure the provisions contained in the PLA are adhered to and to advance the efficiency, safety and quality of the crafts working on the Project.

8.2 Any agreement or resolutions reached pursuant to the preceding paragraph shall not supersede, alter, modify, amend, add to or subtract from this PLA unless specifically expressed elsewhere in this Agreement. Prior to being effective any amendments or revisions to this Agreement shall be in Writing and signed by all the parties hereto.

8.3 All parties signatory to this Agreement acknowledge the importance of attendance and active support of the Project Administrative Committee and agree to participate in the meetings as their responsibility on the Project requires.

8.4 The chairmanship of the Administrative Committee shall alternate between the Contractors designated representative and the Secretary of the Pierce County Construction Trades Council.

8.5 The Administrative Committee shall meet as required, but not less than once each month, to review the operation of the Agreement.

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8.6 This Committee shall be convened within 48 hours on an emergency basis at the request of any party to the Agreement.

ARTICLE IX
HIRING PROCEDURES - IN ACCORDANCE WITH APPLICABLE LOCAL COLLECTIVE BARGAINING AGREEMENT

9.1 Unless otherwise required by this PLA or obligated to abide by other collective bargaining agreements, the Contractor and its subcontractors of any tier shall be required to use the dispatch resources or procedures of the signatory Unions to aquire workers.

9.2 In the event the Unions are unable to fill any request for employees within forty-eight (48) hours after such request is made by the Contractor or subcontractor (Saturdays, Sundays and Holidays in this PLA excepted), the contractor(s) shall first consider referrals from the Preferred Entry program before seeking applicants from other available sources. The contractor shall inform the Union of the name and social security number of any applicants hired from other sources and shall refer the applicant to the Local Union for dispatch to the jobsite within twenty-four (24) hours after they are hired.

9.3 The parties commit to provide to emerging business enterprises, as well as other enterprises not previously having a relationship with the Unions signatory to this PLA, opportunities to participate on the Project. To ensure that such enterprises have an opportunity to employ their core employees, the parties agree that in situations where the contractor is not party to a current collective bargaining agreement with the signatory Union having jurisdiction over the effected work and is a successful bidder, the contractor may request by name and the Union will honor the referral of core employees. The contractor must first demonstrate those core employees posses the following qualifications:

- A current license required by state or federal law for the work to be performed.
- Have worked a total of at least one thousand (1,000) hours in the construction craft during the prior three (3) years.
- Have been on the contractor's active payroll for at least sixty (60) out of the one hundred-eighty (180) days prior to the contract award.
- Have the ability to safely perform the basic functions or the applicable trade.

Core employees who meet the aforementioned qualifications will be dispatched as follows:

1. Contractors with six (6) or more craft employees the contractor may request by name and the Union will honor by referral up to a maximum of five (5) persons in each craft on an alternating basis with the Contractor selecting first. All subsequent referrals will be through the respective Union hiring hall.

2. Contractors with five (5) or fewer craft employees may request by name, and the Union will honor by referral basis as follows:

    - Core Employee
    - Union Referral
    - Core Employee
    - Core Employee
    - Union Referral
    - Core Employee
    - Union Referral
    - Core Employee

    All subsequent referrals will be through the respective Union hiring hall.

9.4.1 It is agreed that affirmative action shall be taken to afford equal employment opportunity to all qualified persons without regard to race, creed, color, sex or national origin. This shall be applicable to all matters relating to hiring, training, promotion, transfer or termination of employees. Furthermore, the parties agree to cooperate to the fullest extent to achieve the intent and purpose of the applicable regulations of Title VII, Civil Rights Act of 1964, and Executive Order No. 11246, or such laws or Executive Orders as may supersede them.

ARTICLE X
HOURS OF WORK, OVERTIME, SHIFTS, HOLIDAYS

10.1 HOURS OF WORK. Eight (8) hours shall constitute a standard work day. Five days, Monday through Friday, shall constitute a standard work week. Standard shift workday shall be from 7:00 a.m. to 3:30 p.m. for first shift with one-half hour unpaid lunch period. Hours of work may be altered by mutual agreement per Chapter 49.28 RCW. Notification of change in hours of work will be given to the union in writing. Hours of work for pile driving are subject to modification by the Contractor to comply with all applicable noise limitation requirements and obligations of the Owner. Work hours shall be uniform for all crafts. Make up days due to inclement weather will be with prior Contractor approval and per applicable local collective bargaining agreements and in compliance with Washington State Prevailing Wage requirements.

10.2 LUNCH PERIOD. Applicable Meal Period provisions in the respective local Collective Bargaining Agreements shall apply.

10.3 SHIFTS. First shift shall be considered the standard work shift. Other shifts will be administered in accordance with applicable local collective bargaining agreements. Subcontractors shall be responsible for paying, all premiums required to work the above noted shifts.

10.4 OVERTIME. Overtime shall be in accordance with the respective local Collective Bargaining Agreements.

10.5 HOLIDAYS. Recognized Holidays shall be as follows: (1) New Year's Day, (2) Martin Luther King's Birthday, (3) Memorial Day, (4) Fourth of July, (5) Labor Day, (6) Thanksgiving Day and (7) Friday after Thanksgiving Day and (8) Christmas Day. Work may be performed on Labor Day when circumstances warrant, i.e., the preservation of life and/or serious property damage.

a. In the event a Holiday falls on Sunday, the following dey, Monday, shall be observed as such Holiday.

b. In the event a Holiday falls on Saturday, the preceding Friday shall be observed. Monday holidays shall be honored in keeping with Federal law.

c. There shall be no paid Holidays unless explicitly provided for under a local Collective Bargaining Agreement. If employees are required to work on a recognized Holiday, they shall receive the appropriate overtime rate.

10.6 IT WILL NOT BE A VIOLATION OF THIS AGREEMENT WHEN THE CONTRACTOR CONSIDERS IT NECESSARY TO SHUT DOWN THE PROJECT IN WHOLE OR IN PART TO AVOID THE POSSIBLE LOSS OF HUMAN LIFE BECAUSE OF AN EMERGENCY SITUATION THAT COULD ENDANGER THE LIFE AND SAFETY OF AN EMPLOYEE. IN SUCH CASES, EMPLOYEES WILL BE COMPENSATED ONLY FOR THE ACTUAL TIME WORKED IN THE CASE OF A SITUATION DESCRIBED ABOVE WHEREBY THE CONTRACTOR OR THE SUBCONTRACTORS OF EVERY TIER REQUESTS EMPLOYEES TO STAND BY, THE EMPLOYEES WILL BE COMPENSATED FOR THE "STAND BY" TIME IN THE EVENT OF ANY CONFLICT, THE RESPECTIVE LOCAL COLLECTIVE BARGAINING AGREEMENT SHALL APPLY.

10.7 PROJECT SECURITY. In the event the Contractor deems it necessary, the parties agree to develop a mutually acceptable system for employees checking in and out on the Project. This system, if necessitated, will be developed by the Project Administrative Committee.

10.8 REPORTING TIME. *(Show-up Time)* In accordance with the respective local Collective Bargaining Agreements.

ARTICLE XI
APPRENTICESHIP PROGRAM

11.1 The Contractor and its subcontractors of every tier shall implement a Project Apprenticeship Program to meet the requirements established by the Contractor Contract with the Owner. The signatory unions shall supply labor for each craft to provide training and job opportunities as a means to increase the skill of the Puget Sound region work force so that Utilizing the apprenticeship training the workers can enter the pool of skilled labor, fully qualified for living wage jobs.

11.2 In implementing the Project Apprenticeship Program, the Contractor and its subcontractors of every tier shall commit to meet the project Washington State Approved Apprenticeship Program participation requirements of Fifteen (15%) of the total contract labor hours, excluding offsite vendors and suppliers per RCW 39.04.320.

11.3 The signatory unions shall provide upon request by each employer or subcontractor, sufficient quantities of qualified apprentices to complete the task assigned. Such apprentices shall work under the supervision of a journeyman.

11.4 Each request for exemption shall include written documentation of affirmative efforts to use SAC-registered apprentices such as copies of the letters from the subcontractors to the union local and responses from the Union locals and apprenticeship programs stating reasons for not providing labor requested, Contractor will promptly respond to the subcontractor in writing with a decision.

11.5 During the initial construction planning period, the Contractor through its subcontractors shall prepare and submit a plan for SAC-registered apprentice's participation. The plan of each subcontractor shall estimate the total contract labor hours to establish the framework for apprenticeship participation to be submitted to Contractor at the pre-construction meeting.

1. Each subcontractor shall provide monthly with the applicable progress payment request to the Contractor a monthly report of apprentices used that month by craft and trade at each tier and level of work, noted with an ongoing status of the progress towards the originally submitted plan. Additionally, with each progress payment request the subcontractor shall submit to the Contractor an apprenticeship monthly report for the current or following month of planned apprenticeship hourly participation by trade.

2. The Apprenticeship monthly report shall identify the individual SAC Approved apprentices who participated.

3. The Apprenticeship Program participation requirements shall apply to all change orders and amendments to the contract.

4. All Apprenticeship and Workforce reports are to be in electronic form The Fields and the types of information requested to be determined mutually between the parties.

5. Bidders are to submit verification that the subcontractor has been notified of the Apprenticeship Program Requirements of this Article.

ARTICLE XII
HELMETS TO HARD HATS

12.1 The Employers and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs

or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

12.2 To the extent permitted by law, the Unions will give credit to such veterans' bona fide, provable past experience. The experience and practical knowledge of veterans will be reviewed and tested by applicable Joint Apprenticeship Training Committee (JATC). Applicants will be placed at the appropriate stage of apprenticeship or at the journey level, as the case may be. Final decisions will be the responsibility of the applicable JATC.

ARTICLE XIII
PREFERRED ENTRY

13.1 The parties agree to construct and expand pathways to good jobs and lifetime careers for community members through collaborative workforce development systems involving community-based training providers and SAC approved apprenticeship programs.

13.2 The Preferred Entry program, as defined by this agreement will identify individuals meeting certain criteria, living in the Project area, and who are compliant with the entry standards for those apprenticeship programs which allow/provide for preferred entry of qualified applicants into their programs. Preferred Entry candidates shall be placed with contractors working as first period apprentices on the Project by utilizing an interview process. The purpose of this program is to facilitate a workforce reflective of the Project area and supporting goals of workforce inclusiveness.

13.3 The contractor recognizes that Pre-Apprenticeship programs provide good community relations. The pre-apprenticeship training programs recognized by this agreement include Seattle Vocational Institute Pre Apprenticeship Construction Training program (PACT), Apprenticeship and Non-Traditional Employment Program for Women and Men (ANEW) or others serving primarily low-income communities of color or women.

13.4 To the extent the Contractor and its subcontractors of every tier, despite reasonable efforts, are unable to meet the objectives and requirements set forth in this Article through use of craft employees represented by any Union signatory, the Contractor and its subcontractors of every tier shall be allowed to recruit for apprentice candidates from the recognized pre-apprenticeship programs. All preferred entry candidates must meet the qualified applicant status established by the state of Washington apprenticeship standards for entry into the applicable Local Union apprenticeship program. Final decisions will be the responsibility of the applicable JATC.

ARTICLE XIV
PAY-DAY

14.1 In accordance with the respective local Collective Bargaining Agreement.

14.2 Employees covered under this PLA shall receive their last paycheck upon notice of lay-off.

ARTICLE XV
CRAFT JURISDICTION AND JURISDICTIONAL DISPUTES ADJUSTMENT

15.1 The assignment of work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes

in the Construction Industry (the Plan) or any successor Plan (Attachment B)

15.2 All jurisdictional disputes on this Project, between or among Building and Construction Trades Unions and employees, parties to this PLA, shall be settled and adjusted according to the presant Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions parties to this PLA.

(a) Where the work in dispute is not traditional building and construction work, or is claimed by any of the parties to the dispute not to be traditional building and construction work, and a difference exists among the parties as to the appropriate procedure with junsdiction to resolve the dispute, the dispute will be settled in accordance with the following procedure. If the dispute is not resolved among the parties within seven (7) working days, the dispute shall be referred, within five (5) working days thereafter, by any one of the Unions or the involved Contractor to the International Unions with which the disputing Unions are affiliated. The International Unions and the involved Contractor shall meet promptly to resolve the dispute. Any resolution shall be reduced to writing and signed by representatives of the involved Contractor and the International Unions

(b) In the event that the respective International Unions of the disputing Local Unions and the involved Contractor are unable to resolve the dispute within fifteen (15) calendar days from the date of referral, the dispute shall be referred by any of the interested parties to a mutually agreed upon Arbitrator, who the parties agree shall be the permanent arbitrator under this Article to hear and decide issues arising from the work assignment that is the basis of the dispute. The parties agree that the Arbitrator shall, within twenty (20) calendar days of such referral, conduct a hearing and render a determination of the dispute.

15.3 All jurisdictional disputes shall be resolved without the occurrence of any strike, picketing,work stoppage, slow-down of any nature, or other disruptive activity for any reason by the Unions or their members, and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

15.4 Each Contractor will conduct a pre-job conference with the appropriate Building and Construction Trades Council prior to the initial commencement of work, and on an as needed basis for projects with multiple phases and/on start dates. The purpose of this language is to promote communication and provide the parties an opportunity to review the work prior to the start of construction. The Contractor will be advised in advance of all such conferences and may participate if they wish.

15 5 Any award or resolution made pursuant to this procedure, shall be final and binding on the disputing Unions and the involved Contractor under this PLA only, and may be enforced in any court of competent jurisdiction in accordance with the Plan. Such award or resolution shall not establish a precedent on any construction work not covered by this PLA. In all disputes under this Article, Contractor shall be considered a party in interest.

ARTICLE XVI
WORK RULES

16.1 Employment begins and ends at the jobsite.

16.2 The selection of craft foreman and general foreman shall be in accordance with applicable local collective bargaining agreement.

16.3 Employees shall be at their place of work at the designated starting time and shall remain at their place of work until the designated quitting time. Place of work shall mean gang boxes, change shacks or other designated tool storage areas or at assigned equipment. Employees shall remain on the Project and at their place of work through the work day except during breaks and lunch, at which time employees may access vending areas or snack trucks.

16.4 There shall be no limit on production by workmen nor restrictions on the full use of tools or equipment. Craftsmen using tools shall perform any of the work of the trade and shall work under supervision of craft foremen There shall be no restrictions on efficient use of manpower other than as may be required by safety regulations: provided, however, legitimate manning practices that are a part of national and/or local agreements shall be followed.

16.5 Security procedures for control of tools, equipment and materials are solely the responsibility of the Contractor and/or its subcontractors of every tier. Employees having any company property or property of another employee in their possession without authorization are subject to immediate discharge. The Contractor will be responsible for the establishment of reasonable job security measures for the protection of personal company and client property.

16.6 Slowdowns, standby crews and featherbedding practices will not be tolerated.

16.7 Specializad equipment may be installed, adjusted, tested and serviced by the Owner's employees, agents, or representatives prior to the occupancy of the Project, provided such installation is in accordance with Washington State prevailing wage laws if applicable The on-site installation or application of such items shall be generally performed by the craft having jurisdiction over such work; provided, however, it is recognized that other personnel having special talents or qualifications may participate in the installation, check-off or testing of specialized or unusual equipment Specialized equipment does not include installation of telecommunications cabling and related equipment.

ARTICLE XVII
MISCELLANEOUS PROVISIONS

17.1 All inspection of incoming shipments of equipment, apparatus, machinery and construction materials of every kind shall be performed at the sole discretion of the Owner or Contractor by persons of their choice.

17.2 The Owner shall have the right to test, operate, maintain, remove and replace all equipment, apparatus or machinery installed, or to be used in connection with such installation on the work site with employees, agents or representatives of the Owner who shall work under the direct supervision of the Owner, as applicable if such supervision is deemed desirable.

17.3 All foremen and superintendents shall have the authority and responsibility to terminate any construction employee working under their supervision who fails to satisfactorily, competently and diligently perform his assigned duties.

17.4 Subject to the grievance procedure of the applicable local collective bargaining agreement the applicable contractor who is the employer shall have the right to terminate any construction employee who in its opinion fails to satisfactorily, competently, professionally and diligently perform his assigned work, and to refuse to rehire such individual. Each termination slip shall show reason for discharge

17.6 Any employee who willfully damages the work of any other employee, or any material, equipment, apparatus, or machinery shall be subject to immediate termination.

17.7 In the interest of the future of the construction industry in the Tacoma area, of which labor is a vital part, and to maintain the most efficient and competitive posture possible, the Unions pledge to work with management on this Project to produce the most efficient utilization of labor and equipment in accordance with this Agreement.

ARTICLE XVIII
SAFETY, HEALTH AND SANITATION

18 1 The Contractor, the subcontractors of every tier and their respective employees shall comply with all applicable provisions of State and Federal laws and regulations including the Occupational Safety and Health Act of 1970 as amended (OSHA), and Washington Industrial Safety and Health Act, Chepter 49.17 RCW (WISHA), reletng to job sefety and safe working, practices.

18.2 The Contractor or its subcontractors shall provide a convenient end sanitary supply of drinking water, cooled in the summer months, and senitary drinking cups.

18.3 The Contractors or its subcontractors shall provide adequate sanitary toilet facilities, water and clean up facilities for the employees.

18.4 The Contractor or its subcontractors shall provide a safe place for storage of tools and facilities ventilated and heated for changing clothes.

18.5 All required safety equipment shall be provided by the Contractor or its subcontractors

ARTICLE XIX
PROTECTION OF PERSONAL PROPERTY

19.1 The protection of personal property shall be in accordance with the applicable local agreement of the employing contractor/subcontractor.

ARTICLE XX
NO STRIKE - NO LOCKOUT

20.1 During the term of this Agreement there shall be no strikes, picketing, work stoppages, slowdowns or other disruptive activity for any reason by the Union, its applicable Local Union or by any employee, and there shall be no lockout by the Contractor. Failure of any Union, Local Union or employee to cross any picket line established at the Project site is a violation of this Article.

20.2 The Union and its applicable Local Union shall not sanction, aid or abet, encourage or continue eny work stoppage, strike, picketing or other disruptive activity at the Contractor's project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the Project for a period of not less than ninety (90) days.

20 3 Neither the Union nor its applicable Local Union shall be liable for acts of employees for whom it has no responsibility. The International Union General President or Presidents will immediately instruct order and use the best efforts of his office to cause the Local Union or Unions to cease any violations of this Article. An International Union complying with this obligation shall not be liable for unauthorized acts of its Local Union. The principal officer or officers of a Local Union will immediately instruct, order and use the best efforts of his office to cause the employees the Local Union represents to cease any violations of this Article. A Local Union complying with this obligation shall not be liable for unauthonzed acts of employees it represents. The failure of the Contractor to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

20.4 In the event of any work stoppage, strike, picketing or other disruptiva activity in violation of this Article, the Contractor may suspend all or any portion of the Project work affected by such activity at the Contractor's discretion and without penalty

20.5 There shall be no strikes, picketing, work stoppages, slowdowns or other disruptive activity affecting the Project site during the duretion of this PLA. Any Union or Local Union which initiates or participates in a work stoppage in violation of this Article, or which recognizes or supports the work stoppage of another

Union or Local Union which is in violation of this Article, agrees as a remedy for said violation, to pay liquidated damages in accordance with Section 6 of this Article.

20.6 In Lieu of, or in addition to, any other action at law or equity, any party may institute the following procedure when a breach of this Article is alleged, after the Union(s) or Local Union(s) has been notified of the fact.

(a) The party invoking this procedure shall notify the Arbitrator (to be determined) or a mutually agreed upon successor, who the parties agree shall be the permanent Arbitrator under this procedure. In the event that the permanent Arbitrator is unavailable at any time, he or she shall appoint en alternate. Notice to the Arbitretor shall be by the most expeditious means available, with notice by facsimile, telegram or any other effective written means, to the party alleged to be in violation and the International Union President and/or Local Union.

(b) Upon receipt of said notice, the Arbitrator named above shall set and hold a hearing within twenty-four (24) hours if it is contended the violation still exists.

(c) The Arbitrator shall notify the parties by facsimile, telegram or any other effective written means, of the place and time he or she has chosen for this hearing. Said hearing shall be completed in one session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an Award by the Arbitrator.

(d) The sole issue at the hearing shall be whether or not a violation of this Article has in fact occurred. The eward shall be issued in writing within three (3) hours after the end of the hearing, and may be issued without an Opinion. If any party desires an Opinion, one shall be issued within fifteen (15) days, but its issuence shall not delay complience with, or enforcement of the award. The Arbitrator may order cessation of the violation of this Article, and such Award shall be served on all parties by hand or registered mail upon issuance.

(e) Such award may be enforced by eny court of competent jurisdiction upon the filing of this PLA and all other relevant documents referred to herein above in the following manner. Facsimile or expedited mail or personal service of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the Arbitrator's award as issued under Section 6 of this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The Court's order or orders enforcing the Arbitrator's Award shall be served on all parties by hand or by delivery to their last known address by registered mail.

(f) Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure, or which interfere with compliance therewith, are hereby waived by parties to whom they accrue.

(g) The fees and expenses of the Arbitrator shall be borne by the party or parties found in violation, or in the avent no violation is found, such fees and expenses shall be borne by the moving party.

(h) If the Arbitrator determines that a work stoppage hes occurred in accordance with Section 13.6 d above, the party or parties found to be in violation shall pay as liquidated dameges the following amounts: For the first shift in which the violation occurred, $5,000, $10,000, for each shift thereafter on which the craft has not returned to work. The Arbitrator shall determine whether the specific damages in this Section shall be paid to the Contractor or the affected Sub-Contractor. The Arbitrator shall retain jurisdiction to determine compliance with this Section and Article.

20.7 The procedures contained in Section 20.6 (a) through 20.6 (h) shall be applicable to violations of this Article. Disputes alleging violation of any other provision of this PLA, including any underlying disputes alleged to be in justification, explanation or mitigation of any violation of this Article, shall be resolved under the grievance adjudication procedures of Article XXII Grievance Procedure.

Commented [A4]: Correct article cited

20.8 The Contractor is a party of interest in all proceedings arising under this Article and Articles XVIII [PREFERRED ENTRY???ICRAFT JURISDICTION AND JURISDICTIONAL DISPUTES ADJUSTMENTCraft Jurisdiction and Jurisdictional Disputes Adjustment and Article XXII Grievance Procedure and shall be sent copies of all notifications required under these Articles and, at its option, may initiate or participate as a full party in any proceeding initiated under this Article.

Commented [A5]: Articles renumbered and correct title cited

ARTICLE XXI
UNION SECURITY

21.1 Per applicable local collective bargaining agreement.

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ARTICLE XXII
GRIEVANCE PROCEDURE

221.1 This PLA is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Project for the purpose of completing the construction of the Project economically, efficiently, continuously, and without interruptions, delays, or work stoppages.

221.2 The Contractors, Unions, and the employees, collectively and individually, realize the importance to all parties to maintain continuous and uninterrupted performance of the work of the Project, and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article

221.3 Any question or dispute arising out of and during the term of this PLA (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following steps:

(a) Step 1
When any employee subject to the provisions of this PLA feels they have been aggrieved by a violation of this PLA, through their local union business representative or job steward, shall, within five (5) working days after the occurrence of the violation, give notice to the work-site representative of the involved Contractor stating the provision(s) alleged to have been violated. The business representative of the local union or the job steward and the work-site representative of the involved Contractor shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Contractor shall keep the meating minutes and shall respond to the Union representative in writing at the conclusion of the meeting but not later then twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the gnevance occurred, and the provision(s) of the PLA alleged to have been violated.

Should the Local Union(s) or any Contractor(s) have e dispute with the other party and , if after conferring, a settlement is not reached within three (3) working days, the dispute may be reduced to writing and proceed to Step 2 in the same menner as outlined herein for the adjustment of an employee complaint.

(b) Step 2
The International Union Representative and the involved Contractor(s) shall meet within seven (7) working days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be appealed in writing in eccordence with the provisions of Step 3 within seven (7) calendar days thereafter

(c) Step 3

If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to a mutually agreed upon Arbitrator for this Article. The decision of the Arbitrator shall be final and binding on all parties. The fee and expenses of such Arbitration shall be borne equally be the Contractor(s) and the involved Local Union(s).

Failure of the either party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The Arbitrator shall have the authority to make decisions only on issues presented, and shall not have authority to change, amend, add to or detract from any of the provisions of this PLA.

229.4 The Contractor shall be notified of all actions at Steps 2 and 3 and shall, upon their request, be permitted to participate in all proceedings at these steps.

ARTICLE XXIII
GENERAL SAVINGS CLAUSE

232.1 If any article or provisions of this Agreement shall be declared invalid, inoperative or unenforceable by any competent authority of the executive, legislative, judicial or administrative branch of the Federal or any State government, the Contractor and the Union shall suspend the operation of such article or provision during the period of its invalidity and shall substitute, by mutual consent, in its place and seal an article or provision which will meet the objections to its validity and which will be in accord with the intent and purpose of the article or provision in question.

232.2 If any article or provision of this Agreement shall be held invalid, inoperative or unenforceable by operation of law or by any of the above mentioned tribunals of competent jurisdiction, the remainder of this agreement or the applications of such article or provision to persons or circumstances other than those as to which it has been held invalid, inoperative or unenforceable shall not be affected thereby.

ARTICLE XXIVII
TERMS OF AGREEMENT

243.1 This Project Labor Agreement shall become **effective on** _____ ___, **20**__ and shall continue only until the Project is completed or abandoned by the Owner, or by the ContrectorContrector for the Project.

ARTICLE XXIV
WAGE SCALES AND FRINGE BENEFITS

254.1 In consideration of the desire of the Contractor, the Owner and the Union for all construction work to proceed efficiently and economically and with due consideration for protection of labor standards, wages and working conditions, all parties agree that:

25.2 The wage rates to be paid all laborers, workers and mechanics performing work covered under this 24.2 PLA shall be in accordance with the respective local Collective Bargaining Agreement, and as required by Chapter 39.12 RCW, as amended, not less than the prevailing wage rates. This requirement applies to laborers, workers and mechanics, whether they are employed by the Contractor, subcontractors of every tier, or any other person who performs a portion of the work contemplated by this PLA and who is covered by the terms hereof.

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254.3 The current Pierce County, Washington state prevailing wage rates *(PWR)* for the inception of this project are **dated (To be determined)**. Pierce COUNTY, WASHINGTON PWR which have been provided to the parties hereto by the industrial statistician of the Washington State Department of Labor and Industries will be available for review at the L&I website at: http://www.lni.wa.gov/prevailingwage/ and are incorporated into this Agreement as if set forth herein.

25.4 In case any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including labor and management representatives the matter shall be referred for arbitration to the DIRECTOR OF THE DEPARTMENT OF LABOR AND INDUSTRIES of the State of Washington, and the Directors decision therein shall be final and conclusive and binding on all parties involved in the dispute, as provided for by Section 39.12.060 of the Revised Code of Washington as amended.

25.5 Those provisions for fringe benefit bonds in the respective applicable local Collective Bargaining Agreement shall be applicable to this PLA.

Signed this _____ day of _____, 2013:

For the Owner

Mark P. Martinez, Executive Secretary
Pierce County Building & Construction Trades Council, AFL-CIO

Dennis Becker, Business Manager
Bricklayers Local #1

John Kerns, Business Manager
Cement Masons & Plasters Local #528

Dennis Callies, Business Manager
IBEW Local #76

Don Felton, Business Manager
Elevator Constructors Local #19

Monty Anderson, Business Manager
Heat & Frost Insulators local #7

Steve Pendergrass, Business Manager
Iron Workers Local #86

Denis Sullivan, Business Manager
IUPAT District Council #5

Don McLeod, Jr., Business Manager
Laborers Local #252

Phil Dines, Business Manager
UA Plumbers & Pipefitters Local #26

Matt Thompson, Business Manager
Roofers & Waterproofers Local #153

Eric Martison, Business Manager
Sheet Metal Workers Local #66

Stanton Bonnnell, Business Manager
UA Sprinkler Fitters Local #699

John Emrick, Business Manager
Teamsters Local #313

Ernie Evans, Business Manager
Operating Engineers Local #612

Ed Triezenburg
Pacific Northwest Regional Council of Carpenters

Northwest Construction Alliance

Exhibit C – Specific Amendments Suggested for Chapter 3

- The Log Pond area is designated "Recreational Shoreline" in the Final Draft SMP. The shoreline will have a restored public beach with a 150 foot shoreline buffer, accessible by a pedestrian and bicycle trail in the outer 100'. The 50' closest to shore will include shrubs, vegetative screen, and potentially vertical separations and overlooks to separate trail users from the habitat and seal haulout. The outer 100' will include a recreational trail and some clumps of trees to provide perching habitat and to dissuade geese.

- "Identify opportunities to restore and create habitat along the waterfront environment. ~~within the context of creating an economically-viable redevelopment."~~ creating an economically-viable redevelopment." (pg. 13)

- "Removing the failing and unused infrastructure will create opportunities to soften and reshape the shorelines to provide richer and more productive habitat for salmon at all tidal stages. Portions of the GP Wharf which are in usable condition will be retained into the future to support water-dependent uses in the Log Pond area, where activity will be limited to the Whatcom Waterway and will not occur within the log pond itself." (pg. 17)

- Work with Ecology to coordinate the selection of environmental cleanup strategies that are appropriate for unrestricted use and compatible with anticipated land uses, such as playgrounds and restaurants allowed in both the mixed use industrial and commercial designations. (p 22)

- The shoreline within the Log Pond area was also designated as a Recreational Shoreline in the Final Draft SMP. The shoreline will be restored for ~~public access and~~ habitat function. Public access may be allowed in limited areas, pending a habitat assessment of this beach and others.

- "Develop complex riparian vegetation along the shoreline in order to restore habitat. Where appropriate, ~~with~~ include designated trails and areas of focused public access to the water." (pg. 23)

- "Parks, trails, public plazas, artwork, signs benches and ourdoor seating areas should be allowed within shoreline setbacks outside of designared shoreline buffers, other than areas that represent significant ecological value or that are designated for habitat restoration in future park plans." (pg. 23)

- "The shoreline within the Log Pond area was also designated as a Recreational Shoreline in the Final Draft SMP. The shoreline will be restored for ~~public access and~~ habitat function, and for public access, where appropriate. Water-dependent, water-related and water-enjoyment uses are also permitted within Recreational Shorelines." (pg. 23)

- "Build public promenades set back from ~~along the~~ waterfront with viewing platforms and overlooks to provide users with recreational opportunities and vistas of key estuary and habitat areas in coordination with upland redevelopment activities." (pg. 24)

- "Enhance the Log Pond beach to improve ~~public access and~~ habitat function in coordination with cleanup and redevelopment activities in the Log Pond Area." (pg. 24)
- "The shoreline within the Downtown Waterfront area is designated as a Mixed-Use Shoreline Environment where the water's edge is reserved for either habitat only or ~~and~~ a mix of habitat and public access, with variable building setbacks to allow businesses, residences, and public facilities to be located within shoreline jurisdiction." (pg. 24)

- Prior to ~~"After completion of~~ environmental remediation of the ASB, an assessment of the highest and best use of the ASB should be considered, including as a hazardous waste disposal site, a marina, a stormwater treatment site, and as natural habitat. ~~the ASB lagoon should be opened to marine waters and restored as a Clean Ocean Marina with fish habitat and public access around the rim of the existing breakwater. The marina should include fish passage corridors through the north and south sides of the breakwater which are located so as to protect existing eelgrass beds from construction impacts."~~ (pg. 25)

- "Enhance the beach on the north side of the ASB lagoon to improve ~~public access and~~ habitat function in coordination with cleanup and redevelopment activities in the Marine Trades Area." (pg. 25)

- The shoreline within the Log Pond area was also designated as a Recreational Shoreline in the Final Draft SMP. The shoreline will be restored for ~~public access and~~ habitat function. (p 33)

- Pocket beaches at the head of the I&J Waterway, ~~, north of the ASB lagoon, the Log Pond,~~Cornwall Cove, and south of the Cornwall Avenue Landfill could be upgraded for hand carry boats. Additional areas for boat access will be considered after a habitat assessment. (p43)

- "The combination of transportation and public aeeess features in early phases will create strong physical and visual connections between downtown and the waterfront, ~~and establish signature~~ Habitat, parks, and public access features will be established along the south side of the Whatcom Waterway. The Log Pond Area will continue to be used for light industrial activities without any significant public investment in roads or utilities. As the Downtown Waterfront Area gradually develops into an urban village, infrastructure will be expanded as necessary to serve proposed development and increase public access to the waterfront, while preserving and limiting access to critical habitat." (pg. 45)

- Develop launching facilities and services for hand carry boats in one or more of the following areas: at the head of the I&J Waterway, ~~north of the ASB lagoon, the Log Pond~~, Cornwall Cove, and/or south of the Cornwall Avenue Landfill. Additional areas for boat access will be considered after a habitat assessment. (p53)

- "The parks and open spaces within this area will create a dramatic new public access trail along the top of the breakwater to the ASB, if it becomes a marina. ~~Clean Ocean Marina~~." (pg. 65)

- If industrial activities in the Log Pond area require ongoing water access, a section of wharf south of the Laurel Street crane pad may remain into the future, where activity will occur in Whatcom Waterway, proper, and not within the log pond itself .

