

CITY COUNCIL

Pedro "Pete" M. Sanchez, Mayor
Lori Wilson, Mayor Pro-Tem
Jane Day
Michael J. Hudson
Michael A. Segala



CITY COUNCIL MEETING

First and Third Tuesday
Every Month

A G E N D A

SPECIAL MEETING OF THE SUISUN CITY COUNCIL

AND

**SUISUN CITY COUNCIL ACTING AS SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY**

TUESDAY, JANUARY 6, 2015

5:30 P.M.

SUISUN CITY COUNCIL CHAMBERS -- 701 CIVIC CENTER BOULEVARD -- SUISUN CITY, CALIFORNIA

TELECONFERENCE NOTICE

Pursuant to Government Code Section 54953, Subdivision (b), the following City Council/Successor Agency meeting includes teleconference participation by Council Member Jane Day from: 301 Morgan Street, Suisun City, CA 94585.

ROLL CALL

Council / Board Members

PUBLIC COMMENT

(Requests by citizens to discuss any matter under our jurisdiction other than an item posted on this agenda per California Government Code §54954.3 allowing 3 minutes to each speaker).

CONFLICT OF INTEREST NOTIFICATION

(Any items on this agenda that might be a conflict of interest to any Councilmembers / Boardmembers should be identified at this time.)

CLOSED SESSION

Pursuant to California Government Code section 54950 the City Council / Suisun City Council Acting as Successor Agency will hold a Closed Session for the purpose of:

Joint City Council / Suisun City Council Acting as Successor Agency

1. PERSONNEL MATTERS

Pursuant to California Government Code Section 54954.5 et seq. the Suisun City Council will hold a Closed Session for the purpose of Public Employee Performance Evaluation: City Attorney.

CONVENE OPEN SESSION

Announcement of Actions Taken, if any, in Closed Session.

ADJOURNMENT

DEPARTMENTS: AREA CODE (707)

ADMINISTRATION 421-7300 ■ PLANNING 421-7335 ■ BUILDING 421-7310 ■ FINANCE 421-7320
FIRE 425-9133 ■ RECREATION & COMMUNITY SERVICES 421-7200 ■ POLICE 421-7373 ■ PUBLIC WORKS 421-7340
SUCCESSOR AGENCY 421-7309 FAX 421-7366

A complete packet of information containing staff reports and exhibits related to each item for the open session of this meeting, and provided to the City Council, are available for public review at least 72 hours prior to a Council /Agency/Authority Meeting at Suisun City Hall 701 Civic Center Blvd., Suisun City. Agenda related writings or documents provided to a majority of the Council/Board/Commissioners less than 72 hours prior to a Council/Agency/Authority meeting related to an agenda item for the open session of this meeting will be made available for public inspection during normal business hours. An agenda packet is also located at the entrance to the Council Chambers during the meeting for public review. The City may charge photocopying charges for requested copies of such documents. Assistive listening devices may be obtained at the meeting

PLEASE NOTE:

1. The City Council/Agency/Authority hopes to conclude its public business by 11:00 P.M. Ordinarily, no new items will be taken up after the 11:00 P.M. cutoff and any items remaining will be agendized for the next meeting. The agendas have been prepared with the hope that all items scheduled will be discussed within the time allowed.
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CITY COUNCIL MEETING

First and Third Tuesday
Every Month

A G E N D A

**REGULAR MEETING OF THE
SUISUN CITY COUNCIL**

**SUISUN CITY COUNCIL ACTING AS SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY,
AND HOUSING AUTHORITY
TUESDAY, JANUARY 6, 2015**

7:00 P.M.

SUISUN CITY COUNCIL CHAMBERS -- 701 CIVIC CENTER BOULEVARD -- SUISUN CITY, CALIFORNIA

TELECONFERENCE NOTICE

Pursuant to Government Code Section 54953, Subdivision (b), the following Council/Successor Agency/Housing Authority meeting includes teleconference participation by Councilmember Jane Day from: 301 Morgan Street, Suisun City, CA 94585.

(Next Ord. No. – 730)

(Next City Council Res. No. 2015 – 01)

Next Suisun City Council Acting as Successor Agency Res. No. SA2015 – 01)

(Next Housing Authority Res. No. HA2015 – 01)

ROLL CALL

Council / Board Members

Pledge of Allegiance

Invocation

PUBLIC COMMENT

(Requests by citizens to discuss any matter under our jurisdiction other than an item posted on this agenda per California Government Code §54954.3 allowing 3 minutes to each speaker).