- The shoreline trail described within the Downtown Waterfront Area will continue through the log pond area, where the majority of the trail will be offset by 50', and will offer a few viewpoints closer to the water's edge. ~~along the Log Pond shoreline to provide public access to the restored Log Pond beach. Here people will experience a soft-bank shoreline similar to the shoreline at the Port's Marine Park facility in Fairhaven."~~ (pg. 66)

- "Shoreline parks should include restored shoreline buffers and incorporate habitat enhancement projects consistent with the Bellingham Shoreline Master Program and Restoration Plan. Shoreline

buffers may include trails and designated water access points, where those shorelines are not considered significant habitat areas. (See related policies in Chapter 3.)" (pg. 69)

- "Restore natural beaches ~~and provide public access to the water's edge~~ at the head of the I&J Waterway, the pocket beach northwest of the ASB lagoon, the restored beach within Log Pond Park, the Central Avenue pocket beach, the pocket beach at the end of Cornwall Ave., referred to in this plan as Cornwall Cove, and the beach at the southern end of the Cornwall Ave. landfill." Assess the sensitivity and habitat value of each of these sites and allow public access where compatible with overall habitat considerations. (pg. 71)

Walker, J Lynne L.

From: Kate Blystone <kate@futurewise.org>
Sent: Monday, September 23, 2013 11:31 AM
To: CC - Shared Department
Subject: Blue Green Waterfront Coalition Comment letter and exhibits 2 of 3
Attachments: Exhibit A - Community Benefits Agreements.pdf

Please see attached exhibit A to our letter.

Kate Blystone
Futurewise
Whatcom Chapter Director

email: kate@futurewise.org
web: www.futurewise.org

1155 N State Street, #310
Bellingham, WA 98225
p 360-306-5708

Futurewise works throughout Washington State to create healthy livable communities, protect our working farmlands, forests and waterways, and ensure a better quality of life for present and future generations.

Community Benefits Agreements

Making Development Projects Accountable

by

Julian Gross

Legal Director,
California Partnership for Working Families

with

Greg LeRoy

of Good Jobs First

and

Madeline Janis-Aparicio

of LAANE

published by

Good Jobs First

and the

California Partnership for Working Families,

a collaboration of

the Center on Policy Initiatives,
the East Bay Alliance for a Sustainable Economy,
the Los Angeles Alliance for a New Economy,
and Working Partnerships USA.

Exhibit A - Community Benefits Agreements handbook

Community Benefits Agreements

Making Development Projects Accountable

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and Working Partnerships USA.

Good Jobs First

Good Jobs First is a national resource center promoting corporate and government accountability in economic development. GJF provides research, training, model publications, consulting, and testimony to grassroots groups and public officials seeking to ensure that subsidized businesses provide family-wage jobs and other effective results. Good Jobs First is also active in the smart growth movement, bringing development subsidies and labor unions into the suburban sprawl/smart growth debate.

Good Jobs First
1311 L Street NW,
Washington, DC 20005
202-626-3780
goodjobs@goodjobsfirst.org
www.goodjobsfirst.org

California Partnership for Working Families

The California Partnership for Working Families (CPWF) is a statewide economic justice organization. Our goal is to ensure that public resources are invested in ways that are economically sound and provide a return to their communities. CPWF is working to reform development policy in California so that the social and economic return on investment is tracked and reported to the public. CPWF also seeks to secure a systematic and timely process for accommodating community input into development decisions.

The organizations that founded the California Partnership for Working Families are:

Center on Policy Initiatives (CPI)
3727 Camino del Rio South, Suite 100,
San Diego, CA 92108
619-584-5744
centerpolicy@onlinecpi.org
www.onlinecpi.org

East Bay Alliance for a Sustainable Economy (EBASE)
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510-893-7106
info@workingeastbay.org
www.workingeastbay.org

Los Angeles Alliance for a New Economy (LAANE)
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213-486-9880
info@laane.org
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408-269-7872
wpusa@atwork.org
www.wpusa.org

Table of Contents

Exhibit A - Community Benefits Agreements handbook

Introduction

The Community Benefits Movement and CBAs

Community Benefit Agreements (CBAs) — deals between developers and coalitions of community organizations, addressing a broad range of community needs — are safeguards to ensure that affected residents share in the benefits of major developments. They allow community groups to have a voice in shaping a project, to press for community benefits that are tailored to their particular needs, and to enforce developer's promises. CBAs are only one aspect of a growing new movement towards community benefits in land-use planning, taking shape through labor-community partnerships around the country.

We have updated and revised this publication to share our experience in implementing some of the CBAs described in the original edition. We have added extensive material in this preface on the community benefits movement; a new chapter describing implementation of the landmark CBA for the Staples development in Los Angeles; a new appendix listing past CBAs; a new appendix describing some current community benefits campaigns; and several new sections on legal issues, community benefits victories, and new approaches. We have also included an overview of the recent CBA for the Los Angeles International Airport, providing for community benefits valued at over half a billion dollars, and a special section on unusual legal aspects of this CBA.

The Economic Development Context

Over the past decade, a growing number of cities across the country have pinned their hopes for renewal on ambitious and expensive economic

development programs accomplished through public/private partnerships. By the late '90's, states, counties and cities were spending close to $50 billion per year on these programs, reflecting a deepening reliance on these partnerships to fuel economic growth. Sports stadiums, entertainment arenas, hotels, office parks, "big box" retail outlets, upscale residential projects and other such developments are increasingly being built with public money in cities all around the country.

The new emphasis on aggressive economic development is closely linked to the "back to the city" phenomenon. For the first time in decades, many large U.S. cities are experiencing population increases, with growing populations of both middle-class "urban pioneers" and Latin American and Asian immigrants taking up residence in urban neighborhoods.

Local government has played a central role in the push for urban economic development. As the federal government has slashed its contribution to urban budgets, and devolution has shifted programs like workforce development and housing construction away from federal and state governments, responsibility for major decisionmaking on urban development is landing in the laps of elected officials and staff at the city and county level.

Unfortunately, the public-private partnerships at the local level are being driven for the most part by the private sector. Although most city and county governments have "planning components," these departments expend most of their resources on the processing of permits and other land use applications. Local governments, eager to expand their tax bases and presented with little meaningful information about the costs and benefits of their choices, often see their role as being limited to facilitating the visions and plans of developers—rather than facilitating a public vision and plan developed with the input of a wide range of stakeholders. They often rely on the job creation projections of developer, but after construction they have little information about actual jobs created. Standards for assessing the costs and benefits of development for communities, if such standards exist, are generally applied on an inconsistent and piecemeal basis.

Therefore, while economic development projects are often heavily subsidized by taxpayer dollars, they produce decidedly mixed results for city dwellers. While many of these projects bring sorely needed jobs and tax revenues back to areas that have been disinvested, there is usually no guarantee that the "ripple effects" of the projects will benefit current residents. Many new developments cause inner-city gentrification, pushing out low-income residents as housing prices rise. Other projects create large numbers of dead-end low-wage retail and service secror jobs, leaving low income, families, mostly people of color, mired in an endless cycle of poverty. While some Smart Growth proponents have advanced the notion that development should be governed by the "Three E's"—the economy, the environment, and equity—few if any jurisdictions have pursued "growth with equity" policies in a systematic way. Consequently, even after investing billions of dollars in economic development, metropolitan regions continue to experience spiraling poverty, sprawling, unplanned growth, a crisis of affordable housing and declining quality of life for low and middle-income communities.

Large-scale expenditures on economic development therefore present a host of questions for local government. What is the role of the public sector in guiding urban growth? What information is needed for local governments and community stakeholders to make informed choices about economic development? How can communities take advantage of nearly $50 billion in annual investment in local economies to address growing inequality and urban poverty and create a renaissance in urban areas across the country? What conditions or performance measures should be attached to public subsidies and major land use

entitlements? What are the goals of economic development? Is it desirable to maximize democratic, civic participation in the economic development process and, if so, what is the best means to do so? What new partnerships can be built to avoid the fractured land use politics of the past several decades?

A New Movement

As local governments grapple with their responsibility to shape development and land use patterns, a new movement has emerged to challenge conventional thinking and offer a broader vision. This movement is centered on the concept of *community benefits*—the simple proposition that the main purpose of economic development is to bring measurable, permanent improvements to the lives of affected residents, particularly those in low-income neighborhoods. This new movement is pressuring the public sector to play a more strategic role in land use planning and urban growth, in order to leverage its multibillion dollar investment in the private sector toward creation of good jobs, affordable housing, and neighborhood services that improve the quality of life for all residents. Just as the state fiscal analysis and Economic Analysis and Research Network (EARN) alliances are building capacity within grassroots organizations to understand state fiscal issues, the community benefits movement is building grassroots capacity and expertise to impact a wide range of land use and urban growth issues.

The community benefits movement began in California, where organizations in Los Angeles, San Diego, San Jose and the East Bay have worked individually and collectively to realize the tremendous social justice potential of economic development and land use planning. The movement is spreading rapidly, taking hold in metropolitan regions across the country, including Denver, Milwaukee, Minneapolis/St. Paul, Miami, Atlanta, Boston, Seattle, New York City, Chicago, and Washington D.C.

In most locations, community benefits work is arising from—and remains integrally connected to—the Smart Growth movement. Over the past decade, Smart Growth advocates have been successful at combating sprawling development, by bringing such issues as jobs-housing balance and transit-oriented development to the center of regional planning processes. In many jurisdictions, Smart Growth has progressed from being a set of proposals by advocates to becoming official government policy.

As the Smart Growth movement has matured, key practitioners have recognized the need to expand the scope of the policy debate on Smart Growth beyond narrowly defined "environmental" issues to engage such challenges as creating family-sustaining jobs in the urban core, bringing much-needed private capital into underinvested communities while avoiding displacement of low-income and middle-income families, and providing the range of public services that together constitute "livable communities," with attention to child care, health care, and parks and open space.

The community benefits movement gives Smart Growth advocates a set of concrete policy tools to advance these outcomes in ways that can be measured: *e.g.*, how many thousands of affordable housing units have been built, how many tens of thousands of living wage jobs have been guaranteed, and how many millions of dollars have been redirected towards community services. The movement has also provided a vehicle to build broad coalitions that promote the deeper involvement of new constituencies, including communities of color, the organized labor movement, low-income urban residents and their institutions, and social service providers. For this reason, prominent champions of Smart Growth, such as the Sierra Club, the Greenbelt Alliance, Environmental Defense, Smart Growth America, Policy Link, and the Natural Resources Defense Council, have embraced the community benefits movement in different regions.

In virtually every area, community benefits coalitions are anchored by a renewed labor movement, with janitors and hotel workers, clerical workers, retail clerks and, in some cases, the building trades, stepping forward to participate in broader social justice alliances. Often, these labor coalitions include "Central Labor Councils," regional alliances of unions dedicated to broadly improving the quality of life for working families. These organizations are joining together with groups that were often on the opposite side of land use disputes: environmentalists, housing developers, neighborhood advocates and others.

In the regions where the movement has taken root, the community benefits movement is reframing the public discourse on economic development. No longer limited to narrow discussions of tax revenue, the dialogue on development policy is now commonly characterized by spirited debates over living wage jobs, park space, affordable housing and proximity to transit corridors. For the first time in a generation, this movement has caused a broad range of public officials, planners, and community-based organizations to recognize the need to play a leadership role in land use planning, and to use public dollars and land use authority in strategic ways to improve job opportunities and the quality of life for low-income communities.

As a result, this movement is promoting democratic civic participation among populations and constituencies that usually engaged in land-use and economic development decisions. Once the near-exclusive province of developers and businesses, the decision-making process in these areas now often includes a much more diverse group of voices as communities become organized and gain the sophistication to effectively advocate for their demands.

Most importantly, the community benefits movement is measurably improving people's lives. CBAs are now in place for major developments in several cities, as described in this publication. These agreements guarantee thousands of new quality jobs, training opportunities, increased numbers of affordable housing units, green building practices, parks, child-care centers, and numerous other benefits.

The movement has achieved a level of momentum and visibility reminiscent of the early days of the "Living Wage" movement (out of which, in fact, many of the organizations advocating for community benefits arose). Groups in several cities are now pursuing citywide policies that would create minimum standards on jobs, housing and neighborhood services for public-private development projects. National press has picked up on this trend, with recent articles in the Wall Street Journal's Real Estate Journal and the New York Times, among other prominent publications. (See Appendix C for the Wall Street Journal's Real Estate Journal article, and www.laane.org/pressroom/news.html for many other examples.)

This Publication

This publication is intended to help community groups learn how CBAs work, and to explain many of the different kinds of benefits for which community groups can negotiate. As you will see, there are now many different precedents, and we hope that groups will be inspired by these examples to continue to push the envelope.

A community group's ability to win a CBA is directly related to how much power it has organized. For neighborhood organizations using this handbook, we assume that you have an organized power base built upon foundations such as block clubs, church-based committees, and/or labor unions. Nothing in this handbook takes the place of organizing, and having a great CBA proposal will get you nowhere unless people are organized enough to make decisionmakers take note.

As CPWF's anchor organizations win more victories, demand for technical assistance and train-

ing in this work has increased. As a result, CPWF is in the process of establishing the National Community Benefits Technical Support Center, to which Good Jobs First will contribute as well. The center will assist organizations across the nation as they embark on community benefits work, coordinating training experiences between experienced staff and interested organizations. The center's programs will provide a mixture of one-on-one consulting services, regional trainings, and distance training opportunities (using its website ar www.californiapartnership.org) and teleconferencing. The center is beginning its operations at the time of this publication.

Ideally, CBAs or baseline community benefits will become a required part of every large, publicly-subsidized development project. Until that time, however, we will have to keep organizing. If you have examples of additional kinds of benefits—or other agreements for the kinds of benefits outlined here—we'd like to hear from you.

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Good Jobs First

Madeline Janis-Aparicio
LAANE

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Exhibit A - Community Benefits Agreements handbook

Chapter One

CBA Basics

What is a Community Benefits Agreement?

A Community Benefits Agreement, or "CBA," is a legally enforceable contract, signed by community groups and by a developer, setting forth a range of community benefits that the developer agrees to provide as part of a development project.

A CBA is the result of a negotiation process between the developer and organized representatives of affected communities, in which the developer agrees to shape the development in a certain way or to provide specified community benefits. In exchange, the community groups promise to support the proposed project before government bodies that provide the necessary permits and subsidies. The CBA is both a process to work towards these mutually beneficial objectives, and a mechanism to enforce both sides' promises.

How Does a CBA Relate to a Development Agreement?

A development agreement is a contract between a developer and a city or county, outlining the subsidies that the local government will provide to the project. Development agreements go by different legal terms in different contexts. Redevelopment agencies usually sign "disposition and development agreements" (DDAs) when they sell land to developers, or "owner participation agreements" (OPAs) when they subsidize the development of land already owned by a developer. Many cities enter into "incentive agreements." The term "development agreement" broadly describes all such contracts. Depending on local practice, development agreements may contain detailed information about the developer's plans for the project and the subsidies the project will receive.

We strongly recommend that a CBA be incorporated into any development agreement for a project, so that the CBA becomes enforceable by the government entity that is subsidizing the development. Whether or not that occurs, a CBA should remain a separate, enforceable agreement between the developer and the community groups.

Some projects receive a public subsidy without any development agreement; this is often the case when a project receives a tax abatement but no other subsidies. In such cases community benefits will have to be set forth in a CBA if they are set forth anywhere.

When is a CBA Negotiated?

A CBA is negotiated between the community groups and the developer before the development agreement is executed by the developer and government. The development agreement negotiations may be going on while the CBA is also being negotiated, but the CBA needs to be finalized first.

What is the Developer's Self-Interest in CBA Negotiations?

Developers use CBAs to help get government approval for their development agreements. In exchange for providing community benefits, developers get community support for their projects. They need that support because they want their projects subsidized, and because virtually all development projects require a wide range of governmental permit approvals, such as building permits, re-zoning and environmental impact statements. Permit approvals almost always have some kind of public approval process, as do most development subsidies. For many projects, the degree of community support or opposition will determine whether the developer will receive the requested approvals and subsidies.

What Kinds of Community Benefits Can CBAs Include?

Benefits provided by a CBA can vary as widely as the needs of affected communities. Community groups should be creative in advocating for benefits tailored to their own needs. Each particular CBA will depend on the community's needs, the size and type of the proposed development, and the relative bargaining power of the community groups and the developer.

Benefits contained in a CBA may be provided by the developer or by other parties benefitting from the development subsidies, such as the stores that rent space in a subsidized retail development. Some benefits can be built into the project itself, such as the inclusion of a child care center in the project, or the use of environmentally sensitive design elements such as white roofs that help avoid the "heat island" effect. Some benefits will affect project operations, such as wage requirements or traffic management rules. Other benefits will be completely separate from the project, such as money devoted to a public art fund, or support for existing job-training centers.

Benefits that have been negotiated as part of CBAs include:

- a living wage requirement for workers employed in the development;
- a "first source" hiring system, to target job opportunities in the development to residents of low-income neighborhoods;
- space for a neighborhood-serving child-care center;
- environmentally-beneficial changes in major airport operations;
- construction of parks and recreational facilities;
- community input in selection of tenants of the development;
- construction of affordable housing.

Later chapters of this handbook contain more detail on these benefits.

If community organizations are unable to negotiate what they want on a particular issue, they may instead negotiate a process to help achieve the same outcome at a later date. "Sunshine" or disclosure requirements are a good example of this.

Even if a developer will nor agree to require tenants to pay a living wage, he may agree to require tenants to report their wage levels. This information can later be used in living wage campaigns. Creativity and flexibility in the negotiation process will be well rewarded.

Who Negotiates a CBA?

CBAs are negotiated between leaders of community groups and the developer, prior to governmental approval of the project. Sometimes a government agency will play an active role in CBA negotiations.

Community-based organizations and labor unions press for CBAs containing strong community benefits. Community-based organizations involved in CBA negotiations are formed by concerned citizens; they may be built upon traditional community organizing structures such as block clubs or church-based groups. These groups may coalesce with living wage campaigns, or with individual labor unions and/or with central labor councils. Sometimes a coalition including many groups will form around a particular proposed development. In other situations, existing networks will take the lead. In either case, community groups and labor unions will need to appoint a steering committee or negotiating team of workable size to conduct negotiations with the developer.

The developer will negotiate with community representatives if he thinks he needs community support to move the project forward. Of course, some developers want to work with community groups in order to promote community involvement with and acceptance of the development, whether or not project approval is dependent on those things. A representative from the developer, or the developer's attorney, will conduct negotiations on his behalf.

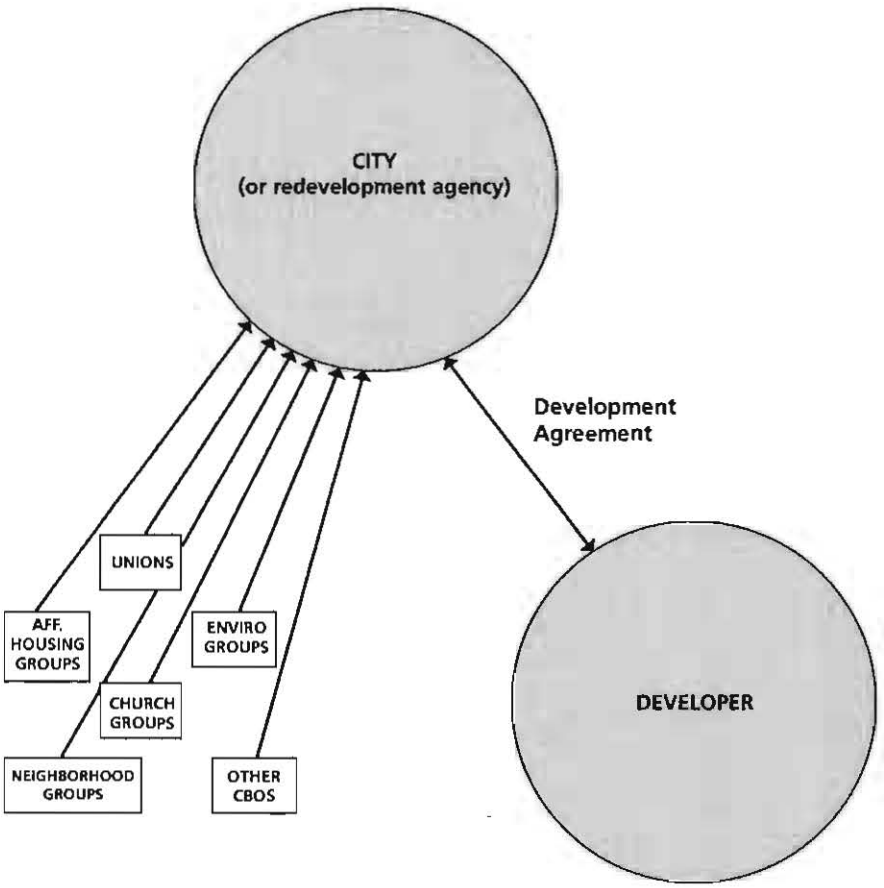
Government staff may or may not be involved in the CBA negotiations. While government staff and attorneys are busy negotiating the development agreement for the project, they are sometimes content to leave to the community representatives the task of negotiating the CBA. In unusual circumstances, a government entity may in fact be the "developer" of a project, while one or more other government entities have permitting authority. In such cases, the government "developer" will be central to the negotiations and a party to the CBA, as with the recent LAX CBA described below.

Attorneys will have to become involved at some point, since CBAs are enforceable contracts, with real legal consequences for both the developer and the community groups. Ideally, the neighborhood organizations will start the negotiations directly with the developer, and attorneys for both sides are brought in to formalize the contract after an agreement has been reached. In such cases the role of the attorneys is simply to memorialize, in a legally enforceable manner, the substance of the agreement. However, one side or the other may wish to have an attorney help conduct its part of the substantive negotiations. If the developer negotiates through an attorney, community groups should negotiate through one as well.

How is a CBA Enforced?

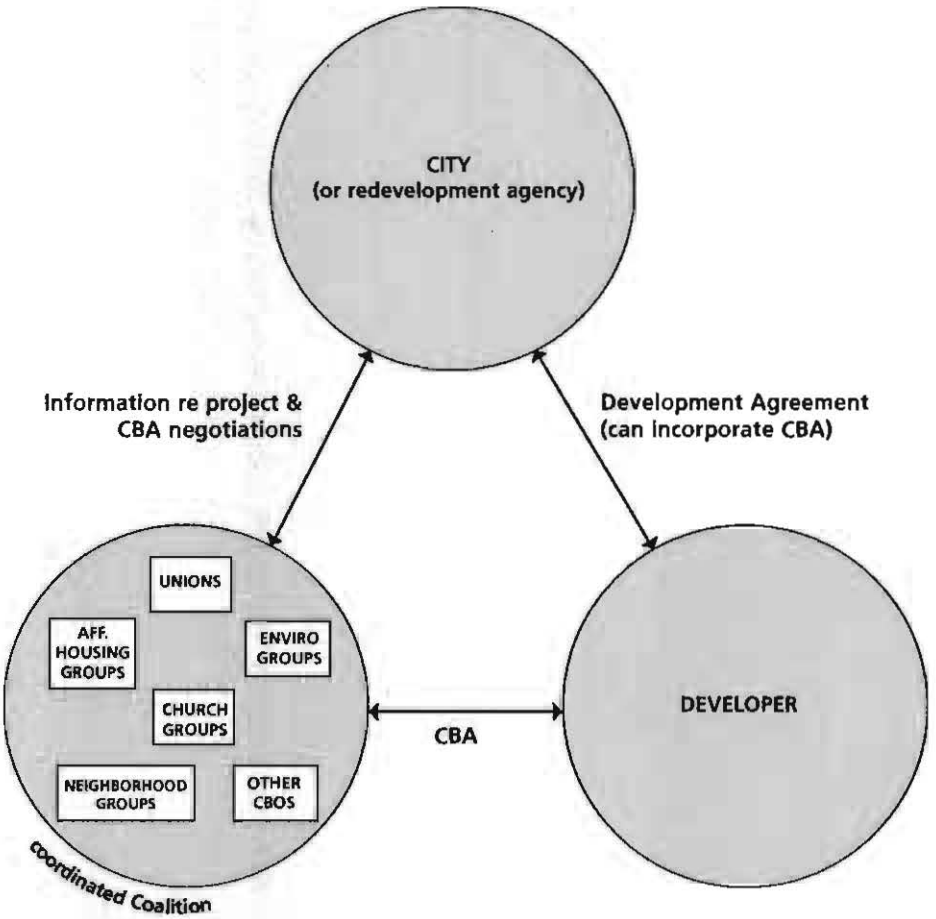
How a CBA is enforced depends on who signed it and what enforcement provisions it contains. As a CBA is a legally binding contract, it can be enforced only by a party that has signed it. CBAs that are incorporated into development agreements can be enforced by the government, as well as by community groups.

WITHOUT A CBA



- Little or no direct comunication b/w community groups and developer
- All developer commitments go into development agreement – city & developer draft language
- No coordination & shared power among community groups
- Community groups cannot enforce developer commitments

WITH A CBA



- Developer commitments re community benefits go into CBA
- Coalition & developer draft language together
- Community groups can enforce developer commitments (City and agency can too, if CBA is included in the development agreement.)
- Community groups share information, have strength in numbers, and coordinate their advocacy

All CBAs should contain carefully-drafted provisions describing how commitments will be monitored and enforced. Commitments made by developers should apply to successor entities such as purchasers of property within the development, and to contractors and tenants of the developer for certain commitments. Each commitment made in a CBA, and the CBA itself, should have a defined term of years. We provide more detail on enforcement issues in Chapter Eight.

How are CBAs implemented?

How a particular CBA is implemented depends on the benefits being provided. Some benefits

EXAMPLE: THE "STAPLES CBA"

In May of 2001, a broad coalition of labor and community-based organizations—the Figueroa Corridor Coalition for Economic Justice—negotiated a comprehensive CBA for the Los Angeles Sports and Entertainment District development, a large multipurpose project that will include a hotel, a 7,000-seat theater, a convention center expansion, a housing complex, and plazas for entertainment, restaurant, and retail businesses. Public subsidies for the project may run as high as $150 million.

The CBA is often referred to as the "Staples CBA" because the project is located adjacent to the Staples Center sports arena, which was developed by the same company.

The Staples CBA was a tremendous achievement in several respects. It includes an unprecedented array of community benefits, including:

- a developer-funded assessment of community park & recreation needs, and a $1 million commitment toward meeting those needs;
- a goal that 70% of the jobs created in the project will pay the City's living wage, and consultation with the coalition on selection of tenants;
- a first source hiring program targeting job opportunities to low-income individuals and those displaced by the project;
- increased affordable housing requirements in the housing component of the project, and a commitment of seed money for other affordable housing projects;
- developer funding for a residential parking program for surrounding neighborhoods; and
- standards for responsible contracting and leasing decisions by the developer.

These many benefits reflect the very broad coalition that worked together to negotiate the CBA. The coalition, led in negotiations by Strategic Actions for a Just Economy, LAANE, and Coalition L.A., included over thirty different community groups and labor unions, plus hundreds of affected individuals. These successful negotiations demonstrate the power community groups possess when they work cooperatively and support each other's agendas.

Chapter Three is a description of the implementation experience for the Coalition since the Staples CBA was signed. The CBA is included in its entirety as Appendix D. (The parties also signed a "Cooperation Agreement," laying out technical legal responsibilities; all community benefits are set forth in the CBA, however.) A Los Angeles Times article on the deal is included as Appendix E.

require ongoing implementation by several entities. A local-hiring program, for example, may require employers to send notice of job opportunities and to interview certain candidates, while job training centers match applicants with available jobs and make prompt referrals. Many community benefits require ongoing communication between community groups and the developer for a period of years after the opening of the development.

On the other hand, some CBA responsibilities can be fulfilled well before the development opens, like a developer's one-time payment into an existing neighborhood improvement fund. Roles, responsibilities, and time frames should be clearly described in the CBA.

Don't Most Development Projects Provide Local Benefits Without a CBA?

Most developments provide *some* benefit to the surrounding communities, in the form of jobs, housing, or retail opportunities. This is never the complete story, however. There are many other questions about virtually any development:

- Are the development's benefits substantial enough to justify the public subsidy?
- Do the benefits outweigh the costs, such as dislocation of homes and businesses, cannibalization of sales from existing retailers, increased vehicle traffic, and/or gentrification pressures?
- Does the development sufficiently cushion the blow to those who will suffer the direct negative impacts of the development?
- Does the development have an appropriate character and scale for the surrounding neighborhood?
- Are the promised benefits reasonably certain to materialize? For example, if the development promises jobs for residents of affected communities, is it clear that jobs will actually go to these residents?
- Will jobs created pay enough that the government won't have to subsidize the employees' wages and benefits?

If the answer to any of these questions is negative or unclear, community groups are right to have concerns about a proposed project, even when they believe it would provide some concrete benefits. The CBA negotiation process is a mechanism for community groups to shape the development and capture more community benefits, hopefully leading to a better project with stronger community support.

EXAMPLE: THE "LAX CBA"

In December of 2004, a broad coalition of community-based organizations and labor unions in Los Angeles entered into the largest CBA to date, addressing the Los Angeles International Airport's $11 billion modernization plan. The CBA is a legally-binding contract between the LAX Coalition for Economic, Environmental, and Educational Justice and the Los Angeles World Airports, the governmental entity that operates LAX.

The benefits obtained through this CBA campaign have been valued at half a billion dollars. The bulk of these benefits are set forth in the LAX CBA; the airport's commitments to two area school districts are set forth in side agreements that were negotiated as part of the Coalition's CBA campaign. The CBA has been hailed by both local policymakers and the administrator of the Federal Aviation Administration as a model for future

airport development nationally. The wide range of benefits include:

- $15 million in job training funds for airport and aviation-related jobs;
- a local hiring program to give priority for jobs at LAX to local residents and low-income and special needs individuals;
- funds for soundproofing affected schools and residences;
- retrofitting diesel construction vehicles and diesel vehicles operating on the tarmac, curbing dangerous air pollutants by up to 90%;
- electrifying airplane gates to eliminate pollution from jet engine idling;
- funds for studying the health impacts of airport operations on surrounding communities; and
- increased opportunities for local, minority, and women-owned businesses in the modernization of LAX.

The CBA has detailed monitoring and enforcement provisions, enabling Coalition members to ensure implementation of these benefits and to hold accountable the responsible parties.

The text of the LAX CBA, more information about the campaign, and national press reaction to the CBA are available online at www.laane.org/lax/cba.html. Unusual legal aspects of the CBA are discussed below. Extensive information on environmental aspects of the LAX CBA is contained in Chapter Six.

The LAX Coalition for Economic, Environmental, and Educational Justice

The almost entirely African-American and Latino communities that lie to the east of LAX, directly under regular flight paths, have suffered from increasing environmental pollution over the years. The multi-racial coalition, formed after the LAX modernization plan was announced, aimed to ensure that the new airport plans went forward only if the community's environmental concerns and other issues were addressed. Organizing in Inglewood and Lennox began immediately after the announcement of LAX's proposal. The Coalition aimed for an enforceable CBA from the start.

The Coalition reflected a combination of interests that crosses many traditional borders, racial as well as topical. In addition to residents of the communities, the Coalition included the environmental movement, for whom the LAX proposal presented a classic environmental justice issue. The Coalition also included the labor unions that represent the workers who are employed or will be employed at LAX—who also, in many cases, live in the communities around the airport. School administrators were part of the coalition because of the special impact of LAX-generated noise and air pollution on the schools and on children. Public school teachers and parents brought their concerns about the impact of noise and dirty air on schools. Clergy, whose leadership is so important in the communities of color, were also Coalition members, including clergy from the Black Muslim congregation in Inglewood and south L.A.

Through effective organizing, thousands of African-American and Latino community members became involved in the campaign, both directly and indirectly, via their churches, schools and organizations. The Coalition leadership solicited their views on what their demands should be, and the community's representatives became the steering committee that listed and prioritized those demands during the CBA negotiation process.

Following is a list of LAX Coalition members.

Community Organizations

- AGENDA
- Clergy and Laity United for Economic Justice
- Community Coalition
- Inglewood Coalition for Drug and Violence Prevention
- Inglewood Democratic Club
- Inglewood Area Ministerial Association
- Lennox Coordinating Council
- Los Angeles Alliance for a New Economy
- Los Angeles Council of Churches
- Los Angeles Metropolitan Churches
- Nation of Islam
- AME Minister's Alliance

Environmental Organizations

- California Environmental Rights Alliance
- Coalition for Clean Air
- Communities for a Better Environment
- Community Coalition for Change
- Environmental Defense – Environmental Justice Project
- Natural Resources Defense Council
- Physicians for Social Responsibility Los Angeles

Labor Unions

- Hotel Employees and Restaurant Employees Local 11
- Service Employees International Union Local 1877
- Service Employees International Union Local 347
- Teamsters Local 911

School Districts

- Inglewood Unified School District
- Lennox School District

THE LAX CBA: UNUSUAL LEGAL ASPECTS

The recent LAX CBA was unusual in that it was negotiated between community groups and a government entity—in contrast with the usual situation, where community groups negotiate with a private developer. Nonetheless, the basic dynamic was very similar to that of a standard CBA negotiation. The Los Angeles World Airports ("LAWA"), an independent governmental entity, was in effect the "developer" of the program of improvements at issue, and LAWA needed approval from the Los Angeles City Council before the program could move forward. In these respects, the standard three-way dynamic between a coalition, a developer, and a decisionmaker was in effect.

Because the "developer" was a governmental entity rather than a private party, the legal consideration provided by the Coalition under the agreement was unusual. In most CBA negotiations, the developer's central demand is for an assurance that the Coalition members will provide political support for the project during public meetings, or at least will not use its political power to oppose the project. However, obtaining such a commitment would be unseemly for a developer that is a governmental entity: it would simply be inappropriate for a government actor to enter into a contract requiring a private citizen to take a certain position in front of another governmental entity at a public hearing.

The LAX CBA therefore provides only that the Coalition organizations will not file lawsuits to challenge the proposed projects. In theory, Coalition organizations were thus free to oppose the LAX modernization program in front of the city council. Such opposition would clearly have violated the spirit of the CBA, however, and of course none of the Coalition organizations took that step. There was a disincentive to do that in any case, as the CBA brought LAWA's and the Coalition's interests into alignment: there will be no benefits provided under the CBA if the project doesn't move forward. This is a good example of how the CBA process encourages cooperative behavior between potentially adversarial parties, even beyond the strict legal responsibilities.

Another unusual aspect of the LAX CBA negotiations was the heavy influence of the federal government. Federal law prohibits airport revenues from being spent on purposes unrelated to airport operations. (See 49 U.S.C. § 47133, "Restriction on use of revenues.") The Federal Aviation Administration has issued regulations that interpret this rule strictly, allowing expenditures in support of the surrounding community only "if the expenditures are directly and substantially related to operation of the airport." (See Federal Register, Vol. 64, No. 30, Section V.A.8.)

This legal reality meant that the parties to the CBA could only negotiate benefits that fit within this rule—in the *future* judgment of the FAA. Airport officials and Coalition members stayed in contact with the FAA during the negotiations, at one point flying to D.C. for a face-to-face meeting. Because most of the community's concerns related

to airport operations, however, this rule was not as restrictive as it might seem.

The Coalition and LAWA are confident that all benefits included in the CBA are permissible under federal law as it has been interpreted. Because subsequent changes in FAA policy interpretations could threaten some of the benefits set forth in the CBA, however, the CBA contains various contingency plans. For example, if the FAA stepped in and prohibited airport funding of the health study required by the CBA, the airport would be required to contribute $500,000 toward measures or programs that promote air quality, are not prohibited by the FAA, and are agreed upon by LAWA and the Coalition. The CBA is thus structured so that the surrounding communities will obtain alternate benefits if the FAA prohibits certain negotiated items.

Exhibit A - Community Benefits Agreements handbook

Chapter Two

CBA Pros and Cons

Benefits of CBAs

Any development project of significant size has to go through a complex governmental approval process. As a proposed project moves through this process, government officials and community groups may request that the project provide particular community benefits, or that the project be tailored to the needs of the community in a certain way. This happens with many development projects, even where there is no formal CBA.

CBAs can greatly improve this approval process by promoting the following values:

- **Inclusiveness.** The CBA negotiation process provides a mechanism to ensure that community concerns are heard and addressed. While some cities do a good job of seeking community input and responding to it, many do not. Low-income neighborhoods, non-English-speaking areas, and communities of color have historically been excluded from the development process. Laws concerning public notice and participation are poorly-enforced, and official public hearings are held at times and places that are not neighborhood-friendly. Having a CBA negotiation process helps to address these problems, providing a forum for all parts of an affected community.
- **Enforceability.** CBAs ensure that the developer's promises regarding community benefits are legally enforceable. Developers "pitching" a project often make promises that are never written into the development agreement, or are never enforced even if they are included. This is especially true of promises about jobs being created for local residents. CBAs commit developers in writing to promises they make regarding their projects, and make enforcement much easier.

- **Transparency.** CBAs help the public, community groups, government officials, and the news media monitor a project's outcome. Having all the benefits set forth in one place allows everyone to understand and assess the specific commitments made by a developer. They can then compare those benefits to benefits provided in similar projects in the past. They can also compare benefits offered by developers who are competing for the right to build on a particular piece of land. Transparency is an undeniable good-government value.
- **Coalition-Building.** The process of negotiating a CBA encourages new alliances among community groups that may care about different issues or have different constituencies. This is critical because developers often use a "divide and conquer" strategy when dealing with community groups, making just enough accommodation to gain the support of one group, while ignoring the concerns of others. (Sometimes this accommodation is seen as little more than a monetary payoff to a single group.) The developer can then claim that there is some community support for the project, and obtain necessary government approvals, even though most community issues have not been addressed. Similarly, a developer may agree to build a project with union construction labor while ignoring the concerns of those unions whose members will fill the project's permanent jobs, and then claim the project has "labor's support." By addressing many issues and encouraging broad coalitions, the CBA process helps counter these divide-and-conquer ploys.
- **Efficiency.** CBAs encourage early negotiation between developers and the community, avoiding delays in the approval process. Without a CBA process, community groups usually express their concerns at public hearings, when the project is up for government approvals. At that point there are three possible outcomes. First, the government can approve the project over neighborhood objections, leaving residents unhappy and leading to a project that fails to address some community needs. Second, the government can reject the project completely, leaving the developer unhappy and the community without whatever benefits the project might have provided. Third, the government can delay the project until the controversial issues have been resolved. That leaves the developer unhappy because time is money, and it delays the community benefits just as it delays the whole project. It also puts the community groups and the developer in roughly the same place they would have been in had they started negotiating over community benefits at the outset. CBA negotiations avoid all three of these unsatisfactory scenarios by leading to a cooperative relationship between normally adversarial parties, and getting good projects approved without delays late in the process.
- **Clarity of Outcomes.** CBAs provide local governments with the information they need to show successful delivery of promised benefits, like creation of jobs. Very few state and local economic development entities can quantify their outcomes when questioned by legislatures or the public about the success of their programs or the public's return on investment. CBAs can be a vehicle for governments to gather and maintain information that demonstrates that the jobs and other benefits actually materialize.

Difficulties and Potential Problems of CBAs

- **Inadequate organizing could set poor precedents.** If neighborhood organizations are poorly organized and therefore

have little leverage over developers and governmental agencies in a particular situation, seeking a CBA will not help—and could result in a poor precedent being set for future projects. CBA negotiations cannot be effective without a certain amount of leverage or working political capital. Of course, if the CBA negotiation process becomes routine in certain cities, then it should increase leverage for community groups generally. In addition, the coalition-building aspect of the CBA negotiation process should increase community leverage.

- **One's person's floor is another person's ceiling.** If developers are looking at the CBAs from past projects, they may not want to provide greater benefits than those provided by others. Community groups want to use past commitments as a "floor," but developers will want to use them as a "ceiling."
- **Legal expenses.** Setting forth community benefits in an enforceable legal document will usually require community groups to employ an attorney. We strongly recommend that neighborhood groups have their own attorney; relying on government attorneys and staff members to produce the language is not effective. Developers will generally have attorneys as well. While the community groups may conduct the negotiations, it is valuable, if not essential, to have the fine print of the CBA finalized by a trusted attorney, to make sure the contract reflects both the substance and spirit of the negotiations. While retaining an experienced attorney is the best option, community groups that lack the money to do so may seek pro bono help through legal assistance clinics, or by a referral from the National Lawyers Guild (go to www.nlg.org for a directory of chapters).

LEGAL ISSUE: THE COALITION AS A LEGAL ENTITY

Because a coalition negotiating a CBA is negotiating as a single entity, it is natural to think that it is the coalition itself that will enter into the CBA with the developer. There are problems with that approach, however.

Most coalitions that enter into CBAs are not incorporated as stand-alone nonprofits. Rather, they are simply groups of organizations and individuals working together. Few coalitions have structured systems for determining who are official members, and who can speak or act on their behalf. (Such systems would be set out in bylaws or similar documents.) This uncertainty could cause problems if an unincorporated coalition were the legal entity that signed a CBA.

Such a CBA would naturally include commitments by the coalition to do certain things and to refrain from doing other things. It would be impossible to determine the scope of these commitments without firm rules for coalition membership and action. It is easy to imagine a situation where an individual who attended several coalition meetings spoke out against a development, after a CBA had been signed by the coalition with a commitment not to oppose the development. The developer might then claim that the individual was a coalition member and had violated the CBA—thus allowing the developer to avoid its obligations as well. The coalition might respond that the individual was not an official coalition member, or was not acting on behalf of the coalition—but

unless there were preestablished membership and action rules then the answer is not clear.

In addition, even if the coalition were the entity signing the CBA, every coalition member could probably be forced to comply with the coalition's commitments under the CBA. The coalition as a whole usually has the legal status of an "unincorporated association." While unincorporated associations can enter into contracts, they differ from corporations in that the members making up the entity can more easily be held responsible for the entity's commitments.

For these reasons, a better approach is to have each organizational member of the coalition sign the CBA on its own behalf. (Individual persons who are coalition members generally should not take on the legal benefits and burdens of a complex contract like a CBA.) This makes clear to each organization the legal reality that it must live up to the CBA's commitments; each organization will probably have its own internal approval process anyway.

This makes the CBA into a complex contract between as many as several dozen different parties. Nonetheless, for convenience the CBA can talk about the coalition organizations as a group, placing similar responsibilities on each of them. The definitions and technical language of the CBA just need to be clear about the approach.

Example: "Coalition" and "Organization" definitions and responsibilities in the LAX CBA.

The following language is from relevant sections of the Cooperation Agreement that accompanied the LAX CBA. The LAX CBA is discussed in detail in Chapter One. The full CBA and Cooperation Agreement are available at: www.laane.org/lax/index.html.

Definitions:

> *"Coalition"* shall mean the LAX Coalition for Economic, Environmental, and Educational Justice, an unincorporated association comprised exclusively of the following Organizations that are signatories to this Agreement, and no other organizations or individuals: [all signing organizations are listed].
>
> *"Organization"* shall mean each entity that is a member of the Coalition as defined above. Obligations of an Organization shall be obligations only of: (1) the Organization itself, as distinct from its member organizations or any natural persons; and (2) staff members or members of the board of directors of the Organization when authorized to act on behalf of the Organization.

Coalition Responsibilities:

> . . . All obligations, powers, rights, and responsibilities of the Coalition under this Agreement shall be obligations, powers, rights and responsibilities of each Organization.

This language makes clear that *each* signing organization has the power to enforce the CBA, and the responsibility to comply with it. It also makes clear that *only* the signing organizations can be held to the CBA commitments. Finally, it clarifies that a signing organization cannot be held responsible for actions of its members, staffers, or board, except when those parties are authorized to act for the organization.

- **Coalition politics.** Of course, building and maintaining coalitions is difficult, especially if the developer is seeking to peel off some groups. All of the basic structural issues about coalitions have to be resolved: Who is in the coalition? How are decisions made? Who is on the negotiating team? How are competing concerns prioritized?

Despite all of the difficulties and pitfalls, we feel that the benefits of a CBA far outweigh the risks. If groups organize well, stick together, and win a good CBA, they will probably set valuable precedents and make future campaigns in their city much easier.

An Understandable Concern: "This is new to us. We don't do this type of thing."

CBAs raise complex issues for community-based organizations. Some community groups may be uncomfortable giving up the right to express negative opinions on a public matter like a development project. Many are not used to entering into complex legal agreements with powerful developers.

In light of these concerns, community groups may be tempted to simply advocate for inclusion of community benefits in a project's development agreement, rather than negotiating a deal directly with the developer. This approach enables community groups to avoid the legal complexities and responsibilities of signing a CBA. If community groups genuinely trust the developer to provide the benefits as described, or if they trust the government to enforce the commitments as part of the development agreement, then this approach is simpler and makes sense.

However, there are serious risks to this approach, and important comparative benefits to a CBA. First, and most important, a CBA allows the community organizations that sign it to enforce the developer's commitments. They do not need to rely on the government to hold the developer to his promises. Government enforcement of community benefits is notoriously lax, and—no matter how committed the developer and city staffers seem—there is always a risk that promised community benefits will not materialize.

Second, a developer may be willing to provide better community benefits in exchange for a legally binding commitment of support from community groups, because he may feel more confident of the project's success thanks to that community support. This is the basic negotiating principle that parties are willing to give more in order to get more.

Third, there is a symbolic benefit to having community groups and the developer sign a CBA. The signing validates and makes concrete the months of negotiations and hard work, and makes the development more likely to be successful and embraced by the community. When negotiations are leading toward an agreement that both sides will sign, there is an assurance that both sides take the negotiations seriously. Developers will have to treat their commitments as binding when they know community groups can enforce them; and community leaders will have to be willing to stand by their own commitments when they are signing a binding legal document. The goal of having a CBA is to provide a directed, serious framework, in which both sides can genuinely buy into the process.

In addition, while some community groups are understandably reluctant about making a legal commitment to refrain from opposing a development, they may have to make at least an implicit commitment in this regard even if they do not sign a CBA. That's because the main reason the developer is negotiating over community benefits is to avoid community opposition. If community groups are not willing to refrain from opposing the project during the approval process, they

have little to offer a developer. For this reason, even if negotiated community benefits are only going to be incorporated into the development agreement (and not into a CBA), the developer will rightly expect that community groups with whom it reached agreement will not oppose the project.

Community-based organizations will quickly lose credibility if they negotiate an increase in a project's community benefits and then turn around and oppose the project. If community groups are seen by developers and by government officials as prone to reneging on their end of a deal—even only a "handshake" deal—it will impede the ability of other neighborhood groups to negotiate with developers in the future.

In sum, community groups are right to think carefully about their commitments before entering into a CBA—but the potential benefits are great. A community group should not sign a CBA unless (1) it believes that offering its public support in exchange for the negotiated community benefits is a good trade-off; and (2) it understands its commitments under the CBA and is willing and able to abide by them. If those conditions are met, having a CBA can greatly increase the quality and certainty of a project's community benefits.

TIPS FROM THE ADVOCATES

Advocates who have been involved in CBA negotiations raise several points of importance. During negotiations:

- **Ensure adequate issue training and leadership development.** Because coalition members are interested and experienced in different issues, it may take time and focused effort to get everybody working together on a shared agenda. While in negotiations, it's important for community leaders to be versatile enough to back each other up, especially since the developer will be resistant to particular requests. Because there may be so many issues involved in the negotiations, coalition members need to educate each other on their various priorities. Issue trainings can help, and openness and communication are an obvious imperative.
- **Include advisors and observers.** While the negotiating team needs to be small, individuals with special expertise can sit in on negotiations as "observers," and can advise and educate team members on technical issues like certain environmental concerns. Even without active participation in the negotiations themselves, such advisors can play an important and active role in strategy sessions.

After a CBA is complete:

- **Involve coalition members in monitoring.** Coalition members can be the eyes and ears of the community once the project is moving forward. Observations of coalition members can be more revealing than any required reports from tenants or the developer.
- **Spread the word.** Nothing is more effective in encouraging new organizing efforts than hearing from organizers who have succeeded in the past. Coalition members who have been part of successful CBA negotiations can be instrumental in spreading the word to other communities. Sharing of experiences and lessons learned can help build a knowledge and power base across various communities—and can help inspire and build effective campaigns.

See Chapter Three for more information on CBA implementation.

Exhibit A - Community Benefits Agreements handbook

Exhibit A - Community Benefits Agreements handbook

Chapter Three

Implementation Experience–The Staples CBA

Perhaps the best-known community benefits agreement is the one signed for the Staples development in Los Angeles in 2001. This CBA is attached as Appendix D and described in detail in the box in Chapter One. Following is an overview of the experience of the Figueroa Corridor Coalition for Economic Justice (FCCEJ) in implementation of the CBA through 2004. In general, the relationship between FCCEJ and the developers is good. One of FCCEJ's lead organizers stated that the developers—the L.A. Arena Land Company and Flower Holdings, LLC—had implemented the benefits in the CBA "to the letter and beyond."

Project Status

The Staples project's developers have steadily pushed the project forward since the signing of the CBA in May 2001. With the support of the community groups that entered into the CBA, the project obtained approval from the City of Los Angeles and the Los Angeles Community Redevelopment Agency just a few months later.

The developers' commitments under the CBA became terms of the disposition and development agreement between the developers and the Community Redevelopment Agency, making these commitments enforceable by local government, in addition to the community groups.

Several of the benefits set forth in the CBA are already being implemented, as described below. Construction of the project is set to break ground very soon.[5]

Oversight Committee

From the perspective of FCCEJ, the central forum for implementation of the CBA is the

Oversight Committee set up by the CBA itself. The Oversight Committee meets with the developers quarterly, providing an opportunity for the developers to update FCCEJ on the status of the project, and for FCCEJ and the developers to discuss implementation of the project's community benefits. The Oversight Committee provides an ongoing, regular accountability mechanism.

In between meetings with the developers, various subcommittees of the Oversight Committee work on specific implementation issues. In addition, the Oversight Committee as a whole may convene prior to a meeting with the developers, to update all members and prepare.

Strategic Actions for a Just Economy, a founding member of FCCEJ, has a staff member devoted full-time to FCCEJ's advocacy. While FCCEJ has several ongoing projects aside from the Staples CBA implementation, this individual spends much time facilitating Oversight Committee meetings, coordinating communications between FCCEJ members, and working on CBA implementation issues. The Oversight Committee also includes staff from several other organizations, all participating as equals. The Oversight Committee reports to the larger FCCEJ Steering Committee, which prioritizes various activities and projects of the coalition.

Commitments Being Implemented

As of early 2005, the developers had begun to implement the following commitments made in the CBA, with cooperation from FCCEJ as described below.

- **Residential parking program.** The CBA required the developers to work cooperatively with FCCEJ to urge the City of Los Angeles to establish a residential parking permit area covering the neighborhood surrounding the Staples project, in order to ensure that long-time residents wouldn't face parking problems due to overflow from the project. The CBA also required the developers to provide $25,000 to the City to fund the new program.

  The City did in fact enact the residential parking district as requested; the new residential parking rules took effect on September 1, 2004. In addition to the money paid to the City for the costs of setting up the district, the developer paid residents' fees for the first five years of permits as well as the posting of new street signage. This benefit is a good example of an effective cooperative approach between the developer, community residents, and local government.

- **Funding for parks.** The CBA required the developers to fund a needs assessment regarding parks, open space, and recreational facilities in the project's neighborhood. Hundreds of local residents participated in this process, guiding the one-million-dollar expenditure required by the CBA for park & recreation facilities. Out of the needs assessment came agreement that the developer would provide $500,000 for a family recreation center that will be free to area residents, and another $500,000 towards the rehabilitation of an existing park. Both of these facilities are scheduled to begin construction in 2005.

- **Funding for off-site affordable housing.** The CBA required the developers to provide $650,000 funding for interest-free loans as "seed money" to area nonprofit affordable housing developers. The developer has already provided this full amount in zero-interest loans to two local nonprofit affordable housing developers for the development of about sixty units so far. The Coalition helped set up the loan fund and ensure that local nonprofit developers knew about this opportunity.

- **Construction of on-site affordable housing.** The developer has initiated the market-rate housing portion of the development. In 2002, the coalition, the city, and the developer worked cooperatively to resolve timing issues around construction of affordable units, and amended the development agreements and the CBA to reflect their shared understanding of the intended timing.
- **Job readiness programs.** As required by the CBA, the developer is providing funds for the first source hiring system and job readiness programs. Project employment has not yet begun, but approximately $50,000 provided so far has supported a range of job readiness programs housed at SAJE and at Los Angeles Trade Technical College. The Coalition has leveraged this seed money to begin a pilot jobs training program for the lowest income families living in the area. Many Coalition organizations have sent their members and constituents to the job readiness programs as well as acting as faculty in the classroom. These programs have expanded from two classes in the first year of operation to five classes in 2005: Economic Survival, ESL Levels I and II, and Computer Literacy Levels I and II. The program's success has led to an additional two-year grant through HUD's Community Outreach Partnership Centers Program, designed to expand the jobs program from its current pilot stage to an institutionalized program. The ultimate goal is to have a pool of new, job-ready applicants from the local community in place when jobs in the development arise. As the job readiness programs develop and an operational first source system becomes necessary, the Coalition will request the remainder of the developer's $100,000 commitment.

Implementation Challenges

Following are some of the challenges FCCEJ has faced during the implementation process for the Staples CBA.

- **Need for leadership development training for grassroots community member participants.** The complex legal, community, and policy aspects of CBA implementation can be daunting and difficult for individual grassroots community members, no matter how committed. Professional organizers and policy advocates benefit from years of training and experience. The Staples CBA implementation has underlined the need for similar training efforts to facilitate participation from—and leadership by—interested individual community members. FCCEJ has therefore helped set up an intensive leadership development training program, which is up and running at this time.
- **Varying understandings of particulars of the CBA.** At several points, the Oversight Committee discovered that Coalition members had varying understandings of some key terms of the CBA. In particular, many coalition members thought the CBA reserved certain decisions to the Coalition, when in fact the agreement required shared consensus between the Coalition and the developer, or reserved the final decision for the developer. Because the relationship between the Coalition and the developer has been good, these points have not developed into major problems. However, this issue emphasizes the importance of close review of a CBA, both prior to signing and during implementation. CBAs are complex documents, and the devil is in the details; input on the front end from many coalition members will reduce misunderstandings and disappointments down the road.

- **Continued cooperation and involvement among coalition members.** Implementation of a complex CBA takes years and involves a wide variety of issues. No one organization has the expertise or the capacity to handle everything that will come up. Housing advocates in a coalition need to take an active role in implementation of affordable housing provisions; labor and its allies need to stay involved with job training, wages, and benefits; and so forth. With the Staples CBA, many benefits are being implemented even prior to the project's construction, making it easy to maintain focus from many Coalition members. However, organizations that bond together to win a CBA should understand that they will need to be working together for years in order to assure strong implementation of the benefits they obtained.

Aftereffects

FCCEJ organizers note that organizations that learned to work together through the Staples negotiations have continued collaborating with regard to other projects. In this respect, success has bred success; the coalition-building aspect of the CBA process has indeed led to lasting collaboration, resulting in greater political effectiveness for participants.

In addition, the success to date of the Staples CBA and other early CBAs has spawned several subsequent CBAs in Los Angeles, described in Appendix B. The developer community seems to be more comfortable with the concept, having seen it work with the Staples deal. And many feel that some important City officials now expect to see a CBA on any large, subsidized project, as an indication that the developer has engaged with the community and that the community has embraced the project.

With a four-year track record of more than a half dozen different full-scale, legally-binding CBAs in place in Los Angeles, community advocates have arguably made CBAs the norm for large, subsidized projects in the city. The fact that developers and city officials seem to be at least accepting (and at times embracing!) this approach indicates that advocates are making demands that are reasonable, and are living up to their end of the bargain by delivering the community support they promise. There should be no surprise on that last point, as communities will support projects that provide good community benefits and address identified needs. The CBA process, as exemplified in the Staples deal and subsequent agreements, seems to have facilitated positive outcomes for developers, city officials, and affected communities.

Exhibit A - Community Benefits Agreements handbook

Exhibit A - Community Benefits Agreements handbook

Chapter Four

Living Wage Programs as Part of CBAs

The living wage movement has enjoyed widespread success in the last few years; as of April 2005, at least 123 jurisdictions[1] have enacted living wage policies. Recognizing that taxpayer dollars are often going to employers that pay wages below the family poverty line, these jurisdictions have required certain employers to pay a higher hourly wage rate. Sometimes the rate is indexed to the federal poverty line or a similar index; some are indexed to go up with the cost of living. Current living wage levels range from about $7.00 per hour up to more than $12.00 per hour required of some large employers in certain cities in California.

In addition to wage requirements, living wage policies can incorporate other employment-related benefits as well. Many living wage policies encourage employers to provide health insurance to their workers by requiring them to pay a higher wage if they do not do so. Some policies require employers to provide a certain number of paid and/or unpaid days off. Some impose limitations on hours worked, or require employers to notify certain workers about eligibility for the federal Earned Income Tax Credit.

Almost all living wage policies apply to businesses receiving government contracts—*i.e.*, businesses performing privatized government services. In addition, at least 89 jurisdictions apply "job quality standards" to companies that receive economic development subsidies[2]. And two California cities, Berkeley and Santa Monica, have applied the principle geographically by enacting living wage policies that cover businesses in particular city districts.[3]

1 ACORN maintains an updated national list of living wage victories. See www.livingwagecampaign.org.
2 The Policy Shift To Good Jobs: Cities, States and Counties Attaching Job Quality Standards to Development Subsidies," by Good Jobs First – available at www.goodjobsfirst.org/pdf/jobquality.pdf – is the only national compilation of such requirements.
3 Santa Monica's geographically-based living wage ordinance was later repealed by voters in a razor-thin election. The city then enacted a narrower living wage ordinance covering service contractors.

The dramatic success of the living wage movement over the last decade is a testament to the tremendous effectiveness of determined organizing campaigns employed in city after city. The idea that government contracts should not be subsidizing poverty-level wages is clearly resonating. And the living wage movement squares with the essential justification of government spending on economic development subsidies: that the subsidies will improve the economic well-being of citizens. Indeed, three-fourths of the job quality standards attached to development subsidies have been established in the absence of grassroots organizing activity, suggesting that living wage arguments are influencing a very wide range of public officials.

The Impact of Existing Living Wage Policies on CBA Negotiations

If a proposed development is located in a jurisdiction that has a living wage policy, that policy may affect CBA negotiations in several ways:

- **The local living wage policy covers all employers in the development.** A few cities have living wage policies that cover not just city contractors, and not just direct recipients of subsidies, but also those who indirectly benefit from subsidies or lease space in a subsidized project. San Francisco, Oakland, and Toledo, Ohio, among others, have living wage policies that go beyond the direct recipients to cover all employers in many subsidized projects. A similar result is achieved by living wage policies that cover all employment on land that is owned by the city; policies like this are often in place for arenas, convention centers, and other facilities in which private employment occurs on city-owned land.

  In such cases, most or all of the jobs in a proposed development project will be covered by the city's living wage provisions. This is an ideal situation: living wage requirements should become part of the project automatically, and community groups can concentrate their energy and political capital on other aspects of the project.

- **The local living wage policy covers the developer's contractors, but does not cover tenants in the development.** Most living wage policies that cover subsidy recipients cover only the entity that actually receives the subsidy and that entity's service contractors. In a typical non-manufacturing or non-headquarters project, that means coverage is limited to the developer and the developer's contractors, such as janitorial, security, and parking companies. Tenants like large stores that lease space from a developer are considered

RESOURCES ON LIVING WAGE PROGRAMS AND THE LIVING WAGE MOVEMENT

- Economic Policy Institute, Living Wage Issue Guide, www.epinet.org
- LAANE, Living Wage Technical Assistance Project, www.LAANE.org
- ACORN, Living Wage Resource Center, www.livingwagecampaign.org
- Policy Link, Equitable Development Toolkit, www.policylink.org
- NOT the employer-funded Employment Policies Institute's anti-living-wage sites, www.livingwage.org and www.livingwage.com

"indirect beneficiaries," and are not covered. While coverage of the developer and its contractors can turn substantial numbers of jobs into living wage jobs, in the typical development project most of the employment is going to be by tenants of the developer. Review local living wage laws carefully to determine the scope of coverage with regard to indirect beneficiaries of subsidies.

Occasionally there are development projects for which most of the employment is by the entity receiving the public subsidy. For example, some big-box stores will purchase land from a redevelopment agency, and then build and open a store there. In such cases this type of living wage policy will apply, and community groups can concentrate on other issues. This distinction underscores the need for community groups to research and understand the precise nature of the proposed development scheme and public subsidy.

- **The local living wage policy simply covers government contractors.** Many cities have living wage policies that apply only to businesses receiving city contracts. These policies will not apply to development projects except in very unusual cases. They can, however, support arguments for a living wage on a particular project: once a city has decided that living wages should be paid when it spends money through contracts, requiring living wages when it spends money through development subsidies is a logical next step.

Living Wage Negotiations When There is No Local Living Wage Policy

When the local government does not have a living wage policy applicable to all or part of a proposed development, community groups can still advocate for living wages as part of a CBA for the project. When a proposed development project will create a large number of jobs—and particularly when a project is being promoted based on the new employment opportunities—community representatives should always consider pressing for living wage requirements. Indeed, the wage levels of jobs that come into a community will often be the issue that motivates community groups to seek a CBA in the first place.

Payment of living wages by the developer and its contractors

Community groups in CBA negotiations may convince the developer to pay living wages to its employees on the project. Although the developer may have very few employees (such as property management office staffers), this commitment has symbolic importance, as the developer is receiving a public subsidy.

Besides tenants, the developer also has control over its relationships with contractors that will create permanent jobs at the site, such as custodial contractors and security contractors. The developer may agree to require such contractors to pay living wages to their employees. Because the total amount of money involved is not great and such services are competitive, the developer may well be open to this idea. This can provide a concrete benefit to many low-wage workers involved with the project.

A Tougher Issue: Payment of Living Wages By Tenants

When community groups ask for the application of living wage requirements to a development's tenants—such as large retail stores and hotels—negotiations over living wages often break down. Take a typical retail development project, where the developer plans to buy land, build a structure, and lease space to several retailers. Community groups will naturally focus their living wage efforts on the retail tenants' employees, since these tenants will provide the vast majority of the pro-

WHAT ABOUT WAGES FOR CONSTRUCTION OF THE DEVELOPMENT?

Wages are often an issue with regard to construction jobs. Although some publicly-subsidized projects are subject to the federal "Davis-Bacon" law or similar state laws requiring that construction workers be paid the "prevailing wage" for the area, many are not.

In such cases, building trades can become part of coalitions negotiating CBAs to help advocate on other issues. In addition to wage issues, the local building trades council may be advocating for a project labor agreement for a certain development, or may have other concerns related to the project. Bringing building trades into a coalition advocating for a range of issues can increase leverage for both. Please see the box in the Conclusion on the Park East Redevelopment Compact for a good example of this. A box in Chapter Seven contains more information on employment and contracting issues regarding construction jobs, and resources on labor-community partnerships in the construction industry.

ject's permanent jobs—and retail jobs are notorious for providing low pay, part-time hours, and no health benefits.

However, since CBA negotiations generally occur prior to the developer's acquisition of the land, this issue will have to be resolved before the developer lines up its tenants. If the developer has yet to recruit and negotiate with potential tenants, it will be very reluctant to agree to require tenants to pay living wages. Some potential tenants may refuse to lease space under such a requirement, or they may demand lower rent as compensation. These plausible scenarios are a serious concern for the developer, as rent payments are the developer's regular income from the project.

These risks are hard for the developer to quantify, and they directly affect the developer's bottom line for the project. For these reasons, developers may strongly resist application of living wage requirements to tenants. Nonetheless, community groups should push hard on this issue, as wage levels go to the basic economic benefit the project will provide.

The arguments for applying living wages to tenants are strong. A development project in a low-income community cannot provide an economic boost to that community if workers land in poverty-wage jobs without health benefits, leaving families dependent on government assistance for basic necessities such as health care, housing, and transportation.

In addition, retail tenants in a subsidized development project benefit from the public subsidy just as the developer does. The development would not exist without the public subsidies, leaving the tenants to scramble for an unsubsidized private location. Those who will make the most money from the project—developers and retail tenants—should share whatever added costs a living wage requirement creates. The purpose of an economic development subsidy is not to create poverty-level jobs. It is to build an economic base in the community, and jobs with poverty-level wages don't do that.

In addition, there is substantial evidence that the costs to employers of paying living wages are much less than one might suspect. Companies that

ARE LIVING WAGE REQUIREMENTS LEGAL?

Employers naturally resist any required increase in the wages they must pay. This resistance has on occasion taken the form of lawsuits challenging living wage policies enacted by various cities. Such challenges have rarely been successful. It would be very surprising if living wage laws were found to violate any aspect of federal law. A small number of states have enacted laws prohibiting cities from enacting living wage laws. Although other states' laws vary, living wage laws that are limited to contract and subsidy recipients appear to be on safe ground.

Living wage requirements agreed to by developers in negotiations with community groups are even safer. Where the requirements are simply part of a contract between private parties—like a CBA—it would be difficult for employers to challenge them. Any employer who dislikes a project's living wage requirements is free to refrain from leasing space in the project. In such circumstances, it would be very hard to successfully challenge a CBA-based living wage requirement.

pay higher wages have lower employee turnover, which increases productivity and reduces training and recruitment costs. One study found that employers' costs from turnover are at least 150% of the employees' base salary.[4] In addition, some costs of higher wages are either absorbed by the employer or passed on to consumers. In general, studies find that the overall cost to employers of paying a living wage is minimal.[5]

Even if none of these offsetting cost factors occurred, the employer's expense from paying a living wage is far from overwhelming. A large retail store that employs 20 full-time workers, if required to raise wages $2 per hour, would incur only $83,200 per year in increased wage costs[6]—hardly a backbreaking figure for a store large enough to have 20 full-time employees, and likely grossing millions of dollars per year in sales. Asking the developer and the tenants to share this cost—after both have benefitted from public subsidies that may run to the tens of millions of dollars—is a reasonable step to ensure that the jobs created are jobs worth having.

What to Do If The Developer Won't Agree to Require Tenants To Pay Living Wages

Community groups may find that a developer simply will not agree to impose living wage requirements on prospective tenants, no matter how hard the issue is pressed. At that point, community groups must decide if this issue is a "deal-breaker"— meaning that they will pull out of CBA negotiations and oppose the project altogether.

If community groups don't want to go that route, either because they still support the project or because they believe that the project is likely to go forward anyway, there are several compromises they can propose. These approaches fall short of a strict living wage requirement on all tenants, but

4 Bliss and Associates and Gately Consulting, 1999, www.laborstudies.wayne.edu/report.pdf.
5 See, e.g., Center for Urban Studies and Labor Studies Center, 1999 report on impact of Detroit living wage ordinance, www.laborstudies.wayne.edu/report.pdf.
6 Two dollars per hour times 20 workers times 40 hours per week times 52 weeks per year equals $83,200.

they may nonetheless increase wage levels in the project, especially if used in combination.

- **Wage & benefit disclosure requirements for the developer and tenants.** CBAs can require the developer and tenants to provide annual or biannual reports on wages paid at the development, and the percentage of jobs for which benefits are provided.
- **Meeting requirements for the developer and tenants.** CBAs can require the developer to meet with community groups

EXAMPLE: LIVING WAGES FOR THE NOHO COMMONS REDEVELOPMENT PROJECT

Attached as Appendix F is the living wage section of the community benefits agreement for the "NoHo Commons" redevelopment project, to be built in North Hollywood, a low-income area of Los Angeles. The 16.7-acre development project includes residential, retail, and office space and will receive over $31 million in public subsidies and loans. The CBA was signed in 2001 by the developer and by the Valley Jobs Coalition, a coalition of community groups spearheaded during negotiations by LAANE.

The living wage provisions for this project reflect what will likely be a common scenario: the developer was unwilling to agree to apply living wage requirements to all tenants, but was willing to commit to attaining living wages for 75% of the project's jobs, and to making other efforts to maximize living wage participation in the project:

- employees of the developer will be paid a living wage;
- employees of the developer's contractors will be paid a living wage;
- the developer will "make all reasonable efforts to maximize the number of living wage jobs" in the development;
- in choosing between prospective tenants, the developer will "take into account as a substantial factor each prospective Tenant's potential impact" on the living wage threshold;
- the developer and prospective tenants will meet with the coalition to discuss each prospective tenant's impact on the living wage threshold;
- the developer will provide biannual reports regarding wage levels; and
- tenants will provide the developer with their wage levels.

If despite these steps the 75% threshold is not met for any two-year period, the developer agreed to pay a $10,000 penalty and to meet with the coalition to develop additional steps to reach the living wage threshold.

Living wage levels in the NoHo Commons policy are tied to Los Angeles' living wage ordinance. There are different approaches to setting "living wage" levels; Policy Link's "Equitable Development Toolkit" explains several methods (see "Resources" box above). The project's living wage threshold formula exempts businesses with fewer than 10 employees and jobs covered by a collective bargaining agreement.

to discuss wage levels of major tenants, prior to leases being signed. CBAs can also require prospective tenants to attend such meetings so that they can provide information on likely wage levels, get informed about the project's living wage goal (if any), and learn of any programs designed to assist employers in paying living wages or providing benefits.

- **Living wage goals.** Even if a developer will not guarantee that all jobs at a development will be living wage jobs, it may commit to making efforts to maximize the number of living wage jobs. The developer might be required to "make all reasonable efforts to maximize the number of living wage jobs in the project," or to consider whether a business pays living wages as a "substantial factor" in choosing tenants. Several CBAs include living wage goals of 70 or 75%. Whether a project has attained the living wage goal can be monitored through required reports and meetings.

What happens if a living wage goal is not met?

Different CBAs have approached this issue in different ways. Some have required the developer to pay a monetary penalty; such a penalty must be substantial enough that it provides a real incentive for developers to achieve the goal. Alternatively, a CBA can require the developer to provide public explanations for failing to meet the goal, explain in a public forum how it intends to meet the goal, or collaborate with the local government and community groups on efforts to increase the project's wage levels.

Some experienced advocates believe that the simple public act of announcing a living wage goal for a project places substantial pressure on developers who care about their reputation with the local government and the community. Increased public scrutiny and media attention may thus be the best way to induce a project to meet its living wage goal.

Exhibit A - Community Benefits Agreements handbook

Chapter Five

Targeted Hiring Programs as Part of CBAs

For many development projects, the developer's primary selling point is jobs. However, promises of new jobs for the neighborhood often go unfulfilled. The simple fact that a project employs a certain number of people does not necessarily mean the employment needs of the local community are being addressed.

The new jobs may be filled by individuals who live in other areas, or who have simply been transferred from the employer's other locations. Lots of factors influence who hears about available jobs, who gets interviewed for such jobs, and who is eventually hired. Even if the hiring process does work well for the local community, many unemployed individuals may need job training in order to become qualified for the new positions.

CBAs can assist with all these problems by incorporating *targeted hiring programs*—requirements that employers in a development make special efforts to hire certain individuals, sometimes with the assistance of local job training programs or a "first source" office. Targeted hiring programs can help development projects fulfill what is often their most fundamental purpose—building an economic base in low-income communities.

In addition to incorporating hiring requirements for employers, CBAs can require developers to provide space or funding for a First Source office. A First Source office, if adequately funded, can be a powerful tool for targeting employment opportunities in socially beneficial ways. Community groups have regularly incorporated targeted hiring requirements into CBAs.

The Case for Targeted Hiring

Targeted hiring policies advance what is often the main function of development project: to help a depressed area by increasing economic opportu-

nities there. This is often the main purpose cited to justify a development's public subsidy.

This purpose is a valid one. Few would argue that a lack of economic opportunities does not have weighty consequences for a community. Geographically concentrated poverty causes particularly acute social conflicts. As employment levels in a neighborhood drop, the need for social services rises—just as a low-income neighborhood is contributing less to the municipal tax base, and suffering from a corresponding lack of political power. Neighborhoods lacking a solid base of family incomes cannot sustain themselves.

Targeted hiring policies are a concrete mechanism to break down employment patterns that exacerbate these problems. While urban neighborhoods decline due to a complex web of larger societal forces—including suburban sprawl, the decline in manufacturing jobs, and a decline in real wages—targeted hiring policies can help government take small but real steps to help the economies of neighborhoods hit hardest by these social trends.

In addition, targeted hiring policies often benefit communities where residents are predominantly people of color. Local governments and community groups can thus further the important social goals of affirmative action without the political and legal difficulties that sometimes come with an explicitly race-conscious policy.

Some people are especially deserving of targeted hiring programs. For example, targeting jobs to workers whose jobs were displaced by a development is obviously fair. Such individuals pay a heavy price when a development project moves forward, and efforts to provide them with job opportunities—usually many months after their previous job ended—seem like small compensation. Some states, including California, require steps to provide opportunities to displaced workers.

Targeting jobs to residents of the neighborhood of the development is also compelling. Anytime a development project is built in a low-income neighborhood, residents of the neighborhood are urged to support the project based on promises of job opportunities the project will provide. It is only fair to require that projects promoted on that basis include some mechanism to ensure that local people actually get some of the jobs. In addition, neighborhood residents will bear most of the negative impacts of the development, such as increased traffic, parking problems, months of heavy construction, the possibility of increased housing costs, and other economic and environmental impacts. Those costs should be balanced with the benefits of economic opportunities. (For these reasons, HUD's "Section Three" program requires that, for all HUD-assisted projects, economic opportunities such as job openings be directed to neighborhood residents "to the greatest extent feasible.")

Combine all these arguments with the simple fact that most development projects explicitly promise jobs for local residents, and you have a powerful case for a CBA that includes some kind of targeted hiring mechanism. Developers and local governments dangling the prospect of local jobs should be willing to take concrete steps to make their promises a reality.

Target Populations

Individuals benefitting from a targeted hiring policy might include:

- individuals whose jobs are displaced by the development;
- residents of the neighborhood immediately surrounding the development;
- residents of low-income neighborhoods anywhere in the metropolitan area;
- individuals referred by local, community-based job training organizations;

- low-income individuals generally; or
- "special needs" individuals, such as public assistance recipients or ex-offenders.

Community groups can select one set of individuals on which they would like the program to focus, or they can develop a tiered system with first, second, and perhaps third priorities for available jobs. There is plenty of room for creativity here: communities may want to include other categories of individuals, such as those graduating from community-based job training programs. As long as there is an appropriate public purpose, targeted hiring is legitimate.

EXAMPLE: TARGETED HIRING IN THE LAX CBA

The LAX CBA's targeted hiring program targets job opportunities to a range of "Special Needs Individuals," including:

> (i) an individual who has received public assistance through the Temporary Assistance for Needy Families Program within 24 months of applying for a job or job training through this program; (ii) an individual who is homeless; (iii) an ex-offender; (iv) an individual who is chronically unemployed; or (v) a dislocated airport worker.

The LAX CBA is described in detail in Chapter One.

Referral and Hiring Processes

Once a targeted hiring program's priorities are set, there are many ways to administer it. Following are some options on how referral and hiring processes can be structured, from simple to more complex:

- Tell the employers what the hiring priorities are, and leave it up to them to recruit and hire targeted individuals. While this approach leaves the employers with wide discretion regarding their hiring methods, results can still be monitored, and enforcement provisions can still be strong.
- Require employers to give notice of job openings in certain ways—mailings to targeted neighborhoods, advertisements in community newspapers, notification to job training centers, etc.
- Require employers to hold jobs open for a certain period of time after notification, and to only interview targeted individuals during that period.
- First Source—Require employers to interview people referred by certain sources, such as particular job training centers or a First Source office.

These methods can be combined or tailored to the needs and capacities of any community. Any of these methods can be combined with percentage goals for hiring targeted individuals.

It is important that the administrative requirements of a targeted hiring program do not exceed the capacity of community resources. If a targeted hiring program's responsibilities exceed local capacity, the program will place few needy workers in the new jobs. It will also become a useless hurdle for employers trying to fill jobs, and could sour the neighborhood against such programs. But a targeted hiring program that runs smoothly will bring jobs to the intended individuals, benefit employers by providing a free source of qualified applicants, and cement relations between the development and the surrounding community.

Community groups should therefore make a realistic assessment of the number and sophistication of job training organizations in the area before

negotiating a program that relies on them for prompt referrals of qualified individuals. Similarly, before setting up a system that relies on a first source office for referrals, community groups should ensure that the office will have adequate funding and staffing.

First Source Programs

The most elaborate type of targeted hiring program is one that requires employers to interview applicants referred by a "first source" office before interviewing other applicants. A first source office receives notice of job openings from employers, maintains contact with a variety of job training organizations to access their pools of applicants, and promptly refers qualified workers to employers.

If adequately staffed and funded, a first source office can provide tremendous benefits. It can benefit employers by enabling them to access a variety of sources of applicants through a single job notice. It can benefit job training organizations and targeted individuals by giving them reliable access to information about job openings. It can help the targeted hiring program meet its goals. And it can dramatically simplify monitoring of the program, since all aspects of the program are centralized.

These responsibilities place tremendous pressure on a first source office; how the office functions will determine the success or failure of the program. A first source office that promptly refers qualified applicants will be seen as a benefit to employers, and can be a powerful tool for targeted employment. Conversely, a first source office that delays employers' efforts to fill jobs, or sends unqualified applicants, will not succeed.

If there is any doubt about the adequacy of resources for a first source office, we recommend that programs instead require employers to work directly with existing job training centers. However, a CBA can certainly require a developer to provide money and/or space for a first source office, and local governments can support first source offices as well.

Because of the risk of inadequate resources, first source offices make the most sense in large communities, where there are many established job training centers, and adequate resources are available. The City of San Francisco has a well-established first source program. The office maintains a master list of applicants from over forty job training centers, and has the capacity to promptly refer qualified applicants for available jobs. It processes hundreds of referrals per year, and keeps track of whether individuals referred were actually hired. The first source office is part of the San Francisco city government, and works with employers on every project covered by the citywide first source policy.[7] Many other cities have first source offices as well, with varying degrees of sophistication and involvement.[8]

Monitoring and Enforcement

The most common complaint from community groups regarding targeted hiring programs is a lack of enforcement. Indeed, many localities have first source or local hiring programs that lack any monitoring or enforcement provisions whatsoever. While the primary factor in the success of a first source program is likely to be whether the first source office and the job training organizations can promptly provide qualified applicants, the importance of monitoring and enforcing the program cannot be discounted.

7 See "First in Line: An Evaluation of San Francisco's First Source Hiring Program," San Francisco Urban Institute, August 2004 (www.picsf.org/documents/documents.htm).
8 See "Adopting A Waterbury Local Hiring Preference Ordinance: An Analysis of the Legal & Policy Options," National Employment Law Project, August 2000 (www.nelp.org/relatedPublications.cfm?section=%5Cwlwp); Frieda Molina, "Making Connections: A Study of Employment Linkage Programs," Center for Community Change, May 1998; Stephanie Haffner, "Using Local Hiring Programs to Promote Employment Opportunities in Low-Income Communities: Examples and Practical Considerations," National Economic Development & Law Center, 1995.

The most basic decision about enforcement is, of course, who will do the enforcing. If the program involves a first source office, that office would seem an obvious choice to monitor and enforce the program. However, the first source office needs to have a good relationship with employers in order to do its job, and the inherent tensions of the enforcement process can impede this relationship. While the first source system will be a crucial source of information regarding employers' compliance, actual enforcement responsibilities should lie with community groups signing the CBA, and with the local government if targeted hiring requirements are included in a development agreement. (Please see Chapter Eight for more information on monitoring and enforcing CBA benefits.)

Percentage Goals

If a program incorporates percentage goals, these become a central aspect of the enforcement system. Goals can be used many different ways:

- The percentage goal can be considered a "safe harbor," so that if an employer has met the percentage goal, it is considered to be in compliance with the program, and no enforcement action can be taken.
- Employers that meet the goal can be presumed to be in compliance with the program—but the enforcement body is empowered to find otherwise.
- Failure to meet the goal can automatically trigger additional requirements for the employer, such as a responsibility to explain in writing the reasons for certain hiring decisions.

However goals are used, they should give employers a strong incentive to meet them. The best approach is probably one that employs both the "carrot" and the "stick." While there are many models for the "stick," community groups should be creative in developing "carrots," or ways to reward employers who meet their targeted hiring goals.

Monitoring Hiring Patterns

The most difficult thing about enforcing a targeted hiring program is obtaining information from employers in enough detail to make enforcement possible. Various factors make employers reluctant to give out information about how they made their hiring decisions. Employers are used to their hiring processes being confidential, reasons for their decisions are often subjective, and hiring decisions are among the most important decisions an employer has to make.

Nonetheless, an employer who agrees to comply with a targeted hiring program—in exchange for participating in a subsidized development project—must also agree to some mechanism for determining whether the program is being followed. Central to any monitoring system is a reporting requirement. Employers should be required to file periodic reports on the percentages of their hires that are targeted individuals, and should be required to describe any difficulties they have had in complying with the program.

Beyond the reporting requirements, how elaborate a monitoring system needs to be will depend on the scope of the program itself. If the program merely places procedural requirements on employers, such as providing notice of available jobs, then monitoring may be quite straightforward.

If the program includes percentage goals for hiring targeted individuals, however, monitoring can become much more complicated. Employers will certainly need to report on the percentage of their hires that were targeted individuals; if an employer falls short of the percentage goal, then compliance will probably depend on whether the employer has made "good faith efforts" to hire targeted individuals. This can be a hard question to answer, and it may involve scrutiny of the cri-

teria the employer used in hiring decisions—a very sensitive area.

Whatever the particulars of a program and an enforcement mechanism, any targeted hiring program needs the following to be enforceable:

- it should spell out cleaz
- it should indicate who will monitor the program and describe how it will be enforced.

If a program runs smoothly, enforcement provisions will rarely come into play.

Legal Issues

Targeted hiring programs need to be carefully crafted to avoid legal pitfalls. Because there are many laws governing the hiring process, these programs can be somewhat tricky from a legal perspective. While it is impossible to completely insulate any program from legal risk, a carefully constructed targeted hiring program should be upheld in the unlikely event of a legal challenge. Community groups should be sure to consult an attorney when designing targeted hiring programs.

Following are some legal issues that require care:

- **Neighborhood Specificity:** Programs that give preference to residents of one neighborhood over another can sometimes implicate constitutional provisions that protect individuals' "fundamental right" to practice their trade. This is only likely to become an issue (1) when employers could recruit applicants from more than one state, and (2) when the program is incorporated into a development agreement. In such cases, the best defense against this potential problem is to make sure that the program is carefully and narrowly designed to address poverty or economic distress in a particular neighborhood, with detailed findings regarding the need for such measures. The more closely the program is tailored to this accepted governmental role, the more likely it is to withstand any legal challenge. This is an instance where the legal requirements line up nicely with the social goals.
- **Deal vs. Regulation:** A targeted hiring program is also more legally defensible when its application is limited to employ-

EXAMPLE: TARGETED HIRING FROM THE STAPLES PROJECT

Attached as Appendix D is the CBA for the Staples project, described above. The First Source Hiring Policy, applicable to all employers in the development, is an attachment to the CBA, and will be included in tenant leases. This policy targets three tiers of individuals for employment opportunities: individuals whose residence or job is displaced by any phase of the development, low-income individuals living near the development, and low-income individuals living in low-income census tracts throughout Los Angeles. For initial hiring, employers are required to hold jobs open for three weeks while they interview only targeted individuals. For later hiring this period is shortened to five days. Employers who comply with the various hiring procedures or who have filled more than 50% of jobs with targeted individuals are presumed to be in compliance with the policy. The policy also contains detailed reporting requirements.

ers who have *clearly benefitted* from the public subsidy to the development. The more the program looks like part of a "deal" between consenting parties—and the less it looks like government regulation of unconsenting businesses—the better its chances of being upheld. Targeted hiring programs should be designed so that employers receive notice of the requirements before they commit to a place in the development. Employers who receive such notice and choose to sign a lease cannot claim to be unfairly regulated.

- **Race and Gender:** Any targeted hiring program that incorporates race- or gender-based criteria into any aspect of its administration is open to legal challenge. Such programs are legal in certain circumstances, but require very strong and detailed justification if the program becomes part of a development agreement. CBAs that will not become part of development agreements, and are simply between two private parties, have more leeway, although even in that case there are limitations.
- **Employer Court Orders:** Some large employers are under court orders regarding their hiring procedures. Court-ordered procedures usually will not conflict with targeted hiring programs; an employer may nonetheless point to a court order as a justification for exemption from the targeted hiring program. Unless there is an irreconcilable conflict between the court order and the program, there is no reason to exempt such employers.
- **Collective Bargaining Agreements:** Targeted hiring programs may conflict with collective bargaining agreements in the construction industry. If community groups want to apply targeted hiring requirements to construction jobs, they should work with representatives of the local building trade unions to try to design a policy that furthers the goals of targeted hiring, while also fitting with the complex systems governing hiring in the construction industry. It will almost always make sense to have targeted hiring policies that work differently for construction than for other industries. Collective bargaining agreements in retail, service, and manufacturing generally do not conflict with targeted hiring requirements.

Exhibit A - Community Benefits Agreements handbook

Chapter Six

Addressing Environmental Issues Through CBAs

The fear of environmental impacts is often what ignites community organizing around a project. Residents may be concerned about anything from the project's visual appearance, to new parking and traffic problems, to toxic emissions generated by industrial projects. CBAs can also require a developer to reduce the negative environmental impacts of a project, or to provide affirmative environmental benefits like parks, open space, and recreational facilities.

The CBA negotiation process is an effective mechanism for communities to negotiate for environmental benefits and mitigations beyond those required by law. CBAs can also allow community groups to step in when government enforcement is lax, supplementing the always-important process of working with the government to ensure enforcement of environmental laws.

The LAX CBA, described in detail in Chapter One, provides a wide range of environmental mitigations and benefits. Concern about environmental impacts of airport operations was the driving force that led the community to press for a CBA. Environmental benefits obtained include:

- retrofitting diesel construction vehicles and ground service equipment, curbing dangerous air pollutants by up to 90%;
- a five-year program for converting trucks, shuttles, passenger vans, and buses serving the airport to alternative fuels or less-polluting vehicles;
- limits on diesel idling of all vehicles at the airport;
- electrifying airplane gates, hangars, and cargo operations areas, to minimize pollution from jet engine idling;
- funds for a comprehensive air quality study;

- funds for a study of "upper respiratory system and hearing loss impacts of LAX operations";
- funds for community-based research studies on the broad health impacts of airport operations;
- millions of dollars for soundproofing nearby schools and residences;
- designated routes for construction traffic; and
- a commitment from the airport to apply to the FAA for permission to restrict nighttime flights over adjacent neighborhoods.

The language for these benefits is set out in the LAX CBA, available online at www.laane.org/lax/index.html.

Mitigations: Reducing the Environmental Impacts of the Development

CBA negotiations on environmental benefits take place against the complex backdrop of environmental law. Federal, state, and local laws contain detailed requirements pertaining to environmental issues—zoning and planning measures, impact disclosure requirements, restrictions on toxic emissions, and so forth. Such laws may regulate everything from the basic uses that are

EXAMPLE: GATE ELECTRIFICATION REQUIREMENTS IN THE LAX CBA

When aircraft pull up to a gate, they need electrical power during periods of loading and unloading passengers, cleaning, maintenance, and so forth. One would think that planes would hook into electrical power provided by the terminal, but they instead run their own engines or diesel-powered auxiliary units to generate power. Burning jet fuel or diesel fuel when there is a clean source of electricity only a few feet away is an obvious waste, with major environmental impacts that are easily avoidable. (Diesel fuel generates huge amounts of smog and other pollutants; the California Scientific Review Panel on Toxic Air Contaminants estimates that 16,000 Californians will develop lung cancer due to exposure to diesel fumes.)

Despite this situation, LAX has never moved aggressively to equip its gates to provide electricity to aircraft. A majority of LAX's gates are not electrified. This is a plain case where the real stakeholders—community members who breathe the air near LAX—had no ability to influence the decisionmakers, and this problem languished for years. People affected by this aspect of airline operations simply had no effective means of pressing LAX to make this simple equipment change—until the CBA negotiations.

By making this issue a priority in their CBA negotiations, the LAX Coalition for Economic, Environmental, and Educational Justice obtained significant commitments from the airport. The airport agreed to an aggressive schedule of gate electrification, with all gates at the airport fully electrified within five years. The airport also agreed to require that all aircraft actually use the gate-provided electricity, rather than running their engines. The CBA contains similar provisions for electrification of cargo operations areas and hangars. These commitments should ensure a substantial and long-overdue reduction in harmful emissions from the airport, leading to cleaner air for adjacent communities.

permitted on a piece of land to the size and appearance of exterior signs. Virtually every impact of a development may be regulated to some degree: both the obvious environmental impacts like pollution and handling of hazardous wastes, and the less obvious ones like traffic patterns, visual appearance, wind tunnels, and storm water drainage.

Environmental laws may prohibit a specific environmental impact, may require that it be mitigated, may require that it merely be disclosed, or may ignore it altogether. Community groups need to work closely with experienced attorneys to determine what laws govern a proposed project.

Once they understand the backdrop of environmental laws pertaining to a project, community groups can use CBAs:

- to strengthen existing environmental requirements;
- to address environmental impacts that existing laws don't cover; and
- to provide more enforcement options by enabling direct, private enforcement of environmental requirements.

One important step: whenever plans for a project contain an environmental impact statement or a related document requiring the developer to take mitigation measures, community groups should try to incorporate the document by reference into the CBA—ensuring that all mitigation requirements are enforceable by affected community members.

Requiring Environmental Benefits

In addition to helping reduce environmental problems, the CBA process can help communities obtain affirmative environmental benefits as well. The larger the proposed development, the greater the public benefits that ought to be provided: open space, public plazas, and money for park and recreation facilities are all amenities that a developer can provide. Communities should think creatively about their needs—and should keep in mind the size of a project's public subsidy when doing so.

Environmental Racism

The history of placement of polluting industries in minority neighborhoods is long, well-documented, and tragic. A detailed discussion of the

EXAMPLE: COMMUNITY ENFORCEMENT OF REQUIRED MITIGATIONS IN THE SUNQUEST PROJECT.

The CBA for the SunQuest project, described in Appendix B, incorporates the project's "mitigated negative declaration." Under California law, a developer must file an environmental impact report unless the proposed project will have no significant impact on the environment. If mitigations are necessary in order to avoid environmental impacts, the developer files a mitigated negative declaration, outlining the required measures.

This important document can be hundreds of pages long, and can contain crucial environmental requirements for the project. These requirements are enforceable by the local agency overseeing the project. By incorporating the mitigated negative declaration into the CBA, the Valley Jobs Coalition made them enforceable by the community groups as well, greatly strengthening the community's hand in addressing environmental issues.

issue of environmental racism is outside the scope of this handbook. Suffice it to say that in a great many instances, community groups will organize to block the establishment or expansion of a polluting or hazardous facility in their community. CBA negotiations are only appropriate with regard to such facilities when the community is comfortable with the project's proposed location—or would be if the developer takes certain mitigation measures.

Pollutants and Hazardous Wastes

In general, industrial development projects that raise issues of toxic discharges, regulated pollutants, hazardous materials, and the like will be subject to detailed strictures under federal and state law. However, the existence of such laws is no substitute for an active, engaged community. Enforcement of these environmental regulations is often spotty, and the consequences of unsafe industrial practices can be devastating for surrounding communities. Community groups that have reason to believe that a proposed development will involve pollution or hazardous materials should obtain advice from organizations with experience in this complex area. Please see box on "Good Neighbor Agreements" for resources on community-company agreements related to pollution and similar issues.

EXAMPLE: PARKS AND OPEN SPACE REQUIREMENTS FOR THE STAPLES PROJECT

The Staples project, described in Chapter One, will be built in the "Figueroa Corridor" neighborhood adjoining downtown Los Angeles. Community groups in the Figueroa Corridor had long noted they had very little park space. In fact, the area contained only one quarter of the park space deemed necessary by the city, given the area's residential density.

In light of this deficit in park space, the scale of the Staples development, and the potential size of the public subsidy, community groups made an increase in neighborhood park space a priority. The Staples CBA, attached in its entirety as Appendix D, reflects this decision.

Section III of the CBA sets out the framework for assessing the community's needs for parks, open space, and recreational facilities. Hundreds of local residents participated in a needs assessment process paid for by the developer, guiding the one-million-dollar expenditure required by the CBA for park & recreation facilities. The CBA required the developer is required to fund at least $1 million worth of new parks and recreation facilities, built within one mile of the project and consistent with the results of the needs assessment. Out of the needs assessment came agreement that the developer would provide $500,000 for a family recreation center, free to area residents; and approximately $500,000 for rehabilitation of a local park. Both of these facilities are scheduled to begin construction in Summer 2005.

In addition to these new park and recreation facilities, the Staples CBA requires the developer to include in the project itself "a street-level plaza of approximately one acre in size and open to the public." The newly constructed parks and this public plaza should provide a concrete benefit to the community surrounding the Staples project, and one closely tailored to the particular needs of the Figueroa Corridor community.

Brownfields

Brownfields are abandoned or under-used properties where development is complicated by actual or perceived problems of environmental contamination. Many urban spaces that would be prime candidates for beneficial redevelopment remain unused because developers are wary of taking on unknown cleanup costs.

The brownfields movement attempts to address this problem through a variety of public/private partnerships. These have often been innovative and effective. Brownfields initiatives have incorporated job training and other community development programs, as well as greenspace protection and other environmentally friendly policies. When there are concerns regarding environmental contamination at a potential development site, community groups should be aware of brownfields programs and the potential they offer.

The web site of the U.S. Environmental Protection Agency provides information about its many brownfields programs. (www.epa.gov/swerosps/bf/index.html). The Northeast Midwest Institute links to many different resources on brownfields. (www.nemw.org/reports.htm#brownfields).

GOOD NEIGHBOR AGREEMENTS

Over the last 25 years, many communities have signed enforceable "Good Neighbor Agreements" with companies operating industrial facilities. Good Neighbor Agreements most often focus on pollution control measures such as facility inspections, accident preparedness plans, and toxic emissions. They sometimes incorporate a broader range of community benefits, such as local hiring, union representation issues, and infrastructure improvements.

When legally enforceable, Good Neighbor Agreements are similar in concept to the CBAs discussed in this handbook. Good Neighbor Agreements are distinguishable in that (1) they generally emphasize control of pollution, toxins, and hazardous materials at industrial facilities, and (2) they are often negotiated with regard to existing facilities rather than proposed new developments. Most legal and practical concepts applicable to Good Neighbor Agreements are applicable to CBAs as well, and vice versa.

The Good Neighbor Project provides extensive information and resources on Good Neighbor Agreements. (Contact: Sanford Lewis, 160 Second Street, Cambridge, MA 02142;(617) 354-1030).) An excellent overview of Good Neighbor Agreements is the article, "Good Neighbor Agreements: A Tool For Environmental and Social Justice," by Sanford Lewis, Esq., and Diane Henkels, in Social Justice, Volume 23, Number 4. (available online at www.cpn.org/topics/environment/goodneighbor.html).

Exhibit A - Community Benefits Agreements handbook

Chapter Seven

Other Community Benefits as Part of CBAs

One of the advantages of CBAs is their flexibility: community advocates can negotiate for whatever benefits their particular community needs the most. In fact, when community groups come together over a proposed development, it is an excellent occasion to assess the community's needs. This assessment—and the coalition-building that can accompany it—can spark organizing and advocacy that goes well beyond any single campaign.

Previous chapters have described the most common benefits that many communities have in fact negotiated. This chapter describes other community benefits that can also be included in a CBA. Some of these benefits have already been won by community groups, while others are strong candidates for future campaigns. Advocates should be thorough and inclusive in assessing their community's needs, and creative in developing new ideas.

Job Training

CBAs offer an excellent opportunity to tailor job training to the needs of employers in a development, and to increase training options for neighborhood residents. CBAs can require employers to provide long-range information about training needs. Local job training organizations can then tailor their programs to fit those needs. This strategy fits very well with a first source program, which can refer the trained employees to the employers who had requested the training. This "customized job training" can be a selling point for tenants in the project, and helps blunt the argument that first source requirements drive up costs for tenants.

CBAs can also require the developer to provide direct support for job training efforts. The LAX CBA includes a commitment from the airport to

provide $15 million for job training. These funds will be administered through the Los Angeles Community Development Department and the local Workforce Investment Board. Funds will be predominantly used for job training for:

- Low-Income Individuals living in the Project Impact Area for at least one year;
- Special Needs Individuals;
- Low-Income Individuals residing in the City;
- Individuals currently working in Airport Jobs or Aviation-Related Jobs and eligible for incumbent worker training.

"Low-Income Individuals" are those whose household income is no greater than 80% of the median income, adjusted for household size, for the Primary Metropolitan Statistical Area. "Special Needs Individuals" include individuals who have received public assistance through the Temporary Assistance for Needy Families Program within the last 24 months, who are homeless, who are ex-offenders, who are chronically unemployed, and dislocated airport workers. "Airport Jobs" and "Aviation-Related Jobs" are defined in the CBA.

CBAs can also require the developer to provide space or seed money for establishment of a new job training program. This approach was used in the NoHo Commons redevelopment project, described in Chapter Four. The NoHo Commons CBA required the developer to provide $10,000 as seed money for a new job training program for day laborers, with the program to be operated by a local nonprofit. Service providers and advocates can use such funds as leverage to raise money from other public and private sources for job training.

Right-to-Organize Commitments

Labor unions and many community groups will place a high priority on obtaining "right-to-organize" commitments from employers in new developments. Such commitments include "card check" agreements, which greatly simplify the process of determining whether employees in a particular workplace wish to unionize, and "neutrality" agreements, which ensure that employers will not use their power over employees to dissuade them from forming a union. Without such commitments, it is very easy for determined employers to impede unionization efforts.

While advocacy for the right to organize fits naturally with advocacy for other community benefits, resulting commitments usually should not be incorporated into CBAs. This is because CBAs should become part of the developer's agreement with the local government, and federal law prohibits some types of local government involvement in collective bargaining issues. While there are some circumstances where right-to-organize commitments may be included in development agreements, the legal complexities argue for a cautious approach. (We strongly advise that you check with an experienced attorney on this issue, as this area of law is complicated and changing.) While the campaign for right-to-organize commitments can be integrated with the campaign for other community benefits, memorializing the right-to-organize commitments in a separate document may avoid some legal pitfalls.

These concerns should not impede aggressive advocacy on this issue, however: union jobs are generally good jobs, where workers have a range of benefits and protections for which they would not otherwise be eligible. Right-to-organize commitments can be integral to raising job quality in new developments.

Affordable Housing

CBAs can be used to promote affordable housing through several different approaches. A lack of affordable housing—in both the rental housing market and the ownership market—is one of the most intractable barriers to economic develop-

RESOURCES ON AFFORDABLE HOUSING

Perhaps the best resources for community groups interested in affordable housing are local nonprofit housing developers and experienced affordable housing advocates. Most communities have one or more such nonprofits, and they will be most familiar with area affordability requirements and other key issues.

Beyond local groups, there are many national sources of information on affordable housing.

- The website of the nonprofit National Housing Conference contains information on housing policy issues in general and affordability in particular, and its online "Affordable Housing Clearinghouse" contains well-organized links to a great number of groups working on housing affordability through many different strategies. (www.nhc.org)
- The nonprofit National Low-Income Housing Coalition provides resources on affordable housing issues, in concert with its network of local members. The NLIHC web site is another good way to find local affordable housing developers and advocates. (www.nlihc.org)
- The website of the Innovative Housing Institute contains an overview of inclusionary zoning requirements around the country, and provides technical assistance on inclusionary zoning. (www.inhousing.org)
- The U.S. Department of Housing and Urban Development maintains many offices and programs devoted to expanding the nation's supply of affordable housing. A description of their current initiative to encourage construction by removing regulatory barriers is at www.hud.gov/initiatives/affordablecom.cfm.

ment of a low-income community. And in metropolitan areas where incomes are rising, loss of affordable housing contributes to gentrification.

Many jurisdictions have "inclusionary zoning" requirements, calling for a certain percentage of units in new residential developments to be "affordable." A typical affordability requirement is 10% to 15% of new units; the percentage often varies with the size of the development. Definitions of "affordable" vary widely, but are usually linked to regional median incomes, with the goal that households should pay no more than 30% of income towards rent.

Many programs are mandatory for new housing developments, but some are optional quid pro quos, with the developer allowed to build at a higher density if it incorporates affordable units. Even where there is no existing inclusionary zoning requirement governing a project, local governments can insist on inclusion of a certain percentage of affordable units as a condition of approval of a project.

If a proposed development includes a residential component, community groups need to determine whether inclusionary requirements govern the project. If not, then community groups can try to obtain a commitment through the CBA process that a certain percentage of the units will be affordable. Even if affordability requirements already apply, community groups should consider attempting to strengthen them through a CBA

for the project. Community groups can press for improvements to the existing requirements in many areas, such as:

- the percentage of units that will be made affordable;
- the definition of "affordable";
- the number of years after construction that the units must remain affordable;
- whether and how the required affordable units will be integrated with the market-rate units;
- number of bedrooms in affordable units;
- whether the developer will apply for a waiver or reduction in affordability requirements, as is permitted in some jurisdictions;
- whether the developer will contribute money to an affordable housing fund rather than building affordable units, as is permitted in some jurisdictions; and
- whether the affordable units must be built at the same time as the market rate units.

Even if a proposed project does not include new residential housing, community groups can press for the developer to fund local affordable housing programs. This is especially appropriate when the development is likely to increase rents in the area, potentially driving out long-term residents.

There are many ways that developers can provide financial support for affordable housing. They can contribute to nonprofit housing developers; they can also contribute to the local jurisdiction's affordable housing fund. The CBA for the Staples project used a creative approach whereby the developer established a revolving loan fund for use by several local nonprofit housing developers. The Staples CBA provides the framework for the developer and these nonprofits to collaborate to produce a substantial number of affordable units in the next few years—perhaps more than the developer's initial commitments regarding the Staples project itself.

Even aside from inclusionary zoning requirements, there are many laws aimed at preserving and increasing the supply of affordable housing. For example, when a redevelopment project results in the demolition of affordable housing units, the local government entity overseeing that project may be required to replace those units. Similarly, many states require that a portion of new tax revenue generated by redevelopment projects be dedicated to development of affordable housing. While these responsibilities generally fall on the local government rather than the developer, community groups should understand these requirements when negotiating over affordable housing with the developer and the local government. Community groups should work with local affordable housing advocates to understand the legal and financial environment and the current opportunities for affordable housing development.

Funding or Facilities for Community Services

Every neighborhood needs funding or facilities for community services. Developers of large, publicly-subsidized projects are often willing to provide space or funding for such services. CBA negotiations can galvanize these commitments, can tailor them as needed, and can make them detailed and enforceable.

Community groups might press for facilities or funding for youth centers, health clinics; child care centers; community centers; senior centers; job training programs; educational programs; art programs; recreation facilities; or other neighborhood improvement projects.

The many possibilities here underscore the need for advocates to conduct a broad, inclusive assess-

ment of their community's needs, and then prioritize their goals. Advocates should remember that developers are not in the business of operating these types of facilities; if developer commitments are not supplemented with community resources and involvement, they are likely to go to waste. Community groups should expect to remain involved in implementation and fundraising for such programs.

Shaping the Mix of Businesses In the Development

Community groups routinely advocate for changes in the elements of a proposed development project, in an effort to bring desirable businesses or nonprofits into the new development. This advocacy fits naturally with negotiations over a CBA.

Communities often press for the inclusion of a supermarket or a bank—crucial services that are often lacking in low-income neighborhoods. If locally-owned and local-serving businesses will be displaced by a development, then it is fair to demand space in the new project for at least some of these businesses. Advocates may also press for inclusion of space for community-serving nonprofits, at a reduced rent if possible.

Because the use of space within a development directly affects the developer's bottom line, community groups may have to spend a lot of their political capital to obtain this type of benefit. However, these decisions will determine whether or not the development really serves the surrounding community, so they are worth fighting for. A new development may be an unusual—or even unique—opportunity to bring a valuable business like a bank or supermarket to a low-income community. The potential benefits to neighborhood residents are immense.

Keeping out undesirable businesses can be just as important as including desirable ones. Community groups can push for developer commitments to exclude businesses that have a track record of labor violations, workplace safety violations, or environmental problems. These criteria can apply both to contractors hired by the developer and tenants, and to the developer's selection of tenants themselves.

An ideal policy would prohibit contracting with or leasing to businesses based on specific, independently verifiable criteria, such as:

- a current designation by a government entity that the business is not a responsible contractor or is not eligible for public contracts;
- recent administrative or judicial findings that the business has violated labor or

EXAMPLE: THE CIM PROJECT IN SAN JOSE

Community groups advocating around the CIM project, described in Appendix B, obtained the following commitment from the developer:

- "best efforts to achieve the goal of 30% retailers from San Jose, 30% from the region, and 30% national to insure an effective and unique mix of retail."
- "a 10% set aside of retail space for existing small businesses in the downtown. The developer will be responsible for reserving this space for 6 months and for aggressively marketing this opportunity for qualified firms."

The legally binding memorandum setting out developer commitments is attached as Appendix G.

employment law, or legal settlements making such admissions; or

- recent citations for violation of environmental laws.

If a developer will not commit to absolute limitations on its discretion over contracting or leasing, it may be willing take into account considerations of business responsibility. While more difficult to enforce, such a commitment will at least get the developer thinking along these lines. Also helpful are requirements that businesses report on such violations, and that the developer report on his mix of tenants from this perspective.

The CBA for the Staples project, described in Chapter One, used a combination of these approaches. See Appendix D, section VIII.

Banking Services and Lending Assistance

Most low-income communities lack adequate access to banking services, home loans and small business loans. This stands as a real barrier to

EXAMPLES: CHILD CARE FACILITY IN NOHO COMMONS AND YOUTH CENTER IN SUNQUEST

The CBA for the NoHo Commons redevelopment project, described in Chapter Four, contains the following provisions regarding an on-site child-care center. Note that the developer is required both to provide space within the development for the child care facility, and to ensure that low-income families will have access to it. In addition, note the implementation role envisioned for the coalition that negotiated this agreement.

Child Care Program and Facility. The Developer agrees to plan an on-site location for a child care center and to enter into a lease agreement with a child care provider for use of that location as a child care center. This child care center shall offer affordable, accessible and quality child care for both on-site employees and the surrounding community. Developer in its lease with the childcare provider shall require that a minimum of 50 spaces shall be made available to very low, low and moderate-income families. The childcare provider shall operate the site on an ongoing basis and shall secure government subsidies for families in need.

The Developer will work with the Valley Jobs Coalition and the Child Care Resource Center to select a quality child care provider to lease the facility. The quality and affordability of the child care center will be the long-term responsibility of the provider. The Valley Jobs Coalition will assist the provider in fundraising and other efforts to maintain the quality and affordability of the child care center.

The NoHo Commons CBA also required the developer to provide rent-free space for the development's first source program.

The CBA for the SunQuest Industrial Park Project, described in Appendix B, requires the developer to build and donate to the City of Los Angeles a facility suitable for use as a youth center. Unlike the NoHo Commons child care facility, the space devoted to the youth center will not be space within the development. The SunQuest CBA is available online at www.laane.org/ad/cba.html. Note the heavy community and government involvement in implementation.

community-friendly economic development. Improved financial services can benefit individuals, families looking to purchase a home, small businesses, nonprofit affordable housing developers, and other local nonprofits.

Many kinds of financial services and assistance would make good community benefits as part of a CBA.

- **Lending assistance.** Community Development Financial Institutions, or CDFIs, make loans that are targeted to communities, businesses, and nonprofits that are underserved by the traditional for-profit lending market. CDFIs can also guarantee loans made by private lenders, and provide technical assistance to loan applicants. Developers can invest in or lend money to CDFIs or similar organizations that serve the neighborhoods in which their projects will be located.
- **Homeownership assistance.** Developers can support programs that help low-income individuals to become homeowners, to repair their homes, or to remain in their homes when at risk of foreclosure because of predatory lending.
- **Banking services.** Many low-income communities have no banking services whatsoever—not even an ATM. If a development is going to include commercial space, bringing a bank into the community can provide a tremendous benefit.

Good resources for information on efforts to bring capital and credit to low-income communities are the National Community Reinvestment Coalition (www.ncrc.org), the California Reinvestment Coalition (www.calreinvest.org), and the Woodstock Institute (www.woodstock-inst.org).

Worker Retention

Some cities and states have "worker retention" laws, which provide job security to long-term service workers when city contracts change hands. In addition to protecting workers, these ordinances also prevent employers who take over city contracts from firing existing workers in order to "break" the union that represents those workers.

CBAs can include similar protections for employees working at a new development. Worker retention provisions can apply to the developer's contractors, tenants' contractors, or both. They can also apply to a specific tenants, such as a hotel or a theater. This ensures that the service workers get to keep their jobs even when the specific hotel or theater operator changes—thus when a hotel changes management from a Hilton ro a Sheraton, the hotel's many service employees are not thrown out of work. Security services, custodial services, and the like are also natural fits for worker retention requirements. Section VII of the Staples CBA, attached as Appendix D, includes worker retention provisions covering contractors and hotel and theater employees.

Local Businesses and Affirmative Action in Contracting

Publicly subsidized development projects provide unique opportunities for businesses in low-income neighborhoods. Occasionally, laws provide that business opportunities arising in a subsidized development be targeted to businesses displaced by the development, or to small businesses in the surrounding neighborhood; HUD's "Section Three" program requires such efforts in some cases. However, these business opportunities are rarely realized.

Community groups can use the CBA process ro require efforts to target business opportunities to neighborhood businesses. These efforts can pertain to service contracts (such as security, landscaping, or custodial services), supply contracts, or construction contracts. Even a single contract can

bump a small local business up from a previous level, giving it a track record on a project of larger size. In addition, contract awards to a local business can produce a bigger "multiplier effect," as locally-owned businesses are more likely to hire local workers and to reinvest profits in the community. While there are some legitimate concerns about such programs, particularly in the construction industry, in many situations business opportunities will nonetheless be a high priority for community advocates.

There are a great many models for programs to help certain businesses obtain contracts. Hundreds of jurisdictions have had or still maintain affirmative action programs in public contracting; many large corporations have programs promoting diversity in contracts they award; and all levels of government have programs targeting small businesses for contract awards.

Approaches used in these programs vary widely. Many programs use some combination of required elements, such as requirements that businesses awarding contracts must:

- notify local contracting organizations of contracting opportunities;
- assist local businesses in bid preparation;
- break large contracts down into smaller contracts;
- make good faith efforts to award contracts to local businesses; and
- attempt to meet percentage goals for local business awards.

Contracting Programs in the Construction Industry

Contracting programs can present special concerns and tensions in the construction industry. The construction industry has unique processes for hiring workers and for awarding contracts and subcontracts, making advocacy in this area difficult and specialized.

Many small construction contractors do not employ union workers or pay union wages and benefits. Building trades and worker advocates are rightly concerned that contracting programs that steer work to these contractors will drag down wages and benefits for workers. They argue that providing jobs to community members is of questionable value if the jobs pay low wages, provide no employee benefits, and provide little training.

Tensions arise because some representatives of low-income communities feel that few individuals from their communities are involved in the unionized construction referral system. They argue that without efforts to involve local businesses, large union contractors will perform the construction contracts, and, while wages might be good, these wages will be going to current union members rather than to workers from their community.

These opposing views present a false dichotomy. To the extent that construction contractors in low-income communities are not union contractors, they can be brought into the union system. Many small construction contractors lack experience with union referral and pension systems, and would benefit from special efforts to bring them in. More union construction contractors can only lead to a better quality of life for workers.

Similarly, to the extent that individuals from low-income communities are not well-represented in certain construction trades, efforts can be made to bring them into the system as well. Many labor unions and devoted advocates have developed creative and successful programs to expand union membership in particular communities.

Many of these issues can be resolved through cooperative efforts and through a combination of related requirements and initiatives. Depending

on the priorities of community groups and worker advocates, these may include:

- prevailing wage requirements, which require decent wages and benefits and prevent contractors from underbidding each other by cutting wages;
- project labor agreements, which establish a common set of work rules, working conditions, hiring practices and settlement dispute mechanisms, usually with the stipulation that there will be no strikes by the unions or lockouts by management;
- local contracting programs, accompanied by assistance to local contractors in complying with project wage requirements and new systems; and
- efforts to bring community members into established union apprenticeship programs, including funding for pre-apprenticeship programs.

A combination of these approaches may enable small local construction contractors to develop their businesses while maintaining good wage levels for the project and bringing many new contractors and workers into the union system. Cooperation and openness by all parties is key.

Even if all these efforts are agreed upon, a local construction contracting program can be difficult to implement even for a single project. Prime contractors have very close relationships with their subcontractors, and are often loath to work with new ones. Advocates for local construction contractors will have the best chance of success if they have the developer on board before the developer has selected a prime contractor, so that the developer makes sure that the prime contractor it chooses has a real commitment to work with local businesses. This is an area where the personal efforts of key individuals can be more valuable than the most detailed written policy.

LABOR-COMMUNITY PARTNERSHIPS IN THE CONSTRUCTION INDUSTRY

There are several examples around the country of creative and effective partnerships between building trades and community organizations. The recent, successful push for community benefits standards on the Park East redevelopment project in Milwaukee featured a strong partnership between building trades and various community-based groups. For more detail on the Park East victory, see the conclusion of this handbook.

For information on successful labor-community partnerships in the construction industry, contact:

- John Goldstein, President, Milwaukee County Labor Council, 414-771-7070, aflciojg@execpc.com
- Houston Drayton, consultant on Seattle-area PLAs, 206-988-5694
- Martin Trimble, Washington (DC) Interfaith Network, 202-518-0815
- Amaha Kassa, East Bay Alliance for a Sustainable Economy, 510-893-7106
- Paul Sonn, Brennan Center for Justice (New York), 212-998-6328

Also, see generally the High Road Partnerships Project of the AFL-CIO's Working for America Institute (www.workingforamerica.org/highroad/index.htm).

EXAMPLE: BUSINESS ASSISTANCE PROGRAMS IN THE LAX CBA

The LAX CBA, described in Chapter One, includes a range of business assistance programs, including the following language:

- targeted outreach within the Project Impact Area to Project Impact Area small businesses, Project Impact Area disadvantaged businesses, and relevant business organizations;
- inclusion of Project Impact Area small businesses, Project Impact Area disadvantaged businesses, and relevant business organizations in pre-bid conferences;
- "Meet the General Contractor" meetings for Project Impact Area small businesses and disadvantaged businesses;
- unbundling of construction projects into bid sizes that will allow small businesses level competition, without restricting the project timelines;
- assistance with access to bonding, insurance, procurement and other types of capacity-related assistance where necessary.

These programs will be targeted to minority- and women-owned businesses and small businesses.

Service and Supply Contractors

Efforts to assist service and supply contractors are less complex. Developers may be open to using local contractors to provide security and other services or supplies related to the development. These ongoing contracts can be excellent opportunities for local businesses. Developers may be somewhat more reluctant to apply contracting requirements to their tenants, but community groups can certainly press on this issue.

As with the construction industry, there are concerns that efforts to assist small, local businesses in obtaining service and supply contracts will lead to lower wages and benefits, as larger businesses often have better compensation packages for their workers. As with construction, however, focused efforts can help bring small businesses into the union system, providing protection for workers while still keeping business opportunities local.

All policies assisting local businesses should have a clear limit on the size of the businesses that can benefit. This limitation will help protect policies from legal challenges. It will also prevent large businesses that are part of the new development from becoming unintended beneficiaries of a local contracting policy.

Just about everything mentioned in this section regarding local contracting applies as well to efforts to benefit minority- and woman-owned businesses, with one caveat: there are special legal concerns related to affirmative action. The limitations on race- and gender-conscious efforts by government are very strict; therefore, the more closely the local government is involved in CBA negotiations, the riskier an affirmative action policy becomes. The legal obstacles are less severe if the government is not involved in CBA negotiations, but they still exist. Programs that target local contractors will in many cases achieve the same important goals of affirmative action programs, with less legal risk.

Exhibit A - Community Benefits Agreements handbook

Exhibit A - Community Benefits Agreements handbook

Chapter Eight

Monitoring and Enforcements of CBA Commitments

Commitments to provide community benefits often go unfulfilled. Difficulties in monitoring and enforcement are a widespread problem. CBAs are an attempt to address this problem, both by memorializing developer commitments in writing and by enabling community groups to enforce them, rather than having to rely on local governments.

For a CBA to succeed in this role, community groups must pay careful attention during negotiations to how each community benefit will be monitored and enforced. For each developer commitment in a CBA, community groups should make sure that the CBA contains answers to the following questions:

- What is the time frame for the commitment to be fulfilled?
- Who will monitor performance?
- How and when will information on performance be made available?
- What will happen if the commitment is not fulfilled?

These are not easy issues to discuss in the context of negotiations over community benefits. An emphasis on the details of monitoring and enforcement does not help create a trusting, collaborative atmosphere during negotiations. Some monitoring and enforcement provisions are off-putting because they are so complex and technical, and they generally require legal expertise.

Nonetheless, community groups need to make effective monitoring and enforcement provisions a priority. Developers who resist sensible and effective monitoring and enforcement systems are

developers whose commitments may reasonably be questioned.

Chapter Five contains detailed information about monitoring and enforcing targeted hiring programs.

Time Frame

Every benefit described in a CBA should have a clearly defined time frame. Many community benefits are "front-end" commitments that are intended to be fulfilled as soon as it is clear that the development is actually going forward (for example, financial contributions for improved neighborhood services). Developers will want some assurance that community groups will not attempt to hold them to these commitments if the project falls through. Front-end benefits should be provided by a date at which it is clear that the development is moving forward, such as the date construction commences.

Benefits concerning a developer's selection of tenants should have time frames tied to the date the developer enters into lease agreements. A good example of this language is the following provision from the "Living Wages" section of the NoHo Commons CBA described in Chapter Four.

B. Coalition Meeting with Prospective Tenants. At least 30 days before signing a lease agreement or other contract for space within the Proposed Development, the Developer will arrange and attend a meeting between the Coalition and the prospective Tenant, if the Coalition so requests. At such a meeting, the Coalition and the Developer will discuss with the prospective Tenant the Living Wage Incentive Program and the Health Insurance Trust Fund, and will assist the Coalition in encouraging participation in these programs. If exigent circumstances so require, such a meeting may occur less than 30 days prior to the signing of a lease agreement; however, in such cases the meeting shall be scheduled to occur on the earliest possible date and shall in any event occur prior to the signing of the lease agreement or other contract.

Other benefits can be provided only after the project is built, such as living wages and local hiring. While these benefits generally don't need a particular "start date," developers may want these benefits to *expire* at a certain time—perhaps five or ten years from the opening of the development. If community groups agree to such a time limit, it should be clearly described in the CBA. The CBA itself should have a defined end date as well.

Monitoring

Community groups should consider how each benefit in a CBA will be monitored. Financial commitments and other one-time benefits are probably the easiest aspects of a CBA to monitor. Much more challenging are ongoing tenant commitments, such as living wage and local hiring requirements. The most effective approaches include affirmative reporting requirements as well as the ability to investigate complaints of noncompliance.

Required reports should be no less frequent than once a year, should be publicly available, and should be due by a particular date each year. A developer might be required to file with the city council a report on a year's wage levels at the development by April 30th of the succeeding year. Tenants can be subject to similar requirements, or can be required to submit information to the developer in time for the developer's report.

Community groups should not simply rely on reports from the developer and tenants. Reports need to be verifiable, and complaints need to be investigated. These tasks can be very tricky, how

ever. Developers and tenants will be reluctant to let community groups inspect records of their wages and hiring decisions. But if developers are making a commitment to community groups, the community groups need a reliable way to determine whether that commitment is being fulfilled.

One possible compromise is to empower local government officials to verify reports and/or investigate complaints. If the CBA has been folded into a development agreement, then the developer's commitments have been made to the local government as well, and a governmental monitoring role is a natural fit. This approach is difficult (or in some cases impossible) if the CBA is not part of a development agreement. In addition, community groups will always prefer the ability to monitor performance themselves, rather than having to rely on the local government. This approach may be a workable compromise on a difficult issue, however.

There is no one-size-fits-all approach to monitoring community benefits. However the details play out, community groups should never settle for a monitoring system where performance reports are not verifiable by anyone. This is an area that will benefit from creative approaches and collaborative problem-solving during the negotiation process.

Enforcement by community groups

Community groups entering into CBAs can and should have the ability to enforce CBAs against the developer in court. While most contracts have some provisions for recovery of money damages against a party violating the agreement, community groups will generally be more concerned with ensuring that promised benefits are in fact

LEGAL ISSUE: CHAINS OF CONTRACTS

Lawyers drafting a CBA need to pay particular attention to language in the CBA that will bind parties other than the developer: developer's contractors and tenants, various subcontractors, entities to whom the developer sells land, and so forth. Making sure that legal requirements bind these entities can be complex, as there may be a lengthy chain of contracts involved.

Take the example of a CBA that includes mandatory living wage provisions covering all businesses working at the development. The chain of contracts might work as follows: the community groups enter into a CBA with the developer, which enters into a lease agreement with a tenant, which hires a contractor to provide custodial services, which hires a subcontractor to perform a particular task, which hires the employees whose wages are at issue. If community groups hope to require that subcontractor to pay a certain wage to its employees, then the CBA needs to contain detailed and well-thought-out language making sure that responsibilities move down the chain of contracts and bind the subcontractor. The CBA needs to set up a system whereby (1) each business is informed of and agrees to the substantive requirements that apply to it, (2) each business agrees that it will include these requirements in other contracts it enters into, and (3) each business agrees that community groups, the local government, or affected individuals can enforce the requirements.

The CBA needs to provide strict penalties for businesses that fail to do this. Any break in the contractual "chain" will make CBA requirements unenforceable against some businesses working in the development.

provided. Community groups should therefore ensure that CBAs recognize the right to ask for a court order requiring the developer to honor commitments contained in the CBA.

It is a little trickier for community groups to maintain the ability to directly enforce CBA commitments on tenants and contractors of a development. (See box on Legal Issue: Chains of Contracts.) Developers may be resistant to asking their tenants and contractors to open themselves up to lawsuits by community groups. However, if the developer is really agreeing to impose these commitments on tenants and contractors, there needs to be a way for community groups to enforce them.

The only alternative to direct enforcement against the tenants and contractors is to make the *developer* responsible for the behavior of tenants and contractors. Again, CBAs should be clear that the developer is subject to court orders to fulfill its commitments and cannot escape by paying money damages. All these enforcement issues require close attention from an attorney trusted by community groups.

Enforcement by Local Government

Requirements of a CBA should usually become part of a development agreement with the local jurisdiction providing the subsidy. If the local jurisdiction intends to provide the subsidy without any written agreement with the developer, community groups should encourage the jurisdiction to initiate one.

Inclusion of a CBA in the development agreement greatly assists in the enforcement of the CBA. While community groups should certainly ensure that they can directly enforce the developer's commitments, the threat of government enforcement may be much more powerful to a developer. Development agreements generally contemplate a wide variety of enforcement measures, and cities have the experience and resources necessary to take these measures—when they have the political inclination to do so.

In addition, government may be able to fold enforcement of some community benefits into existing administrative systems. For example, if a city has a living wage policy, making living wage commitments in a CBA enforceable through the city's administrative system is an obvious step. Ideally this can be a system where affected individuals, such as workers in the development, can take complaints of noncompliance.

The only community benefits that generally should not become part of a development agreement are those for which there are clear restrictions on local governmental action, such as "card check" agreements and affirmative action programs; community groups have wider flexibility than local governments in entering into contracts in these areas.

On all issues, however, community groups signing CBAs should embrace their ability to enforce developer commitments. The core principle of a CBA is that each side's commitments are legally enforceable by the other side. Community groups signing a CBA thus have the legal power to require the developer to provide the community benefits as described in the CBA, and careful drafting will make this possibility more than an abstract one.

CBAs should contain some correction period, allowing each party a chance to correct problems once put on notice. In addition, CBAs should contain some dispute-resolution system, giving parties an ability to come together and work out solutions, thereby avoiding litigation. Court action or arbitration is an important last-resort enforcement option, however.

Hopefully, it will be a rare case where community-based organizations actually need to take legal action because a developer violates a CBA. Open communication and good-faith efforts to work out problems—backed by the ability to take legal action if necessary—should solve most CBA compliance issues.

Exhibit A - Community Benefits Agreements handbook

Exhibit A - Community Benefits Agreements handbook

Conclusion

Changing the Paradigm

As effective as community groups have been in negotiating recent CBAs, project-by-project negotiations are not an ideal approach. Community groups should not have to identify upcoming projects, mobilize coalitions, and fight the same battles over and over again. In the long run, such an approach is too resource-intensive to be effective for anyrhing but the largest and most prominent development projects. Many smaller subsidized projects will inevitably go forward without appropriate community involvement.

The goal of the community benefits movement is to avoid this situation by changing the paradigm of land use planning for large, publicly-subsidized projects or those requiring major land use approvals. Results of this change will take many concrete forms: citywide policies providing minimum standards for certain projects; changes in land use planning documents, like general plans, to require analysis of economic effects of land use decisions; ordinances requiring close scrutiny of high-impact big-box stores; and an expectation that certain large, prominent, heavily subsidized projects will have a CBA.

Community benefits advocates should remain outcome-oriented. While this handbook describes an approach that has worked in many situations, the strength of this approach is its adaptability. Aspects of it that work in a given situation should be used, and aspects that don't should be jettisoned. Every community is different: in needs, in politics, in development opportunities, in strength and cohesiveness of community organizations. The CBAs described in this handbook came out of determined yet flexible advocacy; through flexibility and creativity, the determined advocates around the country will further develop this approach and craft new techniques as well.

PARK EAST REDEVELOPMENT COMPACT

A broad coalition of labor and community advocates, the Good Jobs and Livable Neighborhoods Coalition, recently won a tremendous victory in Milwaukee. For two years, the Coalition has been pressing for strong community benefits standards for the downtown redevelopment of the Park East corridor. In 2004 the County Board passed a legally binding resolution establishing a range of community benefits requirements for the series of redevelopment projects that will reshape downtown Milwaukee in coming years. The resolution, known as the Park East Redevelopment Compact, sets out the following requirements for covered projects:

- employer participation in a County-assisted local hiring plan;
- prevailing wages for construction workers;
- additional apprenticeship and training requirements for construction employment;
- a 20% affordable housing requirement;
- selection of developers shall take into account the broad economic implications of the proposals, including jobs and tax base, and RFPs shall require developers to address those issues;
- County policies to assist disadvantaged business enterprises will apply to Park East redevelopment projects;
- consideration of green space and green design principles in evaluation of RFPs; and
- a standing Community Advisory Committee to advise the County on implementation of these requirements.

This range of principles and requirements, applicable to a series of large future redevelopment projects, is a perfect example of incorporation of community benefits principles into land use planning. The campaign for this project is also noteworthy in that it featured a close and effective collaboration between community groups and building trades. The broad coalition included the following groups:

Exhibit A - Community Benefits Agreements handbook

- 9 to 5 National Association of Working Women
- AFSCME District Council 48
- AFT Local 212
- Arlington Court Resident Organization
- Arms Around Amani Neighborhood Association
- Community Advocates
- Great Waters Group of the Sierra Club
- Harambee Ombudsman Project, Inc.
- Hillside Neighborhood Residents Council
- Institute for Wisconsin's Future
- Interfaith Conference of Greater Milwaukee
- Metro Milwaukee Fair Housing Council
- MICAH
- Milwaukee County Labor Council
- Northcott Neighborhood House, Inc.
- Painters Local 781
- St. Benedict Community Meal
- St. Benedict the Moor Catholic Church
- United Auto Workers Local 469
- United Lodge 66, Machinists Union
- Urban Underground
- Wisconsin Citizen Action
- Wisconsin Council on Children and Families
- Wisconsin Federation of Nurses and Health Professionals
- Women and Poverty Public Education Initiative

For more information on the Park East victory, see the web site of the Institute for Wisconsin's Future, www.wisconsinsfuture.org, or contact John Goldstein, President, Milwaukee County Labor Council, 414-771-7070, aflciojg@execpc.com. See Appendix A for information on Coalition advocacy during initial implementation of the Park East Redevelopment Compact.

MEASURING BROADER IMPACTS

Several communities have recently moved to change their land-use planning processes to require a formal assessment of a wide range of impacts of proposed projects. Environmental impact reports are a crucial tool, but, with narrow exceptions, their scope is necessarily limited to environmental issues. The impacts of any large development are much broader than that, of course.

Large developments always have substantial social and economic impacts in many areas, including type and quality of jobs, availability and cost of goods and services, public finances and tax base, economic climate for surrounding businesses, jobs/housing balance, smart growth principles, and public safety. A large development could obviously have positive or negative impacts in most or all of these areas.

Because most planning processes do not include formal consideration of these wide-ranging impacts, community benefits advocates have proposed changes, and several government entities have responded:

- The Los Angeles Community Redevelopment Agency requires preparation of a "community context report" for certain projects, looking at a wide range of impacts.
- The city of Los Angeles recently passed an ordinance requiring developers who propose to bring in certain types of "big box" stores to pay for formal assessments of the economic impacts the stores. The assessments must evaluate such factors as potential business, housing, and open space displacement; impact on city revenues; creation of blight; job creation or loss; and access to low-cost goods. Information on the ordinance is available at www.www.laane.org/ad/superstores.html. The text of the ordinance is available at www.laane.org/ad/superstores.html.
- The city of Sacramento recently passed a "superstores" ordinance requiring an assessment similar to that required in Los Angeles.

Advocates have generally proposed these types of policies only for projects over a certain size or type, or that receive a public subsidy over a certain amount. Both members of the public and government decisionmakers will benefit from formal consideration of a wide range of project impacts.

In addition to project-specific impact assessment policies, some advocates have pushed for consideration of economic impacts of land use decisions at the "general plan" level—general plans are the basic land use planning documents in most cities. San Diego is currently considering addition of an "Economic Prosperity Element" to its general plan. Appendix H contains the city's current draft of this language. Contact: Donald Cohen, Center on Policy Initiatives, 619-584-5744, dcohen@onlinecpi.org.

Exhibit A - Community Benefits Agreements handbook

Following are some of the benchmarks we'll be looking for over the next few years:

- an increasing number of local and state public officials who advocate for community benefits and are willing to speak to their peers in other cities;
- more CBAs won for specific developments;
- more RFPs and RFQs issued by public agencies requiring applicants to include a range of community benefits in their proposals;
- more development projects for which the public entity maintains a revenue stream dedicated for community benefits;
- new policies requiring certain minimum standards for subsidized projects, like local hiring or living wages;
- new policies requiring measurement of a wide range of impacts of proposed developments;
- an increasing number of redevelopment plans, specific plans, and other public land use planning documents that reflect community benefits principles; and
- an increase in media awareness of community benefits issues and coverage of community benefits campaigns.

We strongly encourage advocates throughout the country to be creative in designing and implementing a community benefits agenda in their own communities. Please contact us for assistance we can provide in developing your campaigns. The experience in California—and the burgeoning community benefits movement throughout the country—demonstrate that in the right circumstances, determined organizing and strategic advocacy can help publicly subsidized development projects deliver tremendous benefits to affected communities.

Exhibit A - Community Benefits Agreements handbook

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Julian Gross is a civil rights attorney and is the legal director of the California Partnership for Working Families. He works with the CPWF anchor organizations on their community benefits initiatives, and is a resource to advocates around the country on legal aspects of this work. Julian represented LAANE and other community-based organizations in negotiating the Los Angeles CBAs described in this article. He has drafted numerous local hiring and contracting policies, and has worked on living wage policies and many other community economic development initiatives.

Julian also runs a small law office in San Francisco, working with nonprofits and government entities on issues of social and economic justice, and assisting nonprofits with organizational needs. He has an extensive background in employment law, community economic development strategies, affirmative action, anti-discrimination law, and organizational issues relevant to nonprofits. Prior to entering private practice, Julian was a Skadden Fellow and a Project Attorney at the Employment Law Center / Legal Aid Society of San Francisco, litigating affirmative action, civil rights, and employment discrimination cases. Julian provides technical assistance to grantees of the McKay Foundation.

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Dubbed "the nation's leading watchdog on state and local economic development subsidies," Greg LeRoy founded and directs Good Jobs First. He is the author of the 1994 book *No More Candy Store: States and Cities Making Job Subsidies Accountable* (the first national compilation of accountability safeguards), and 1998 winner of the Public Interest Pioneer Award of the Srern Family Fund. Greg has been writing, training and consulting on economic development issues more than 20 years for state and local governments, labor-management committees, unions, community groups, and development associations. Good Jobs First is a national resource center promoting corporate and government accountability in economic development; it provides research, training, model publications, consulting, and testimony to grassroots groups and public officials seeking to ensure that subsidized businesses provide family-wage jobs and other effective results.

Madeline Janis-Aparicio

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Madeline Janis-Aparicio is co-founder and executive director of the Los Angeles Alliance for a New Economy. In 2002, she was appointed by Los Angeles Mayor James Hahn as a volunteer commissioner to the board of the city's Community Redevelopment Agency, the country's largest such agency.

Ms. Janis-Aparicio led the historic campaign to pass L.A.'s living wage ordinance, which has since become a national model. Over the past six years, she has provided training and assistance to living wage coalitions in more than 20 cities across the country, and is widely regarded as an innovator in the fight against working poverty. She serves on the boards of directors of Good Jobs First, the California Partnership for Working Families, Clergy and Laity United for Economic Justice, and the Phoenix Fund for Workers and Communities, a project of the New World Foundation.

LAANE and Ms. Janis-Aparicio have received many honors, including the UCLA Law School's Antonia Hernandez Public Interest Award and the Los Angeles Roman Catholic Archdiocese's Empowerment Award, awards from the Liberty Hill Foundation and Office of the Americas, and numerous commendations from the Los Angeles City Council and the California Assembly and Senate.

Prior to founding LAANE, Ms. Janis-Aparicio served as executive director of the Central American Refugee Center (CARECEN) from 1989 to 1993, where she helped lead a successful campaign to legalize and regulate the activities of the mostly Latino immigrant sidewalk vendors. During this time, she also headed efforts to combat civil rights abuses of Central American immigrants by the L.A. Police Department and the Immigration and Naturalization Service, and helped tens of thousands of Central American immigrants achieve legal immigrant status.

Before joining CARECEN, Ms. Janis-Aparicio, an attorney, represented tenants and homeless people in slum housing litigation, and advocated for homeless disabled people who had been denied government benefits. She also worked for two years at the law firm of Latham & Watkins on commercial litigation and land use matters, representing many large companies throughout Los Angeles. She received degrees from UCLA Law School and Amherst College in Massachusetts.

Exhibit A - Community Benefits Agreements handbook

Exhibit A - Community Benefits Agreements handbook

Appendix A

Current Community Benefits Campaigns

Following is a list of some of the many community benefits campaigns in progress. This list is not intended to be exclusive; any attempt at a comprehensive list would rapidly fall out of date. We hope instead to simply give an idea of the wide range of campaigns going on around the country at time of writing.

Berkeley & Oakland, California

The East Bay Alliance for a Sustainable Economy is working with a coalition of labor and community groups to win a CBA for a proposed University of California development that includes a full-service hotel and conference center. The coalition is calling for union construction, union hotel jobs at a living wage, money for affordable housing and an affordable childcare linkage fee. EBASE successfully campaigned for a vote in favor of these principles from the City Council of Berkeley, where the UC project will be located.

EBASE is also leading a campaign to win community benefits from the massive redevelopment of the former Army base in West Oakland, including ensuring that a "community fund" promised to residents is fully funded and that the project meets community needs for living wage jobs and affordable housing.

Contact: ***Amaha Kassa***
EBASE
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Denver, Colorado

Denver's redevelopment agency is considering granting a public subsidy to the developer of a large, multi-use redevelopment project on the site of the historic Gates Rubber Factory. A coalition of labor unions and community groups, coordinated by the Front Range Economic Strategy Center, is negotiating a CBA with the developer. The coalition is pressing the redevelopment agency for

improvements in the project and increased community benefits, given the large amount of taxpayer money to be spent. While negotiations over the bulk of the project continue, the coalition—known as the Campaign for Responsible Development—entered into an enforceable memorandum of understanding with the developer, under which the coalition agreed to support a requested zoning change, and the developer agreed to keep certain big-box stores out of the area.

Contact: ***Chris Nevitt***
Front Range Economic Strategy Center
303-477-6111, x. 14

Los Angeles, California

Adams/LaBrea Project: In 2003 LAANE helped organized a community effort that successfully reopened the public process for a development that would have destroyed dozens of homes. LAANE is now working with the Adams-La Brea Neighborhood Committee for Accountable Development—a grassroots organization of neighborhood residents—to ensure that the Adams/LaBrea Redevelopment Project meets the needs of the community. Thanks to this advocacy, the revised RFP for this project contains basic community benefits principles, which may become part of a CBA with the selected developer. The RFP, developer responses, and other information about this project are available at the Community Redevelopment Agency's web site, www.lacity.org/cra/adamslabrea/index.htm.

Grand Avenue Project: The Grand Avenue Redevelopment Project will be an enormous development centered around Los Angeles' major musical venues—the Disney Hall and Dorothy Chandler Pavilion—near City Hall. The project will include hotels, offices, housing, retail, and a park, mostly on public land. LAANE has been working with the Figueroa Corridor Coalition for Economic Justice to advocate for a CBA and to ensure that community benefits are incorporated in the development agreement between the City and the developer. The CRA's living wage policy will require that every job at the project be a living wage job. In addition, at least 20% of the housing units will be affordable, and an existing park will be rehabilitated to make it more accessible to the community. FCCEJ will press for deeper affordability levels, and local hiring and job training commitments.

Contact: ***Roxana Tynan***
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Miami, Florida

The Miami Workers Center is advocating for a CBA for the 7th Avenue Passenger Service Center, a transit hub development that would serve the predominantly African-American neighborhood of Liberty City. The project is slated to receive up to $35 million in subsidies. Miami Workers Center is seeking to influence the RFP for the project so that the community receives low-income housing and various community services.

Contact: ***Sushma Sheth***
Miami Workers Center
305-759-8717 xt. 1004
sushma@theworkerscenter.org.

Milwaukee, Wisconsin

The Good Jobs and Livable Neighborhoods Coalition is working on initial implementation issues for the Park East Redevelopment Compact, described in the conclusion of this handbook. Despite opponents' claims that the community benefits requirements would rule out developer interest in projects in the Park East Corridor, there are at least six different proposals in the works for the first parcel for sale under the new requirements. The Coalition is advocating for selection of a project that will provide the maximum beneficial impact on surrounding communities.

Contact: ***John Goldstein***
Milwaukee County Labor Council
414-771-7070
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San Diego, California

The city of San Diego is considering adopting an "Economic Prosperity Element" to include in its general plan. (General plans establish legally binding long-range plans for a community's growth and development.) The Center on Policy Initiatives has been advocating for this change, which would formally bring several community benefits principles into the city's land use planning process. As currently drafted, this new element discusses income distribution and the connection between land use decisions and the local economy. This sophisticated document is attached as Appendix H.

In addition, San Diego is updating its basic land use planning documents for its continued redevelopment of the city's downtown. The Center on Policy Initiatives is working with a broad coalition, A Community Coalition for Responsible Development (ACCORD), to encourage the city to require a range of community benefits standards and procedures for future downtown redevelopment projects. Proposed policies include responsible contracting, wage and health care requirements, increased funding for affordable housing, and various environmental standards. The Coalition is also advocating for use of a "Community Economic Benefits Assessment" tool to encourage selection of projects that have a positive overall economic impact.

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Center on Policy Initiatives
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San Jose, California

The proposed Coyote Valley development project in San Jose requires enactment of a "specific plan," a crucial land use document, setting out the scope of the development and the subsidies it will entail. The development is slated to create over 25,000 housing units and more than 50,000 jobs in the San Jose region. Working Partnerships is a working member of the Coyote Valley Specific Plan Task Force. Working Partnerships is seeking a 20% set-aside for affordable housing units, as well as construction of two new health care clinics to serve the expected 80,000 new residents. This process provides an opportunity for community benefits issues to be addressed during early stages of land use planning, along with the traditional traffic and environmental issues.

Also in San Jose, Working Partnerships is advocating for a citywide policy on community benefits for subsidized projects. The policy would require a wide-ranging impacts assessment, and would set certain recommended levels of community benefits based on the results of the impacts assessment. The San Jose City Council and Redevelopment Agency are slated to consider enactment of the policy this year.

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New Haven, Connecticut

In November 2004, the Yale University Medical School's announced plans to construct a new $430 million cancer center, which will be a 14-story, comprehensive clinical cancer care center. The university projects that the project will create 400 new permanent positions and 350 construction jobs. The project is to be completed by fall 2008, and is likely to receive federal, state, and local subsidies. The Connecticut Center for a New Economy is leading a coalition advocating for a community benefits agreement for the project, including a range of community benefits. Last summer the city's Board of Aldermen passed a resolution "strongly urging" the university to enter into community benefits negotiations.

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Appendix B

Past Community Benefits Agreements

Following is a brief overview of some successful negotiations of Community Benefits Agreements, and the current status of the projects.

LAX CBA:

This recent, landmark CBA is described in detail in a box in Chaprer One. The text of the CBA and detailed information about the campaign is available online at www.laane.org/lax/cba.html.

Hollywood & Vine CBA:

In early 2004, a coalition of community-based organizations entered into a CBA for this large, mixed-use development project on one of the most prominent intersections in Hollywood. The CBA requires the developer to:

- take specified steps to achieve a 70% living wage goal;
- require employers in the development to hire through a first source hiring policy;
- increase the number of affordable housing units in the development, with specified portions of the affordable units reserved for tenants of varying income levels;
- provide $150,000 for area job training programs; and
- provide $30,000 of seed funding for a health care access outreach program.

The CBA will be incorporated into the disposition and development agreement for the project. Construction is slated to begin in 2005.

CIM Project CBA:

A broad coalition of service employees' unions, building trades, small businesses, environmental advocates, neighborhood groups, and child care

advocates obtained the following commitments in the 2003 amended development agreement for this $140 million multi-use project in San Jose. The project is receiving a subsidy of about $40 million from San Jose's redevelopment agency.

- living wages for employees of the development's parking garage;
- a project labor agreement for the construction of the project;
- increased affordable-housing requirements;
- guaranteed space in the development for small businesses, and a marketing program to make local small businesses aware of project opportunities;
- a commitment to work toward low-cost space for a child-care center; and
- a commitment to seek living wage jobs if a grocery store, department store, or hotel becomes part of the project.

Appendix G is a memorandum that sets out most of these commitments and that became a legally binding attachment to the project's development agreement. The community benefits commitments are explicitly enforceable by the Coalition under the legal status of a designated "third-party beneficiary." The project is under construction at this time.

Marlton Square CBA:

In 2002, a coalition of community-based organizations entered into a CBA with the developer of this $123 million retail and housing redevelopment project in Los Angeles. The CBA included developer commitments to:

- dedicate space within the development for a community services facility, such as a community center, youth center, or job training center, according to needs as determined through a community process;
- require employers in the development to hire through a first source hiring policy; and
- take specified steps to achieve a 70% living wage goal.

The CBA was incorporated into the master agreement the developer signed with the city. Construction has not yet begun on the project.

The Staples CBA:

This noteworthy 2001 CBA is described in detail in Chapter One. Implementation experience for this CBA is covered in Chapter Three. The Staples CBA is included in its entirety as Appendix D. A Los Angeles Times article on the deal is included as Appendix E.

NoHo Commons CBA:

In 2001, the Valley Jobs Coalition entered into a CBA with the developer of this residential, retail, and office project in North Hollywood, a low-income area of Los Angeles. The project will receive over $31 million in public subsidies and loans. The CBA is enforceable by the Coalition, and includes the following commitments:

- a 75% living wage commitment for employment in the development, with concrete steps to be taken toward achievement of this commitment and monetary penalties if the commitment is not met;
- on-site space for a child care center, with at least 50 spaces reserved for very-low, low, and moderate-income families;
- establishment of a first source hiring system for employers in the development, including rent-free space for staffing the referral system;
- a system for tailoring job training to needs of employers in the development;
- seed money for a job training program for day laborers; and

- developer and contractor compliance with city worker retention and responsible contracting policies.

The Living Wage provisions in this CBA are described in Chapter Four, and are included as Appendix F. The CBA was incorporated into the Los Angeles Community Redevelopment Agency's disposition and development agreement with the developer, so it is enforceable by the Agency. Regular implementation meetings on local hiring are occurring, and the developer provided seed money for the day laborers' job training program on schedule. Construction is underway.

SunQuest Industrial Park CBA:

The SunQuest Industrial Park is a 33-acre industrial project to planned for Los Angeles' San Fernando Valley. The project relied on the sale of city-owned land, and benefitted from a city commitment to clean up toxic wastes at the development site. A CBA for the project was signed in October 2001 by the developer and by the Valley Jobs Coalition, a coalition of community groups led during negotiations by LAANE. Benefits contained in the CBA include:

- limitations on truck traffic and truck idling;
- a process for community review of design of the development, and commitments from the developer regarding certain environmentally friendly design components;
- $150,000 from the developer toward a neighborhood improvement fund;
- funding for arts programs in local schools;
- 4,000 square feet of indoor space and 10,000 square feet of outdoor space for a youth center;
- a goal of 70% living wage jobs at the development, and specified efforts to meet that goal;
- a first source hiring policy covering all employers at the development.

The developer is still negotiating terms of its deal with the City of Los Angeles, so the project has not moved forward yet. If and when it does, CBA requirements will be in force.

Hollywood & Highland:

In 1997, a coalition of community-based organizations and leaders, labor unions, and clergy pressed for greater community benefits as part of this high-profile hotel and retail redevelopment project in the heart of Hollywood. Half of the 2,000 jobs at the development are either living wage or union, as a direct result of this organizing effort. The coalition also pressed for a detailed local hiring policy covering both hotel and retail jobs; this policy has been implemented very successfully, and is often looked at as a model first source program.

Appendix C

Article on CBAs from Wall Street Journal's Real Estate Journal

The Wall Street Journal's Real Estate Journal
December 15, 2004

Residents Have Their Say On LAX Expansion Plans

By SHEILA MUTO

In the latest sign of the growing coordination among social groups and the sway they are having on development projects, the city of Los Angeles has agreed to pay nearly $500 million to provide environmental mitigation and jobs-related benefits programs to the neighborhoods affected by plans to upgrade and expand the Los Angeles International Airport.

As expected, the Los Angeles City Council yesterday approved the agreement struck between the Los Angeles World Airports, the city department that owns and operates the Los Angeles International Airport and three other airports in Southern California, and a 22-member coalition of environmental, neighborhood, labor, social and religious groups and two school districts.

The legally-binding accord includes measures to soundproof schools and homes in the airport area, set up opportunities for businesses and residents in the impacted area to get aviation and airport-related work, study the impact of the airport's operations on the health of nearby residents, and boost funding to reduce airport noise, emissions and traffic. The Los Angeles World Airports will fund the measures outlined in the agreement. In return, the coalition has promised not to sue the city over its $11 billion plan to upgrade and expand the airport.

"It was in our best interest to negotiate rather than litigate," says Daniel Tabor, one of the lead negotiators of the agreement and a resident of Inglewood, Calif., one of the cities affected by operations at the airport. "The coalition gave standing and a seat at the table for people who for years have been complaining about the nega-

tive impacts of the airport and have opposed past airport-expansion plans," he says.

The airport accord is the latest in a growing number of so-called community-benefits agreements. The concept was pioneered in Los Angeles by the nonprofit Los Angeles Alliance for a New Economy to allow local residents and groups to have a say in shaping a major development project, press for benefits from rhe project and mitigate its harmful effects. The concessions typically are granted in exchange for pledges from the groups rhat are parties ro rhe agreement not to file lawsuits or otherwise stand in the way of the development proceeding. Efforts to hammer out such agreements between residents and developers or public agencies are underway from New York to Seattle.

In New York, a group of neighborhood, civic and business leaders are pressing Columbia University to help create low-income housing in the West Harlem area where the university has proposed to expand. In Seattle, a public-interest coalition is negotiating with city officials and representatives ofVulcan Inc., billionaire Paul Allen's company, which is seeking to develop an area north of downtown into a biotechnology hub, to address affordable-housing, transportation, job and environmental issues.

At least a dozen such agreements are in the works in the U.S., according to Madeline Janis-Aparicio, executive director of Los Angeles Alliance for a New Economy (LAANE). "It's a relatively new movement to reshape the nature of land use and economic development," she says. "It's at its most advanced stage in Los Angeles because that's where we came up with it."

The key to working out community-benefit agreements, "is keeping communities, residents and organizations informed to be able to participate in a serious way in the process," says Ms. Janis-Aparicio. "They need to understand how decisions are made, how land use and economic development works in the area, and they need to know about these projects in advance. Once the shovels hit the ground, it's too late."

So far, LAANE has been involved with negotiating community-benefits agreements stemming from about half a dozen development projects. In 2001, the nonprofit was part of a coalition of 25 community groups and five unions that reached a $70 million agreement with the developer of a four-million-square-foot expansion of the Staples Center in downtown Los Angeles, which included plans to develop two hotels, shops, restaurants, housing and expand the Los Angeles Convention Center.

At the time, many residents in the area felt they had been left out of the planning process when the Staples Center arena was built in 1999. Seeking a role in the expansion plan, the coalition groups banded together and negotiated an agreement with the Los Angeles Arena Land Co., a company owned by Philip Anschutz and Rupert Murdoch, to give local residents first shot at jobs created by the project, guarantee that 70% of the jobs created by the project pay a living wage of $10.04 an hour without health benefits and $8.79 with benefits, and provide $1 million for a park, among other things.

Most of the $500 million allocated by the Los Angeles airport accord will go toward noise abatement and job training. The accord requires the Los Angeles World Airports to spend $15 million over a five-year period on training residents of Inglewood and Lennox and other communities affected by the airport upgrade-and-expansion plan for aviation- and airport-related jobs. Residents will also be given the first shot at airport jobs. The Inglewood and Lennox school districts will receive $229 million over 10 years to soundproof schools, most of which have simply boarded up classroom windows to suppress the noise from airplanes taking off and landing. A little more than $43 million over a five-year period will go to soundproofing homes in the affected areas.

Exhibit A - Community Benefits Agreements handbook

"None of the organizations in the coalition are getting money from this agreement," says Jerilyn López Mendoza, policy director of the Los Angeles office of Environmental Defense, a New York-based nonprofit that is a member of the coalition. "The money is going directly to the mitigation programs and job programs."

Los Angeles World Airports will pay for these measures through bonds, reserves, concessions and parking revenues, passenger charges, airline landing fees and terminal rents, according to an agency spokesman. The agreement must still pass muster with the Federal Aviation Administration, since the city is seeking to use airport revenues to fund the measures.

"We feel very good about the agreement," says Jim Ritchie, deputy executive director of long-range planning at the Los Angeles World Airports, who was involved with negotiations on the agreement. He says the FAA was briefed on the agreement, which was "well received," although the FAA gave no formal indication of whether it will approve the agreement. "Here we were," says Mr. Ritchie, "a team of airport personnel and typical opponents coming together with an approach, rather than waiting for litigation and the same groups appearing in court."

-- Ms. Muto is a national real-estate writer for The Wall Street Journal. Her "Bricks & Mortar" column appears most Wednesdays exclusively on RealEstateJournal. She is based in the Journal's San Francisco bureau.

Appendix D

Staples CBA

Following is the "Community Benefits Program" for the Staples CBA, signed in May of 2001, and discussed in detail in Chapters One and Three. The parties also signed a "Cooperation Agreement," laying out technical legal responsibilities; all community benefits are set forth in the following CBA, however. A Los Angeles Times article on the deal is included as Appendix E.

ATTACHMENT A
COMMUNITY BENEFITS PROGRAM

I. PURPOSE

The purpose of this Community Benefits Program for the Los Angeles Sports and Entertainment District Project is to provide for a coordinated effort between the Coalition and the Developer to maximize the benefits of the Project to the Figueroa Corridor community. This Community Benefits Program is agreed to by the Parties in connection with, and as a result of, the Cooperation Agreement to which it is attached. This Community Benefits Program will provide publicly accessible park space, open space, and recreational facilities; target employment opportunities to residents in the vicinity of the Figueroa Corridor; provide permanent affordable housing; provide basic services needed by the Figueroa Corridor community; and address issues of traffic, parking, and public safety.

II. DEFINITIONS

As used in this Community Benefits Program, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form. Any capitalized terms not specifically defined in this Attachment A shall have the meanings as set forth in the Settlement Agreement.

"Agency" shall mean the Community Redevelopment Agency of the City of Los Angeles.

"City" shall mean the City of Los Angeles.

"Coalition" shall have the meaning set forth in the Cooperation Agreement.

"Contractor" shall mean a prime contractor, a subcontractor, or any other business entering into a contract with the Developer related to the use, maintenance, or operation of the Project or part thereof. The term Contractor shall not include Tenants.

"Cooperation Agreement" shall mean the Cooperation Agreement entered into between the Developer and the Coalition on May 29, 2001.

"Developer" shall mean the corporations entitled the L.A. Arena Land Company and Flower Holdings, LLC.

"Needs Assessment" shall have the meaning set forth in Section III.C.1.

"Project" shall have the meaning set forth in the Cooperation Agreement.

"Tenant" shall mean a person or entity that conducts any portion of its operations within the Project, such as a tenant leasing commercial space within the Project, or an entity that has acquired a fee simple interest from the Developer for the purpose of developing a portion of the Project. "Tenant" does not include Contractors and agents of the Developer.

Tenant shall exclude any tenant of a residential dwelling unit, any guest or other client of any hotel and any governmental entity.

III. PARKS AND RECREATION

A. PURPOSE. The purpose of this Section is to help address the deficit of park space in the Figueroa Corridor community. The Figueroa Corridor contains less than a quarter of the park space acreage required by the City. The park construction efforts under this Section will help address this deficit, providing a measurable and lasting benefit to the Figueroa Corridor community.

B. QUIMBY FEES. Developer agrees to pay all fees required by the Los Angeles Municipal Code, Chapter I, Article 7, Section 17.12, "park and recreation site acquisition and development provisions," subject to offsetting credits as allowed by that section and/or state law and approved by the city. The Coalition shall support Developer's application for Quimby credit under this section, provided that Developer's applications for credits are based on publicly accessible space and facilities.

C. PARKS AND OPEN SPACE NEEDS ASSESSMENT.

1. **Needs Assessment.** The Developer will fund an assessment of the need for parks, open space, and recreational facilities in the area bounded by the following streets: Beverly Boulevard and the 101 freeway (north boundary); Western Avenue (west boundary); Vernon Avenue (south boundary); and Alameda Street (east boundary). Developer will commence fulfillment of its responsibilities under this section III.C within 90 days after enactment by the Los Angeles City Council of a development agreement ordinance for the Project.

2. **Funding.** Developer will fund the Needs Assessment in an amount between $50,000 and $75,000, unless the Coalition consents to the Developer funding the Needs Assessment in an amount less than $50,000.

3. **Selection of organization conducting needs assessment.** The Needs Assessment will be conducted by a qualified organization agreed upon by both the Developer and the Coalition, and paid an amount consistent with Section III.C.2, above. The Developer and the Coalition may enlist other mutually agreed upon organizations to assist in conducting the Needs Assessment.

D. PARK AND RECREATION FACILITY CREATION BY DEVELOPER.

1. **Park and recreation facility creation.** Following the completion of the needs assessment, the Developer shall fund or cause to be privately funded at least one million dollars ($1,000,000) for the creation or improvement of one or more parks and recreation facilities, including but not limited to land acquisition, park design, and construction, within a one-mile radius of the Project, in a manner consistent with the results of the Needs Assessment. By mutual agreement of the Coalition and the Developer, this one-mile radius may be increased. Each park or recreation facility created pursuant to this agreement shall be open to the public and free of charge. Developer shall have no responsibility for operation or

maintenance of any park and recreation facility created or improved pursuant to this agreement. Developer after consultation with the Coalition shall select the location of park and recreation facilities to be created or improved. Park and recreation facilities shall be created or improved in a manner such that a responsible entity shall own, operate, and maintain such facilities. Each park created or improved pursuant to this agreement shall include active recreation components such as playgrounds and playing fields, and shall also include permanent improvements and features recommended by the Needs Assessment, such as restroom facilities, drinking fountains, park benches, patio structures, barbecue facilities, and picnic tables. Recreation facilities created pursuant to this Section should to the extent appropriate provide opportunities for physical recreation appropriate for all ages and physical ability levels.

2. **Timeline**. The park and recreation facilities created or improved pursuant to this agreement shall be completed within five years of completion of the Needs Assessment. At least $800,000 of the funds described in Section III.D.1, above, shall be spent within four years of completion of the Needs Assessment.

E. **OPEN SPACE COMPONENTS OF DEVELOPMENT.**

1. **Street-level plaza.** The Project will include a street-level plaza of approximately one-acre in size and open to the public.

2. **Other public spaces.** The Project will include several publicly-accessible open spaces, such as plazas, paseos, walkways, terraces, and lawns.

IV. COMMUNITY PROTECTION

A. PARKING PROGRAM. The Developer shall assist the Coalition with the establishment of a residential permit parking program as set forth below.

1. **Permit Area**. The area initially designated as part of the Parking Program is generally bounded by James Wood Drive on the north, Byram and Georgia Streets on the west, Olympic Boulevard on the south and Francisco on the east. The permit area may be adjusted from time to time by mutual agreement of the Developer and the Coalition or upon action by the City determining the actual boundaries of a residential parking district in the vicinity of the Project.

2. **Developer Support**. The Developer shall support the Coalition's efforts to establish the parking program in the permit area by requesting the City to establish a residential permit parking district through a letter to City Council members and City staff, testimony before the City Council or appropriate Boards of Commissioners, and through technical assistance which reasonably may be provided by Developer's consultants.

To defray the parking program's costs to residents of the permit area, the Developer shall provide funding of up to $25,000 per year for five years toward the cost of developing and implementing the parking program within the permit area. Such funding shall be provided to the City.

3. **Limitations**. The Coalition understands, acknowledges and hereby agrees that the City's determination of whether to establish a residential permit parking district and the boundaries thereof are within the City's sole discretion. The Developer is not liable for any action or inaction on the part of the City as to establishment of a residential permit parking district or for the boundaries thereof. The Coalition understands, acknowledges and hereby agrees that the total annual aggregate cost of a residential permit parking district may exceed $25,000 per year and that in such event, the Developer shall have no liability for any amounts in excess of $25,000 per year for five years.

B. TRAFFIC. The Developer in consultation with the Coalition shall establish a traffic liaison to assist the Figueroa Corridor community with traffic issues related to the Project.

C. SECURITY. The Developer shall encourage the South Park Western Gateway Business Improvement District to address issues of trash disposal and community safety in the residential areas surrounding the Project. The Developer shall request the BID to provide additional trash receptacles in the vicinity of the Project, including receptacles located in nearby residential areas.

V. LIVING WAGE PROGRAM

A. DEVELOPER RESPONSIBILITIES REGARDING LIVING WAGES.

1. **Compliance With Living Wage Ordinance.** The Developer, Tenants, and Contractors shall comply with the City's Living Wage Ordinance, set forth in the Los Angeles Administrative Code, Section 10.37, to the extent such ordinance is applicable.

2. **Seventy Percent Living Wage Goal.** The Developer shall make all reasonable efforts to maximize the number of living wage jobs in the Project. The Developer and the Coalition agree to a Living Wage Goal of maintaining 70% of the jobs in the Project as living wage jobs. The Developer and the Coalition agree that this is a reasonable goal in light of all of the circumstances. Achievement of the Living Wage Goal shall be measured five years and ten years from the date of this Agreement. In the event that actual performance is less than 80% of the goal for two consecutive years, Developer shall meet and confer with the Coalition at the end of such two year period to determine mutually agreeable additional steps which can and will be taken to meet the Living Wage Goal.

3. **Achievement of Living Wage Goal.** For purposes of determining the percentage of living wage jobs in the Project, the following jobs shall be considered living wage jobs:

- jobs covered by the City's Living Wage Ordinance;
- jobs for which the employee is paid on a salaried basis at least $16,057.60 per year if the employee is provided with

employer-sponsored health insurance, or $18.657.60 per year otherwise (these amounts will be adjusted in concert with cost-of-living adjustments to wages required under the City's Living Wage Ordinance);

- jobs for which the employee is paid at least $7.72 per hour if the worker is provided with employer-sponsored health insurance, or $8.97 per hour otherwise (these amounts will be adjusted in concert with cost-of-living adjustments to wages required under the City's Living Wage Ordinance); and

- jobs covered by a collective bargaining agreement.

The percentage of living wage jobs in the Project will be calculated as the number of on-site jobs falling into any of the above four categories, divided by the total number of on-site jobs. The resulting number will be compared to the Living Wage Goal to determine whether the Living Wage Goal has been achieved.

4. **Developer Compliance If Goal Not Met.** Whether or not the Living Wage Goal is being met at the five- and ten-year points, the Developer shall be considered to be in compliance with this Section if it is in compliance with the remaining provisions of this Section.

5. **Reporting Requirements**. The Developer will provide an annual report to the City Council's Community and Economic Development Committee on the percentage of jobs in the Project that are living wage jobs. The report will contain project-wide data as well as data regarding each employer in the Project. Data regarding particular employers will not include precise salaries; rather, such data will only include the number of jobs and the percentage of these jobs that are living wage jobs, as defined in Section V.A.3, above. If the report indicates that the Living Wage Goal is not being met, the Developer will include as part of the report a discussion of the reasons why that is the case. In compiling this report, Developer shall be entitled to rely on information provided by Tenants and Contractors, without responsibility to perform independent investigation. This report shall be filed for any given year or partial year by April 30th of the succeeding year.

6. Selection of Tenants.

a. **Developer Notifies Coalition Before Selecting Tenants.** At least 45 days before signing any lease agreement or other contract for space within the Project, the Developer shall notify the Coalition that the Developer is considering entering into such lease or contract, shall notify the Coalition of the identity of the prospective Tenant, and shall, if the Coalition so requests, meet with the Coalition regarding the prospective Tenant's impact on the 70% living wage goal. If exigent circumstances so

require, notice may be given less than 45 days prior to signing such a lease agreement or other contract; however, in such cases the Developer shall at the earliest possible date give the Coalition notice of the identity of the prospective Tenant, and, if the Coalition requests a meeting, the meeting shall occur on the earliest possible date and shall in any event occur prior to the signing of the lease agreement or other contract.

b. **Coalition Meeting with Prospective Tenants.** At least 30 days before signing a lease agreement or other contract for space within the Proposed Development, the Developer will arrange and attend a meeting between the Coalition and the prospective Tenant, if the Coalition so requests. At such a meeting, the Coalition and the Developer will discuss with the prospective Tenant the Living Wage Incentive Program and the Health Insurance Trust Fund, and will assist the Coalition in encouraging participation in these programs. If exigent circumstances so require, such a meeting may occur less than 30 days prior to the signing of a lease agreement; however, in such cases the meeting shall be scheduled to occur on the earliest possible date and shall in any event occur prior to the signing of the lease agreement or other contract. The Developer will not enter into a lease agreement with any prospective Tenant that has not offered to meet with the Coalition and tbe Developer regarding these issues prior to signing of the lease.

c. **Consideration of Impact on Living Wage Goal.** When choosing between prospective Tenants for a particular space within the Project, the Developer will, within commercially reasonable limits, take into account as a substantial factor each prospective Tenant's potential impact on achievement of the Living Wage Goal.

d. **Tenants Agree to Reporting Requirements.** Tenants are not required to participate in the Living Wage Incentive Program or the Health Insurance Trust Fund. However, all Tenants in the Project shall make annual reports as set forth in Section V.B.3, below. The Developer will include these reporting requirements as a material term of all lease agreements or other contracts for space within the Project.

B. TENANTS' OPPORTUNITIES AND RESPONSIBILITIES.

1. **Living Wage Incentive Program.** All Tenants will be offered tbe opportunity to participate in a Living Wage Incentive Program. Tenants are not required to participate in this program, but may choose to participate. Under the Living Wage Incentive Program, Tenants providing living wage jobs may receive various benefits of substantial economic value. The Coalition, the Developer, and the City will collaborate to structure a set of incentives, at no cost to the Developer, to assist the Project in meeting the Living Wage Goal. The Living Wage Incentive Program shall be described in a simple and accessible written format suitable for presentation to prospective Tenants. The Coalition, working collaboratively with the Developer, shall seek funding from governmental and

private sources to support the incentives and benefits provided in the Living Wage Incentive Program.

2. **Health Insurance Trust Fund.** All Tenants will be offered the opportunity to participate in the Health Insurance Trust Fund. Tenants are not required to participate in this program, but may choose to participate. The Health Insurance Trust Fund, still being established by the City, will provide Tenants with a low-cost method of providing employees with basic health insurance.

3. **Reporting Requirements**. Each Tenant in the Project must annually report to the Developer its number of on-site jobs, the percentage of these jobs that are living wage jobs, and the percentage of these jobs for which employees are provided health insurance by the Tenant. Tenants need not include precise salaries in such reports; rather, with regard to wages, Tenants need only include the number of jobs and the percentage of these jobs that are living wage jobs, as defined in Section V.A.3, above. Such reports shall be filed for any given year or partial year by January 31st of the succeeding year.

C. TERM. All provisions and requirements of this Section shall terminate and become ineffective for each Tenant ten years from the date of that Tenant's first annual report submitted pursuant to Section V.B.3, above.

VI. LOCAL HIRING AND JOB TRAINING

A. PURPOSE. The purpose of this Section is to facilitate the customized training and employment of targeted job applicants in the Project. Targeted job applicants include, among others, individuals whose residence or place of employment has been displaced by the STAPLES Center project, low-income individuals living within a three-mile radius of the Project, and individuals living in low-income areas throughout the City. This Section (1) establishes a mechanism whereby targeted job applicants will receive job training in the precise skills requested by employers in the Project, and (2) establishes a non-exclusive system for referral of targeted job applicants to employers in the Project as jobs become available.

B. CUSTOMIZED JOB TRAINING PROGRAM. The First Source Referral System, described below, will coordinate job training programs with appropriate community-based job training organizations. Prior to hiring for living wage jobs within the Project, employers may request specialized job training for applicants they intend to hire, tailored to the employers' particular needs, by contacting the First Source Referral System. The First Source Referral System will then work with appropriate community-based job training organizations to ensure that these applicants are provided with the requested training.

C. FIRST SOURCE HIRING POLICY. Through the First Source Hiring Policy, attached hereto as attachment No. 1, qualified individuals who are targeted for employment opportunities as set forth in Section IV.D of the First Source Hiring Policy will have the opportunity to interview for job openings in the Project. The Developer, Contractors, and Tenants shall participate in the First Source Hiring Policy, attached

hereto as Attachment No. 1. Under the First Source Hiring Policy, the First Source Referral System will promptly refer qualified, trained applicants to employers for available jobs. The Developer, Contractors, and Tenants shall have no responsibility to provide notice of job openings to the First Source Referral System if the First Source Referral System is not fulfilling its obligations under the First Source Hiring Policy. The terms of the First Source Hiring Policy shall be part of any deed, lease, or contract with any prospective Tenant or Contractor.

D. FIRST SOURCE REFERRAL SYSTEM. The First Source Referral System, to be established through a joint effort of the Developer and the Coalition, will work with employers and with appropriate community-based job training organizations to provide the referrals described in this Section. The Coalition and the Developer will select a mutually agreeable nonprofit organization to staff and operate the First Source Referral System, as described in the First Source Hiring Policy. The Developer will provide $100,000 in seed funding to this organization. The Developer will meet and confer with the Coalition regarding the possibility of providing space on site for the First Source Referral System, for the convenience of Tenants and job applicants; provided, however, the Developer may in its sole and absolute discretion determine whether or on what terms it would be willing to provide space for the First Source Referral System. If the First Source Referral System becomes defunct, Employers shall have no responsibility to contact it with regard to job opportunities.

VII. SERVICE WORKER RETENTION

A. SERVICE CONTRACTOR WORKER RETENTION. The Developer and its Contractors shall follow the City's Worker Retention Policy as set forth in the Los Angeles Administrative Code, Section 10.36. The City's Worker Retention Policy does not cover individuals who are managerial or supervisory employees, or who are required to possess an occupational license.

B. WORKER RETENTION FOR HOTEL AND THEATER EMPLOYEES. The Developer agrees that Tenants in hotel and theater components of the Project will follow the City's Worker Retention Policy with regard to all employees, and will require contractors to do the same. The Developer will include these requirements as material terms of all lease agreements or other contracts regarding hotel and/or theater components of the Project.

C. INCLUSION IN CONTRACTS. The Developer shall include the requirements of this section as material terms of all contracts with Contractors and with Tenants in hotel and theater components of the Project, with a statement that such inclusion is for the benefit of the Coalition.

VIII. RESPONSIBLE CONTRACTING

A. DEVELOPER SELECTION OF CONTRACTORS. The Developer agrees not to retain as a Contractor any business that has been declared not to be a responsible contractor under the City's Contractor Responsibility Program (Los Angeles Administrative Code, Section 10.40.)

B. DEVELOPER SELECTION OF TENANTS. The Developer agrees that before entering into or renewing a lease agreement regarding any space over fifteen thousand (15,000) square feet, the Developer shall obtain from any prospective Tenant a written account of whether the prospective Tenant has within the past three years been found by a court, an arbitrator, or an administrative agency to be in violation of labor relations, workplace safety, employment discrimination, or other workplace-related laws. When choosing between prospective Tenants for a particular space within the Project, the Developer will, within commercially reasonable limits, take into account as a substantial factor weighing against a prospective Tenant any findings of violations of workplace-related laws. In complying with this Section, the Developer shall be entitled to rely on information provided by Tenants, without responsibility to perform independent investigation.

C. REPORTING REQUIREMENTS. The Developer will provide an annual report to the Coalition and to the City Council's Community and Economic Development Committee on the percentage of new lease agreements or other contracts regarding use of space within the Project that were entered into with entities reporting violations of workplace-related laws. In compiling this report, Developer shall be entitled to rely on information provided by Tenants and Contractors, without responsibility to perform independent investigation. The report may aggregate information from various End Users, so as not to identify any particular Tenant. This report shall be filed for any given year or partial year by April 30th of the succeeding year, and may be combined with the report regarding living wages, required to be filed by Section V.B.3.

IX. AFFORDABLE HOUSING

A. PURPOSE. Developer has included between 500 and 800 housing units as part of the Project. The goal is create an "inclusionary" development; *i.e.* the project will include an affordable housing component (the "Affordable Housing Program") as set forth in this Section.

B. DEVELOPER AFFORDABLE HOUSING PROGRAM. This Developer Affordable Housing Program exceeds requirements of state law and the Agency. To further its connection to the surrounding neighborhoods, the Developer proposes to work with community-based housing developers to implement much of the plan.

1. **Percentage Affordable Units.** The Developer shall develop or cause to be developed affordable housing equal to 20% of the units constructed within the Project, as may be adjusted under Section IX.D., below, through joint efforts with community-based organizations to create additional affordable units as provided in Section IX.C, below. The Developer intends to include between 500 and 800 units in the Project; therefore, the Developer's affordable housing commitment would be between 100 and 160 units, as may be adjusted under Section IX.D below.

2. **Income Targeting** The distribution of affordable units shall be as follows:

a. 30% affordable to families earning zero to 50% of Area Median Income ("AMI");

b. 35% affordable to families earning 51% to 60% of AMI;

c. 35% affordable to families earning 61% to 80% of AMI.

3. **Term of Affordability.** Affordable units will remain affordable for a minimum of 30 years.

4. **Location.** Affordable units may be built within the Project or off-site. Units built off site will be located in redevelopment areas within a three-mile radius from the intersection of 11th and Figueroa Streets. To the extent the Agency provides direct financial assistance in the creation of affordable units, 50% of the affordable units shall be constructed within the Project if required by the Agency.

5. **Unit and Project Type.** Given the high density of the proposed on-site high-rise housing, any inclusionary units within the Project will be two-bedroom units. Three- and four-bedroom units may be developed at offsite locations that are more appropriate to accommodate larger units and families. In connection with any off-site affordable units, Developer shall give priority consideration to creation of projects suitable for families in terms of unit size, location, and proximity to family-serving uses and services.

6. **Relocated Persons.** To the extent allowed by law, priority shall be given to selecting persons relocated in connection with the development of the STAPLES Center to be tenants in any affordable units created under this Section IX. Notice of availability of affordable units shall be given to such relocated persons as set forth in Section X.D.

7. **Public Participation and Assistance.** Nothing herein shall limit the right of the Developer to seek or obtain funding or assistance from any federal, state or local governmental entity or any non-profit organization in connection with the creation or rehabilitation of affordable units.

C. COOPERATIVE DEVELOPMENT WITH COMMUNITY BASED ORGANIZATIONS

1. **Purpose**. In addition to development of affordable housing on-site or off-site, Developer shall work cooperatively with community based organizations to in an effort to provide additional affordable housing units. The goal of this program is to identify affordable housing infill development opportunities within a 1.5-mile radius of Figueroa and 11th Street and to affiliate with well-established non-profit affordable housing development corporations in the area.

2. **Interest Free Loans.** As "seed money" for affordable housing development, within 2 years after receiving final entitlement approvals for the Project, Developer will provide interest-free loans in the aggregate amount not to exceed $650,000 to one or more non-profit housing developers that are active in the Figueroa Corridor area and are identified in the Section VI.D.3, below, or are mutually agreed upon by the Developer and the Coalition. Repayment of principal repayment shall be due in full within three (3) years from the date the loan is made. Provided that the loan or loans have been timely repaid, such repaid amounts may be loaned again to one or more non-profit housing developers; however, it is understood that all loans will be repaid within six (6) years from the date the first loan was made. In addition, the loans shall be on such other commercially reasonable terms consistent with the purposes of this Section IX.C.

3. **Prequalified Non-Profit Development Corporations.** The following non-profit community based organizations are eligible to seek to participate in this cooperative program:

a. Esperanza Development Corporation - Sister Diane Donoghue

b. 1010 Hope Development Corporation - DarEll Weist

c. Pueblo Development Corporation- Carmela Lacayo

d. Pico Union Development Corporation - Gloria Farias

4. **Use of Program Funds.** The interest free loans may be used by the selected organizations for the following purposes:

a. Land acquisition/option/due diligence.

b. To focus on existing buildings to substantially rehabilitate or to acquire small infill sites capable of supporting approximately 40 or more units.

c. Entitlement and design feasibility studies.

d. Financial analysis and predevelopment studies.

e. Funding applications and initial legal expenses.

f. Other expenses reasonably approved by Developer to secure full funding agreements

5. Project Selection Process

a. Within 90 days following Project approvals, Developer will meet and confer with principals of each non-profit listed in Section IX.C.3, above to gain a comprehensive understanding of the capabilities and capacity of each organization and ability to obtain financing support.

b. Within 6 months following Project approvals, Developer will request proposals from each non-profit organization, which may include one or more prospective sites and use best efforts to identify one or more projects to pursue.

c. Developer shall consult with and seek the input of the Coalition in the selection of the nonprofit housing developer or developers. Developer shall enter into a loan agreement with any selected nonprofit housing developer to provide the interest free loan as set forth in this Section IX.C.

D. ADJUSTMENTS TO AFFORDABLE HOUSING UNITS. The assistance provided by Developer under Section IX.C may result in production of affordable units substantially in excess of 20%. Further, the Coalition has a goal of at least 25% affordable units. Therefore, for every two units of affordable housing (including both rehabilitation or new construction) created by the non-profit developer or developers with the assistance of Developer under Section IX.C in excess of 25%, Developer shall receive a credit of one unit toward Developer's obligation to create affordable housing units; provided, however, that Developer's overall obligation for affordable housing units shall not be less than 15% due to any such reduction.

In the event that no affordable units are created under the cooperative program established in Section IX.C, above, through no fault of the Developer and the Developer is unable to recoup all or a portion of the loan or loans, the Developer's obligation to create affordable units shall be reduced by one unit for each $10,000 of unrecouped loans; provided, however that Developer's overall obligation for affordable housing units shall not be less than 15% of the housing due to any such reduction.

X. RELOCATED FAMILIES

A. PURPOSE. The purpose of this Section is to address problems that may be faced by families that were relocated by the Agency in connection with the development of the STAPLES Center. Many such families can no longer afford their current housing due to the expiration of the relocation assistance provided by the Agency.

B. MEET AND CONFER. The Developer agrees to meet and confer with the Coalition, City Councilmembers, Agency board and staff, and other City staff in effort to seek and obtain permanent affordable housing for families relocated in connection with the development of the STAPLES Center. Meetings with the Coalition shall be held quarterly, or less frequently if mutually agreed by the Coalition and the Developer. Meetings with City Councilmembers, Agency board and staff, and other City staff will be held as necessary. The Developer's responsibilities under this section will terminate five years from the effective date of the Cooperation Agreement.

C. ASSISTANCE. The Developer will generally assist the Coalition to seek and obtain permanent affordable housing for relocated families. Developer will speak in favor of such efforts at least two appropriate public meetings and hearings when requested to do so by the Coalition. The Developer will use commercially reasonable efforts to provide technical assistance to the Coalition.

D. NOTICE OF AVAILABILITY. For a period of three years, Developer shall use good faith efforts to cause the Agency to give, to the fullest extent allowed by law, 30 days notice of availability of affordable units created by the Project to persons relocated in connection with construction of STAPLES Center and to provide such relocated persons the first opportunity to apply as potential tenants. Persons eligible for such notice shall be relocated persons who are not tenants in a permanent affordable housing project and who otherwise meet income and other requirements for affordable housing.

E. TIMING. Permanent affordable housing for relocated families is an urgent matter and, therefore, time is of the essence. Consequently, Developer's obligations under this Section X, shall begin within five days following execution of the Settlement Agreement.

XI. COALITION ADVISORY COMMITTEE

To assist with implementation of this Community Benefits Program, address environmental concerns and facilitate an ongoing dialogue between the Coalition and the Developer, the Coalition and the Developer shall establish a working group of representatives of the Coalition and the Developer, known as the Advisory Committee. This Advisory Committee shall meet quarterly, unless it is mutually agreed that less frequent meetings are appropriate. Among other issues, the Developer shall seek the input of the Advisory Committee in the Developer's preparation of the construction management plan, the traffic management plan, the waste management plan and the neighborhood traffic protection plan. In addition, the Developer shall seek the input of the Advisory Committee in a effort to develop and implement potential solutions to other environmental concerns, including without limitation, pedestrian safety, air quality and green building principles.

XII. GENERAL PROVISIONS

A. SEVERABILITY CLAUSE. If any term, provision, covenant, or condition of this Community Benefits Program is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall continue in full force and effect.

B. Material Terms. All provisions and attachments of this Community Benefits Program are material terms of this Community Benefits Program.

Attachment 1

FIRST SOURCE HIRING POLICY

SECTION I. PURPOSE.

The purpose of this First Source Hiring Policy is to facilitate the employment of targeted job applicants by employers in the Los Angeles Sports and Entertainment District. It is a goal of this First Source Hiring Policy that the First Source Referral System contemplated herein will benefit employers in the project by providing a pool of qualified job applicants whose job training has been specifically tailored to the needs of employers in the project through a non-exclusive referral system.

SECTION II. DEFINITIONS.

As used in this policy, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form.

"City" shall mean the City of Los Angeles and any of its departments and/or agencies.

"Developer" shall mean the L.A. Arena Land Company and Flower Holdings, LLC. and their Transferees.

"Project" shall mean the Los Angeles Sports and Entertainment District.

"Employer" shall mean a business or nonprofit corporation that conducts any portion of its operations within the Project; provided, however, this First Source Hiring Policy shall only apply to any such portion of operations within the Project.. Employer includes but is not limited to lessees, landowners, and businesses performing contracts on location at tbe Project. All "Employers" are "Covered Entities," as defined above.

"First Source Referral System" shall mean the system developed and operated to implement this First Source Hiring Policy, and the nonprofit organization operating it.

"Low-Income Individual" shall mean an individual whose household income is no greater than 80% of the median income for the Standard Metropolitan Statistical Area.

"Targeted Job Applicants" shall mean job applicants described in Section IV.D, below.

"Transferee" shall mean a person or entity that acquires a fee simple interest or a ground lease from the Developer for the purpose of developing all or any portion of the Proposed Development.

SECTION III. EMPLOYER RESPONSIBILITIES

A. Coverage. This First Source Hiring Policy shall apply to hiring by Employers for all jobs for which the work site is located within the Project, except for jobs for which hiring procedures are governed by a collective bargaining agreement which conflicts with this First Source Hiring Policy.

B. Long-Range Planning. Within a reasonable time after the information is available following execution by of a lease by Developer and Employer for space within the Project, the Employer shall provide to the First Source Referral System regarding the approximate number and type of jobs that will need to be filled and the basic qualifications necessary.

C. Hiring process.

(1) Notification of job opportunities. Prior to hiring for any job for which the job site will be in the Project, the Employer will notify the First Source Referral System of available job openings and provide a description of job responsibilities and qualifications, including expectations, salary, work schedule, duration of employment, required standard of appearance, and any special requirements (e.g. language skills, drivers' license, etc.). Job qualifications shall be limited to skills directly related to performance of job duties, in the reasonable discretion of the Employer.

(2) Referrals. The First Source Referral System will, as quickly as possible, refer to the Employer Targeted Job Applicants who meet the Employer's qualifications. The First Source Referral System will also, as quickly as possible, provide to the Employer an estimate of the number of qualified applicants it will refer.

(3) Hiring. The Employer may at all times consider applicants referred or recruited through any source. When making initial hires for the commencement of the Employer's operations in the Project, the Employer will hire only Targeted Job Applicants for a three-week period following the notification of job opportunities described in subparagraph III.C.1, above. When making hires after the commencement of operations in the Project, the Employer will hire only Targeted Job Applicants for a five-day period following the notification of job opportunities. During such periods Employers may hire Targeted Job Applicants recruited or referred through any source. During such periods Employers will use normal hiring practices, including interviews, to consider all applicants referred by the First Source Referral System. After such periods Employers shall make good-faith efforts to hire Targeted Job Applicants, but may hire any applicant recruited or referred through any source.

E. Goal. Any Employer who has filled more than 50% of jobs available either during a particular six-month period with Targeted Job Applicants (whether referred by the First Source Referral System or not), shall be deemed to be in compliance with this First Source Hiring Policy for all hiring during that six-month period. Any Employer who has complied with remaining provisions of this First Source Hiring Policy is in compliance with this First Source Hiring Policy even it has not met this 50% goal during a particular six-month period.

F. No Referral Fees. Employers shall not be required to pay any fee, cost or expense of the First Source Referral System or any potential employees referred to the Employer by the First Source Referral System in connection with such referral.

SECTION IV. RESPONSIBILITIES OF FIRST SOURCE REFERRAL SYSTEM.

The First Source Referral System will perform the following functions related to this First Source Hiring Policy:

A. Receive Employer notification of job openings, immediately initiate recruitment and pre-screening activities, and provide an estimate to Employers of the number of qualified applicants it is likely to refer, as described above.

B. Recruit Targeted Job Applicants to create a pool of applicants for jobs who match Employer job specifications.

C. Coordinate with various job-training centers.

D. Screen and refer Targeted Job Applicants according to qualifications and specific selection criteria submitted by Employers. Targeted Job Applicants shall be referred in the following order:

(1) First Priority: individuals whose residence or place of employment has been displaced by the STAPLES Center project or by the initial construction of the project and Low-Income Individuals living within a one-half-mile radius of the Project.

(2) Second Priority: Low-Income Individuals living within a three-mile radius of the Project.

(3) Third Priority: Low-Income Individuals living in census tracts or zip codes throughout the City for which more than 80% of the households, household income is no greater than 80% of the median household income for the Standard Metropolitan Statistical Area.

E. Maintain contact with Employers with respect to Employers' hiring decisions regarding applicants referred by the First Source Referral System.

F. Assist Employers with reporting responsibilities as set forth in Section V of this First Source Hiring Policy, below, including but not limited to supplying reporting forms and recognizing Targeted Job Applicants.

G. Prepare and submit compliance reports to the City as set forth in Section V of this First Source Hiring Policy, below.

SECTION V. REPORTING REQUIREMENTS.

A. Reporting Requirements and Recordkeeping.

(1) Reports. During the time that this First Source Hiring Policy is applicable to any Employer, that Employer shall, on a quarterly basis, notify the First Source Referral System of the number, by job classification, of Targeted Job Applicants hired by the Employer during that, quarter and the total number of employees hired by the Employer during that quarter. The First Source Referral System shall submit annual aggregate reports for all Employers to the City, with a copy to the Coalition, detailing the employment of Targeted Job Applicants in the Project.

(2) Recordkeeping. During the time that this First Source Hiring Policy is applicable to any Employer, that Employer shall retain records sufficient to report compliance with this First Source Hiring Policy, including records of referrals from the First Source Referral System, job applications, and number of Targeted Job Applicants hired. To the extent allowed by law, and upon reasonable notice, these records shall be made available to the City for inspection upon request. Records may be redacted so that individuals are not identified by name and so that other confidential information is excluded.

(3) Failure to Meet Goal. In the event an Employer has not met the 50% goal during a particular six-month period, the City may require the Employer to provide reasons it has not met the goal and the City may determine whether the Employer has nonetheless adhered to this Policy.

SECTION VI. GENERAL PROVISIONS.

A. Term. This First Source Hiring Policy shall be effective with regard to any particular Employer until five years from the date that Employer commenced operations within the Project.

B. Meet & Confer, Enforcement. If the Coalition, the First Source Referral System, or the City believes that an Employer is not complying with this First Source Hiring Policy, then the Coalition, the First Source Referral System, the City, and the Employer shall meet and confer in a good faith attempt to resolve the issue. If the issue is not resolved through the meet and confer process within a reasonable period of time, the City may enforce the First Source Hiring Policy against the Developer as a term of any agreement between the City and the Developer into which the First Source Hiring Policy has been incorporated.

B. Miscellaneous.

(1) Compliance with State and Federal Law. This First Source Hiring Policy shall only be enforced to the extent that it is consistent with the laws of the State of California and the United States. If any provision of this First Source Hiring Policy is held by a court of law to be in conflict with state or federal law, the applicable law shall prevail over the terms of this First Source Hiring Policy, and the conflicting provisions of this First Source Hiring Policy shall not be enforceable.

(2) **Indemnification.** The First Source Referral System shall, jointly and severally, indemnify, hold harmless and defend the Developer and any Employer, and their officers, directors, partners, agents, employees and funding sources, if required by any such funding source (the "Indemnified Parties") from and against all fines, suits, liabilities, proceedings, claims, costs, damages, losses and expenses, including, but not limited, to attorney's fees and court costs, demands, actions, or causes of action, of any kind and of whatsoever nature, whether in contract or in tort, arising from, growing out of, or in any way related to the breach by the First Source Referral System or their affiliates, officers, directors, partners, agents, employees, subcontractors (the "First Source Parties") of the terms and provisions of this First Source Hiring Policy or the negligence, fraud or willful misconduct of First Source Parties. The indemnification obligations of the First Source Parties shall survive the termination or expiration of this First Source Hiring Policy, with respect to any claims arising as the result of events occurring during the effective term of this First Source Hiring Policy .

(3) **Compliance with Court Order.** Notwithstanding the provisions of this Policy, the Developer, Employers, Contractors, or Subcontractors shall be deemed to be in compliance with this First Source Hiring Policy if subject to by a court or administrative order or decree, arising from a labor relations dispute, which governs the hiring of workers and contains provisions which conflict with terms of this Policy.

(4) **Severability Clause.** If any term, provision, covenant, or condition of this First Source Hiring Policy is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall continue in full force and effect.

(5) **Binding on Successors.** This First Source Hiring Policy shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the parties. Any reference in this Policy to a specifically named party shall be deemed to apply to any successor in interest, heir, administrator, executor, or assign of such party.

(6) **Material Terms.** The provisions of this First Source Hiring Policy are material terms of any deed, lease, or contract in which it is included.

(7) **Coverage.** All entities entering into a deed, lease, or contract relating to the rental, sale, lease, use, maintenance, or operation of the Project or part thereof shall be covered by the First Source Hiring Policy, through the incorporation of this First Source Hiring Policy into the deed, lease, or contract. Substantive provisions set forth in Section III. "Employer Responsibilities," apply only to jobs for which the work site is located within the Project.

Appendix E

Los Angeles Times Article About Staples CBA

Los Angeles Times
Thursday, May 31, 2001
Home Edition
Section: Part A
Page: A-1

Community, Developers Agree on Staples Plan

Deal: The proposed entertainment and sports district could become a model for urban partnerships.

By: LEE ROMNEY
TIMES STAFF WRITER

Ending the threat of widespread opposition, the developers of a major hotel and entertainment center around Staples Center have agreed to an unprecedented package of concessions demanded by community groups, environmentalists and labor.

The developers--including billionaire Philip Anschutz and media mogul Rupert Murdoch--agreed to hire locally, provide "living wage jobs" and build affordable housing and new parks. The deal is scheduled to be announced today after months of confidential negotiations.

The billion-dollar project is seen as vital to the revitalization of downtown Los Angeles. Known as the L.A. Sports and Entertainment District, it would be anchored by a 45-story hotel with at least 1,200 rooms at Olympic Boulevard and Georgia Street. The project also would include a 7,000-seat theater for musicals, award shows and other live entertainment. Restaurants, nightclubs and retail stores would be built around a plaza.

A 250,000-square-foot expansion of the adjacent Los Angeles Convention Center also is in the plan, as well as two apartment towers with a total of 800 units and a second smaller hotel.

The deal brokered with the coalition of activist groups, unions and residents, which will become part of the development agreement, is believed to be the first of its kind nationwide to take such a broad array of community concerns into account, according to economic and community development experts. Union and neighborhood leaders are hopeful that it will serve as a blueprint for similar projects, particularly when hefty public subsidies are involved.

"I've never heard of an agreement that's as comprehensive as this," said Greg LeRoy, director of the Washington-based Good Jobs First, a national clearinghouse that tracks the public benefits of economic development projects. "What's unusual here is that [housing, employment and open-space provisions are] all together. . . . It's really a model."

The development partnership, led by the Los Angeles Arena Land Co., also owns Staples Center. That project received Los Angeles city approval in 1997 on the condition that the developers eventually build the massive complex to help the Convention Center attract more business.

But community opposition posed a serious threat, in part because the hotel project likely will require a city subsidy that could exceed $75 million. While scattered resistance may yet emerge, the developers now can claim the backing of the groups most affected by the development, including 29 community groups, about 300 predominantly immigrant residents of the neighborhood and five labor unions.

"I think the City Council has to be pleased with that . . . because those are the people who will be most impacted," said John Sheppard, land use planning deputy to Councilwoman Rita Walters, who represents the neighhorhood and arranged the first meeting between community groups and Arena Land President Tim Leiweke last fall.

Next week's city elections added urgency to the mix. Marching orders for Ted Tanner, senior vice president of Staples Center and Arena Land--the main developer--were to secure all city entitlements by the end of June. Getting the community on board, and avoiding a protracted fight, was "extremely important," he said.

The city Planning Commission approved the plan May 23. It is scheduled for a vote before the Community Redevelopment Agency next week and then moves to City Council.

The approach on both sides of the table stands in marked contrast to the way things went down when Staples Center rose from the ground just two years ago. Then, the community was neither organized nor informed enough to act, and Staples officials now concede they were insensitive to community needs.

Still, the new deal did not come easy. Many coalition members are more accustomed to protest than to the 100 hours of labor-style negotiations that ultimately produced the package. Early relations were rocky. When Leiweke canceled plans to attend the first meeting with residents last October, organizers placed his name placard on an empty chair, addressing him angrily in his absence.

But the tone changed over time as mutual trust built. By March, Tanner--who had been anointed lead negotiator by Leiweke--delivered an update to residents in accented Spanish, and was met with applause.

Tanner said the difficulty in negotiations was

in striking a balance--to meet the demands of the coalition without burdening the development or its tenants with costly conditions not required elsewhere.

"Our goal in continuing negotiations was to win true support and advocacy for the project," said Tanner, an architect who early in his career sat across the table from community groups on urban planning projects in Philadelphia. "Their goal was the same--to see if we could make this project better and improve benefits for the community."

For community groups, unions and residents, however, the deal has even broader implications. The effort, they say, has yielded the most tangible results yet of a nascent strategy to serve the overall interests of neighborhoods.

"It's a huge step forward," said Madeline Janis-Aparicio, executive director of the Los Angeles Alliance for a New Economy and one of the lead community negotiators. "Bringing all these groups together showed how housing relates to jobs relates to environment. These are holistic people with holistic needs, and to have a developer take that into account . . . is just amazing."

Among the highlights of the deal:

- More than $1 million for the creation or improvement of parks within a mile of the project, with community input; a one-acre public plaza and other public open space.
- At least 70% of the estimated 5,500 permanent jobs to be created by the project--including those offered by tenants--will pay a living wage or better. Those are defined as paying $7.72 an hour with benefits or $8.97 without, or covered by collective bargaining agreement. The deal also calls on the developer to notify the coalition 45 days before signing tenant lease agreements.
- A local hiring and job training program for those displaced by the arena, living within three miles of the project or living in low-income areas citywide. Developers will give $100,000 in seed funding to create specialized job training programs through local community groups and ensure that appropriate residents are notified first of jobs.
- A residential parking permit program, financed by developers for five years, that will reserve street parking for residents. Common in affluent areas, officials say it will become the first parking permit zone in a low-income neighborhood.
- Construction of between 100 and 160 affordable housing units, or 20% of the total project. Those will be affordable to residents earning below 50%, 60% and 80% of the area's median income. The units exceed Community Redevelopment Agency requirements in number and serve families with lower incomes. Developers also will provide up to $650,000 in interest-free loans for nonprofit housing developers in the early stages of developing projects in the area.

Some of the 29 community groups that came together as the Figueroa Corridor Coalition for Economic Justice had worked together before, helping to organize union efforts at USC. The alliance broadened beginning last summer to include everyone from local churches and housing activists to environmentalists, tenant organizers and immigrant rights groups.

Meanwhile, residents began to organize too, coming together to air concerns over conditions around the existing arena, where reckless drivers, costly parking tickets, and vandalism have plagued their lives.

Labor, too, played a key role--with two

unions representing hotel and restaurant workers and janitors joining the community coalition as part of an effort to expand their influence beyond wage issues.

They are among five unions negotiating jointly for union jobs and the right to organize at the new center under the direction of Los Angeles County Federation of Labor leader Miguel Contreras.

Realizing that the window of opportunity was small and closing, coalition members opted to link up with labor to further leverage their power, said Gilda Haas, director of Strategic Actions for a Just Economy, one of the lead organizations in the coalition.

When disagreements stymied the progress of the janitors' union, community negotiators stood in unison with labor. In turn, labor chimed in on issues such as affordable housing, which affects their membership but was not technically on their agenda.

"I kept thinking of this as two airplanes approaching an airport at the same time," said David Koff, a hotel union research analyst who served as an official County Federation of Labor observer in the community negotiations. "The idea was to get both to make a soft landing at the same time."

The unions, which also represent parking lot attendants, stagehands and operating engineers, are expected to announce their finalized agreements soon. But labor sources said most of the core issues have been resolved, due in part to the coordinated approach to negotiations.

"What we're hoping is to get work, to get housing, to have a better way of living," said Manuel Pacheco Galvan, who hopes to trade his job at a Hollywood market for one closer to home. "Almost everything we asked for we got. . . . In the beginning it didn't seem possible, but now we see that it's a reality. This will mean some change for all of us."

PHOTO:
Proposed L.A. Sports and Entertainment District around Staples Center is a billion-dollar project.

PHOTOGRAPHER:
UCLA Urban Simulation Team

Appendix F

Living Wage Section of the NoHo Commons CBA

Following are the living wage provisions for the NoHo Commons CBA, described in Chapter Four. The entire CBA is available online at http://www.laane.org/ad/cba.html.

SECTION VI. LIVING WAGE POLICY.

A. Developer Responsibilities Regarding Living Wages.

1. Compliance With Living Wage Ordinance. The Developer and Contractors shall comply with substantive provisions of the City's Living Wage Ordinance, ser forth in the Los Angeles Adininistrative Code, Section 10.37.

2. Seventy-Five Percent Living Wage Proportion. The Developer shall make all reasonable efforts to maximize the number of living wage jobs in the Development. The Developer and the Coalition agree that at leasr 75% of the jobs in the Development will be living wage jobs. The Developer and the Coalition agree that this is a reasonable requirement in light of all of the circumstances. Achievement of the Living Wage Proportion shall be measured each year on January 1, but shall be reported biannually, as described in section VI.A.5, below. In the event that actual performance is less than 75% of the Living Wage Proportion for two consecutive years, Developer shall promptly meet and confer with the Coalition to determine mutually agreeable additional steps which can and will be taken to meet the Living Wage Proportion. Notwithstanding anything to the contrary, Developers failure to meet the above mentioned 75% requirement shall not be a breach or default under this agreement or the Owners Participation Agreement. However if the Agency determines in its reasonable discretion that the Developer has not in any two calendar year period used reasonable efforts

to meet the 75% requirement, then the Agency may assess a penalty of $10,000 for each such applicable period. This penalty shall be the only liability that Developer shall have regarding the 75% Living Wage requirement.

3. ***Exemption for Small Businesses.*** Developer's responsibilities with regard to the Living Wage Proportion shall not apply to jobs at businesses that employ fewer than ten workers.

4. ***Calculation of Proportion of Living Wage Jobs.*** For purposes of determining the percentage of living wage jobs in the Development, the following jobs shall be considered living wage jobs:

- jobs covered by tbe City's Living Wage Ordinance;
- jobs for which the employee is paid on a salaried basis at least $16,057.60 per year if the employee is provided with employer-sponsored health insurance, or $18.657.60 per year otherwise (these amounts will be adjusted in concert with cost-of-living adjustments to wages required under the City's Living Wage Ordinance);
- jobs for which the employee is paid at least $7.99 per hour if the worker is provided with employer-sponsored health insurance, or $9.24 per hour otherwise (these amounts will be adjusted in concert with cost-of-living adjustments to wages required under the City's Living Wage Ordinance); and
- jobs covered by a collective bargaining agreement.

The percentage of living wage jobs in the Development will be calculated as the number of on-site jobs falling into any of the above four categories, divided by the total number of on-site jobs. No part of this calculation shall take into account jobs covered by the exemption for small businesses, described in section VI.A.3, above. The resulting number will be compared to the Living Wage Proportion to determine whether the Living Wage Proportion has been met.

5. ***Reporting Requirements.*** The Developer will provide a bi-annual report to the Agency on the percentage of jobs in the Development that are living wage jobs. The report will contain project-wide data as well as data regarding each employer in the Development. Data regarding particular employers will not include precise salaries; rather, such data will only include the number of jobs and the percentage of these jobs that are living wage jobs, as defined in Section VI.A.3, above. If the report indicates that the Living Wage Proportion is not being met, the Developer will include as part of the report a discussion of the reasons why that is the case. In compiling this report, Developer shall be entitled to rely on information provided by Tenants and Contractors, without responsibility to perform independent investigation. This report shall be filed for any given year or partial year by April 30th of the succeeding year.

6. ***Selection of Tenants.***

a. *Developer Notifies Coalition Before Selecting Tenants.* At least 45 days before signing any lease agreement or other contract for space within the Development, the Developer shall notify the Coalition that the Developer is considering entering into such lease or contract, shall notify the Coalition of the identity of the prospective Tenant, and shall, if the Coalition so requests, meet with the Coalition regarding the prospective Tenant's impact on the 75% Living Wage Proportion. If exigent circumstances so require, notice may be given less than 45 days prior to signing such a lease agreement or other contract; however, in such cases the Developer shall at the earliest possible date give the Coalition notice of the identity of the prospective Tenant,

and, if the Coalition requests a meeting, the meeting shall occur on the earliest possible date and shall in any event occur prior to the signing of the lease agreement or other contract.

b. *Coalition Meeting with Prospective Tenants.* At least 30 days before signing a lease agreement or other contract for space within the Proposed Development, the Developer will arrange and attend a meeting between the Coalition and the prospective Tenant, if the Coalition so requests. At such a meeting, the Coalition and the Developer will discuss with the prospective Tenant the Living Wage Incentive Program and the Health Insurance Trust Fund, and will assist the Coalition in encouraging participation in these programs. If exigent circumstances so require, such a meeting may occur less than 30 days prior to the signing of a lease agreement; however, in such cases the meeting shall be scheduled to occur on the earliest possible date and shall in any event occur prior to the signing of the lease agreement or other contract.

c. *Consideration of Impact on Living Wage Proportion.* When choosing between prospective Tenants for a particular space within the Development, the Developer will reasonably take into account as a substantial factor each prospective Tenant's potential impact on achievement of the Living Wage Proportion.

d. *Tenants Agree to Reporting Requirements.* Tenants shall make annual reports as set forth in Section VI.B.3, below. The Developer will use best efforts to include these reporting requirements as a material term of all lease agreements or other contracts for space within the Development.

B. Tenants' opportunities and responsibilities.

1. ***Living Wage Incentive Program.*** All Tenants will be offered the opportunity to participate in a Living Wage Incentive Program. Under the Living Wage Incentive Program, Tenants providing living wage jobs may receive various benefits of substantial economic value. At no cost to the Developer, without the Developer's prior and sole consent, the Coalition, the Developer, and the Agency will collaborate to attempt to structure a set of incentives to assist the Development in meeting the Living Wage Proportion. The Living Wage Incentive Program shall be described in a simple and accessible written format suitable for presentation to prospective Tenants. The Coalition, working collaboratively with the Developer, shall seek funding from governmental and private sources to support the incentives and benefits provided in the Living Wage Incentive Program.

2. ***Health Insurance Trust Fund.*** The Agency, the City and the Coalition are attempting to create a Health Insurance Trust Fund, which is intended to provide Tenants with a low-cost method of providing employees with basic health insurance. When available, all Tenants will be offered the opportunity to participate in the Health Insurance Trust Fund. Tenants are not required to participate in this program, but may choose to participate.

3. ***Reporting Requirements.*** Developer shall require each Tenant to annually report to the Developer its number of on-site jobs, the percentage of these jobs that are living wage jobs, and the percentage of these jobs for which employees are provided health insurance by the Tenant. Tenants need not include precise salaries in such reports; rather, with regard to wages, Tenants need only include the number of jobs and the percentage of these jobs that are living wage jobs, as defined in Section VI.A.4, above. Such reports shall be filed for any given year or partial year by January 31st of the succeeding year.

Appendix G

CIM Project – Memorandum Attachment to DDA

Following is a memorandum setting out community benefits commitments for the CIM project, described in Appendix B. This memorandum became a legally binding attachment to the project's development agreement. These community benefits commitments are explicitly enforceable by the Coalition under the legal status of a designated "third-party beneficiary."

SJ REDEVELOPMENT AGENDA: 12-10-02
ITEM: 7.1

15 71

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO:	Mayor and Redevelopment Board Members	FROM:	Board Members Cindy Chavez, David Cortese and Linda LeZotte
SUBJECT:	Approval of a Disposition and Development Agreement with CIM California Urban Real Estate Fund, L.P.	DATE:	December 10, 2002

APPROVED: [signatures] DATE: 12-10-02

RECOMMENDATION:

We recommend that the Redevelopment Agency Board

- Approve items a, b, c, f, and h, as outlined in the staff report
- Refer Item e back to the Executive Director in order to be brought back to the Board as a separate agenda item, and amend items g & i to correspond with the this direction.
- Direct staff to bring back to the Agency Board amendments to the DDA and/or additional agreements as appropriate around the following issues:
  - Construction
    - Creation of a Construction Mitigation Plan for Agency Board approval prior to the start of construction
    - Develop a Project Labor Agreement on all three sites to assure quality construction and a timely completion of the project
  - Housing
    - CIM conduct a market survey to inform residential design and unit mix, thereby insuring quick absorption into the market.
    - Amend the Residential Affordability components of the DDA:
      - While maintaining the overall 20% affordable requirement of the rental units on Fountain Alley and 2nd/Santa Clara, modify the affordability levels for the 26-units currently proposed for the project to include 17 VLI units and 9 ELI.
      - While maintaining the over 20% affordable requirement of the for sale product at 2nd/Santa Clara, pursue Housing Department programs that would allow the 9-for sale units currently proposed to be purchased by 5 moderate and 4 low-income qualified candidates.
      - Promote the Housing Department's homebuyer program to potential buyers of the residential units on Block 3 with a goal to make 2nd mortgages available for at least 10% and up to 20% of the units on the site.
  - Retail space
    - The developer make best efforts to achieve the goal of 30% retailers from San Jose, 30% from the region, and 30% national to insure an effective and unique mix of retail.

- A 10% set aside of retail space for existing small businesses in the downtown. The developer will be responsible for reserving this space for 6-months and for aggressively marketing this opportunity for qualified firms.
- To insure quick lease up of the potential space, the Agency should consider review of the retail leasing efforts at appropriate intervals to determine if adjusting the cap upon businesses whose primary business is restaurants is necessary.
- Explore methods to apply the living wage provisions set forth in the City's Living Wage Policy to grocery stores over 10,000 square feet, department stores with food service, and hotels.

- Parking Agreement:
  - Provisions should include a parking strategy for demand caused by residential uses above and beyond the supply currently provided within the project
  - Provisions should also include methods to insure that the provisions of the City's Living Wage policy applies to parking operations and maintenance of the project.
- Childcare Goal: The developer should work with City staff and other specialists in the childcare field to determine whether childcare is a viable opportunity for the project. In addition, strategies to test the market should also be considered.
- Formal acknowledgement of the Community Benefits Assessment Plan and provide the South Bay AFL-CIO Labor Council (as a representative of the Labor/Community Coalition that completed the Community Benefits Assessment) the rights to enforcement against the developer on various provisions included in the Community Benefits Assessment Plan

BACKGROUND:

The City of San Jose is one of the most diverse and vibrant big cities in the country. This diversity has brought together various cultures and different expertise from numerous constituencies to create an environment that fosters innovation and creativity. CIM's proposal can bring more of the City's diversity and vibrancy to downtown.

Over the past few months, the community has been assessing the project in a number of various formats. The Redevelopment Agency and San Jose Downtown Association has sponsored several public meetings. In addition, a network of community groups has collaborated with Working Partnerships USA to produce a formal Community Benefits Assessment of the proposed development. Out of this research and outreach has come a wide range of input. Community priorities have included:

- Mitigation of Construction impacts
- High quality product that appeals in today's market
- Changes to the Affordable Housing mix (in addition to the market rate housing proposed)
- A diverse retail mix that includes local retailers, as well as regional and national
- Building a strong job base and maintaining high employment standards
- More public parking
- Childcare

While these priorities come from the community, members of the Agency Board echoed many during the study session in June.

Construction will be the first clear impact to the City, as parking spaces come off line and construction crews and trucks begin to come downtown. It is imperative that Downtown businesses continue to thrive throughout the construction because it is their success that will shape the environment of retail in the downtown. Without the success of local businesses, CIM's leasing strategy would become extremely challenging. Given the importance of any construction mitigation package, a plan created in conjunction with downtown stakeholders should come back to the Agency Board as part of the implementation steps associated with this project.

Crucial to the success of the construction mitigation package is a smooth and trouble free construction process. A Project Labor Agreement (PLA) has been very successful in assuring high quality, well-performed work in several projects downtown. A PLA between CIM and local unions should be considered to help insure high quality construction that is completed on a timely basis. Preventing delays is one of the most effective ways of limiting the impact of a construction project upon local businesses and residents.

While maintaining a high quality of life for residents throughout the construction process is important, it is also paramount that the final product appeals to current residents as well as the market for new residents. As such, a market survey should be performed to help shape the residential portions of the project. Such a survey would help the developer better understand the market conditions of San Jose and could provide crucial information into the final design of the project.

Quality design is essential for the success of this project. The developer will be carrying a large construction loan, the Agency's return on our investment and the impact upon other downtown projects all depend upon quick absorption of these new units into the market. One strategy that will impact absorption and also coincide with a Council priority is affordability. Currently, the City's Housing Department has been aggressively pursuing 2nd Mortgage opportunities to allow families earning incomes in the Median, and in some cases Low-Income, categories purchase homes. Staff should examine making 2nd mortgages available for at least 10% and up to 20% of the units on Block 3.

Such a policy would help address some of the challenges identified by Keyser Marston in their analysis of the housing impacts associated with the non-residential portion of the development. This analysis shows that the majority of workers at the future development would fall within the moderate and low-income categories, with another large group within the very-low income (VLI) and extremely low-income (ELI) categories. By adjusting the affordability range for buyers of the 9 for-sale units at 2nd & Santa Clara to include low as well as moderate-income units, the City Council and Agency Board's affordable housing priority can be advanced while promoting quick absorption of the product. City staff should assist in the implementation of this win-win approach.

One of the other items Keyser Marston identified in their analysis was the demand for VLI and ELI housing generated by this project. While maintaining the number of units to the current 20% affordability requirement, the current proposal can be modified to help meet the area's acute need for ELI housing as well as VLI units. For instance, the currently proposed 26 VLI units can be modified to include 17 VLI units and 9 ELI units.

A crucial component of the projects overall success is in its retail. Touring the product CIM has created elsewhere demonstrates their capacity to produce exciting, diverse shopping opportunities. The board recognizes the importance local San Jose businesses play in creating this vitality. So does CIM. Their goal is to create a mix of local, regional, and national retailers that serve the nearby residents while drawing visitors from other parts of the city. Strategies should be developed to insure that San Jose based businesses are actively pursued for incorporation in the retail mix, including:

- Providing a goal of 30% local, San Jose-based tenant, 30% regional retailers, and 30% national chains,
- Promote quick absorption of the retail space by expanding the list of potential retailers by removing the cap on restaurant space
- Requiring at least 10% of retail space will be set aside for small businesses in the downtown. The developer would be responsible for reserving this space for 6 months and for aggressively marketing this opportunity to current small businesses.

CIM should also design methods to apply components of the City's Living Wage to various retailers, thereby insuring not only successful businesses but also successful workers. A strategy to afford the same provisions as the City's Living Wage Policy to workers in grocery stores, department stores with food service and hotels would insure that the development would remain competitive for local, regional, and national stores.

In addition to steps that promote the success of the retail space, the City and Redevelopment Agency should prepare a strategy to address potential demand for parking from the residential units above and beyond what is currently provided. While the current parking ratios are appropriate and conform to the current code requirements, strategies to address excess demand should be developed as part of the Parking Agreement to insure that tenants and retailers alike have a common understanding of how to address future parking demand. Any strategy needs to respect the need for retail parking while acknowledging the potential inconvenience to residents.

Another source of demand generated by the proposed project and other existing uses in the area is for childcare. While the City has many programs designed to increase the number of childcare slots throughout the City, there is always a need to explore additional opportunities. CIM should work with City staff and other childcare experts to determine whether there is strong potential for childcare at the project and determine strategies to explore its viability.

CONCLUSION:
The CIM proposal negotiated with staff does a wonderful job addressing many of the important issues facing this project. However, continued dialogue around the issues outlined above will assure the City and CIM have a project that is financially successful while benefiting the community.

Appendix H

"Economic Prosperity Element" from Preliminary Draft of General Plan for the City of San Diego

Following is the City of San Diego's preliminary draft for an "Economic Prosperity Element" that would be included in the City's general plan, as described in Appendix A. This language reflects the latest version as of this writing.

Economic Opportunity

Despite the economic growth that has occurred over the last few years, economic prosperity has not been evenly distributed in the City of San Diego. National and local economic trends have resulted in a combination of fewer middle income jobs, a concentration and culture of poverty, and increasing high end job opportunities creating increased income, social, and spatial disparities. Among the costs of these disparities, are the increased service costs incurred by the City and other public agencies and the significant land use impacts which exacerbate these same disparities.

D. Employment Development Goals

- A broad distribution of economic opportunity throughout the City.
- A higher standard of living through increased wages and benefits in low-wage industries.
- A City which provides life-long skills and learning opportunities by investing in excellent schools, post-secondary institutions, and opportunities for continuous education and training available to existing residents.
- Equitable access to educational opportunities.
- A City which provides a variety of job opportunities including middle-income employment opportunities and career ladders for all segments of the population.

- A City that will continue to incubate growth and investment by providing a skilled and educated workforce that meets industry needs.

Employment and Wages Discussion

Job creation and retention are directly related to enhanced economic development opportunities. There is a nationwide economic trend away from the production and assembly of physical goods and toward the provision of services and the production of intellectual property. Many jobs associated with manufacturing which are in the middle-income range have moved overseas. Within the United States, long-term trends suggest that workers and firms have been moving to areas in the South and Southwest which have lower costs of living and lower wages.

San Diego is one of the top ten cities in the country projected for job growth in the next 20 years. Many new jobs are currently being created by emerging high-technology companies including telecommunications, electronics, compurers, software, and biotechnology. The expansion of high-technology industries in San Diego has successfully created higher-income employment opportunities for local residents and has also attracted others outside the region seeking high-technology employment. Because these export-driven industries compete in national and international markets, they have favorable long-term growth potential and also support locally-based firms which supply services and products.

However, the majority of the additional jobs over the next few years will be in the services industries. The continued success of the visitor industry and retail/business service occupations has resulted in an increased percentage of lower-wage employment in the City. Unfortunately, the most significant decline in average wages in the region have occurred in low-paying industries. The City of San Diego should increase the quality of these jobs by encouraging the development of career ladders in these low-wage industries.

The shift away from base-sector manufacturing to both service and knowledge-based employment has contributed to an "hour-glass" economy in the City. A middle-income job provides benefits, offers full-time employment, and is associated with a career ladder. These jobs pay a wage that will cover the cost of housing, food and health-care, with some money left over for discretionary spending. Middle-income jobs are central to the City's economic health because they reduce the burden on social, health, and housing programs and assure an adequate supply of discretionary income resulting in higher sales tax revenue for the City. Savings from public programs and additional sales tax revenue from discretionary purchases enable the City to invest in education, mobility, conservation, community infrastructure and other areas vital to San Diego's economic competitiveness. These investments are imperative as San Diego competes with low-wage regions and countries to retain middle-income jobs.

San Diego must rely on quality of life, a highly educated and skilled workforce and local

ingenuity to continue to retain beneficial industries. In the last ten years, the San Diego region has pursued an economic development strategy that focuses on supporting industry clusters that import dollars. Although a diverse employment mix is the key to a stable economy, a new focus on the attraction and growth of middle-income employment and the development of career ladders in low-wage industries should also be considered when updating incentives.

Policies

D.1. Employment land shall be preserved for middle-income employment uses including manufacturing, research and development, distriburion, and wholesale trade.

D.2. The city shall invest in infrastructure, educational and skill development, and quality of life assets that support middle-income employment development.

D.3. The City shall encourage the development of measures that facilitate expansion of high technology business facilities which have the potential to create middle-income jobs likely ro be filled by local residents.

D.4. Through incentives and legislation, the City should pursue the creation of middle-income employment and higher quality jobs in low-paying driver industries such as visitor and entertainment and amusement.

D.5. The City should support legislation to increase health benefits to employees and address the rising costs of businesses that try to provide healthcare for their employees.

D.6. The City should support measures to increase wages in low-wage industries including efforts to create career ladders.

D.7. The City should support living wage, or similar legislation, to increase the standard of living for lower-income residents.

D.8. The City should continue to promote job opportunities in low-income neighborhoods.

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GRINSTAD & WAGNER
ARCHITECTS

24 September 2013

Bellingham City Council
City Hall, 210 Lottie Street
Bellingham, WA 98225

Re: Waterfront redevelopment plan

Dear Council Members:

I write this as a private citizen, not as a member of the Bellingham Planning Commission. This may be late for public input, but here goes. There were four or five areas of the waterfront plan that I think still may need some consideration.

The most important in my opinion is the environmental cleanup. I feel that the Port of Bellingham and the City should clean the site to the highest standard. If the decision is to cap the former dump, special attention must be paid to sealing the edges. The water side especially is vulnerable to erosion by wave action. There must be a three or four mile reach from Hale's Passage to the shoreline of the dump. The rare storm that comes in from the northwest could build significant waves to batter the edge of the "cap".

A second thought I have is that there needs to be more park area along the water's edge. In the plan most of the park area is now in the farthest southwest region of the site. While I applaud the creation of a large park area here, it is at the expense of the open space buffering development from the water. I think that more space should be provided at the shoreline.

I am also unsure about the extent of the City's obligation to provide infrastructure. It seems to me that the City could end up spending a whole lot more for this provision than the "partner" Port will spend in its cleanup. I don't know how to resolve this.

The issue of allowable height needs to be discussed. I think that the 200 foot height limit is too generous. While the plan does a fair job ensuring that there will not be a fence of 200-foot high buildings blocking the downtown from the water, I feel that a limit of 150 feet is more appropriate.

The access to the site is also a concern. While I understand that until the railroad tracks are moved, access will be at grade level, I hope that the City will be able to find the funds to provide not only a new bridge at Commercial Street, but rebuild the Cornwall Avenue bridge and possibly provide another bridge at Wharf Street. That would allow plenty of access not subject to railroad crossing.

Thanks for your time and attention,

Thomas E. Grinstad

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THE LANDINGS
AT COLONY WHARF LLC

September 23, 2013

Bellingham City Council
210 Lottie Street
Bellingham, WA 98225

Dear Bellingham City Council:

The Landings at Colony Wharf would like address and bring to your attention the ongoing, prominent Working Waterfront. There has been some concern by the community citizens that the Working Waterfront is a dying industry and we are here to tell you it is not dying but progressing.

Here are the facts about this Working Waterfront we hope can be heard by the Council as well as the citizens:

- We are one of the first boatyard facilities to receive a Boatyard Permit, 25 years ago – 1988; which is still on going
- We have developed the "cluster effect" business area; there are 20-30 Marine Businesses on one parcel of land (that are needed) which employ 114 Family Wage Jobs
- We have developed the Marine Trades area on the Whatcom Waterway/Creek
- We established a port for Marine Spill Response in Bellingham
- We have added sales for many Bellingham companies because of our barge loading and moorage
- Marine customers have spent over $1 million in 2013 through out Whatcom County

We ask that the Bellingham City Council recognize the current work that is happening on the waterfront as well as the potential it brings. The Working Waterfront IS working and is not dying but prospering. We want to continue marine trades services for our local boating community.

Please strongly evaluate the above and feel free to contact us with any questions regarding it.

Sincerely,

The Landings at Colony Wharf, LLC

By: Rieker Sternhagen
Rieker Sternhagen
General Manager

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