REPORTS: (Informational items only.)

1. Mayor/Council -Chair/Boardmembers
2. City Manager/Executive Director/Staff

DEPARTMENTS: AREA CODE (707)

ADMINISTRATION 421-7300 ■ PLANNING 421-7335 ■ BUILDING 421-7310 ■ FINANCE 421-7320

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CONFLICT OF INTEREST NOTIFICATION

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PRESENTATIONS/APPOINTMENTS

(Presentations, Awards, Proclamations, Appointments).

3. Approving Appointment of Solano Transportation Authority Board Alternate.

CONSENT CALENDAR**City Council**

4. Council Adoption of Resolution No. 2015-___: Authorizing the City Manager to Enter into an Updated Maintenance Contract on Behalf of the City with New Image Landscape Company for the Suisun City Maintenance Assessment Districts for FY 2014-15 – (Kasperson).
5. Council Adoption of Resolution No. 2015-___: Authorizing the City Manager to Enter into Purchase Agreements for Properties which are Segments of Parcels 0037-080-060 & 0037-080-020 – (Kasperson).
6. Extension of the BayREN Program into 2015 – (Garben).
 - a Council Adoption of Resolution No. 2015-___: Authorizing the City Manager to Execute a Memorandum of Understanding Regarding the San Francisco Bay Area Regional Energy Network (BayREN) for Calendar Year 2015 Program Implementation; and
 - b Council Adoption of Resolution No. 2015-___: Adopting the 5th Amendment to the Annual Appropriation Resolution No. 2014-47 to Appropriate Funds for the BayREN Grant Program.
7. Council Adoption of Resolution No. 2015-___: Adopting Resolution of Intention to Annex Territory to Community Facilities District and to Authorize the Levy of Special Taxes Therein – (Kasperson).

GENERAL BUSINESS**PUBLIC HEARINGS****City Council**

8. PUBLIC HEARING: Draft 2015-2023 Housing Element – (Kearns).
 - a Council Adoption of Resolution 2015-___: Authorizing the Submittal of the Draft 2015-2023 Housing Element to the State Department of Housing and Community Development for its Initial 60-Day Review.
9. PUBLIC HEARING: Prohibition Against Smoking at Special Events (Continued from December 16, 2014) – (Mattos).
Council Introduction and Waive Reading of Ordinance-___: Amending Title 12, Chapter 12.12 of the Suisun City Code Regulating the Smoking of Tobacco Products during Special Events in Parks and Recreational Areas.

ADJOURNMENT

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AGENDA TRANSMITTAL

MEETING DATE: January 6, 2015

CITY AGENDA ITEM: Council Adoption of Resolution No. 2015-___: Authorizing the City Manager to Enter into an Updated Maintenance Contract on Behalf of the City with New Image Landscape Company for the Suisun City Maintenance Assessment Districts for FY 2014-15.

FISCAL IMPACT: There would be no fiscal impact on the General Fund. This project would be 100% funded through the Maintenance Assessment Districts (MADs) of the City. The FY 2014-15 contract increased the original contract amount of \$178,554 by 3.5% to a new contract total of \$184,803, and these amounts were included in the adopted FY 2014-15 Annual Budget.

BACKGROUND: The City handles the bidding process and the awarding of the landscape contract for the MADs. In early 2013, a RFP was published and bids were opened April 22, 2013. On June 4, 2013, the City Council awarded the contract to New Image. That contract was for an initial period of one year, and the specifications provided that the contract could be extended for three additional one-year periods, if the City was satisfied with New Image's performance. The contract amount would be adjusted annually based on the California State CCI.

STAFF REPORT: In July 2014, it was determined that New Image was doing a satisfactory job and that the contract should be renewed. During the renewal process it was determined that both parties would benefit from a contract that was worded more clearly. The action that is proposed would amend the original agreement and replace it with a form that is recommended by the City Attorney. The revision is not intended to modify the original understandings of the parties and does it would not change any of the fiscal impacts or scopes of work. The primary change is to clarify the renewal process. The amended agreement would be effective July 1, 2014, for a term of 12 months with the option of extending the contract for up to three additional one-year terms.

RECOMMENDATION: It is recommended that the City Council adopt Resolution No. 2015-___: Authorizing the City Manager to Enter into an Updated Maintenance Contract on Behalf of the City with New Image Landscape Company for the Suisun City Maintenance Assessment Districts for FY 2014-15.

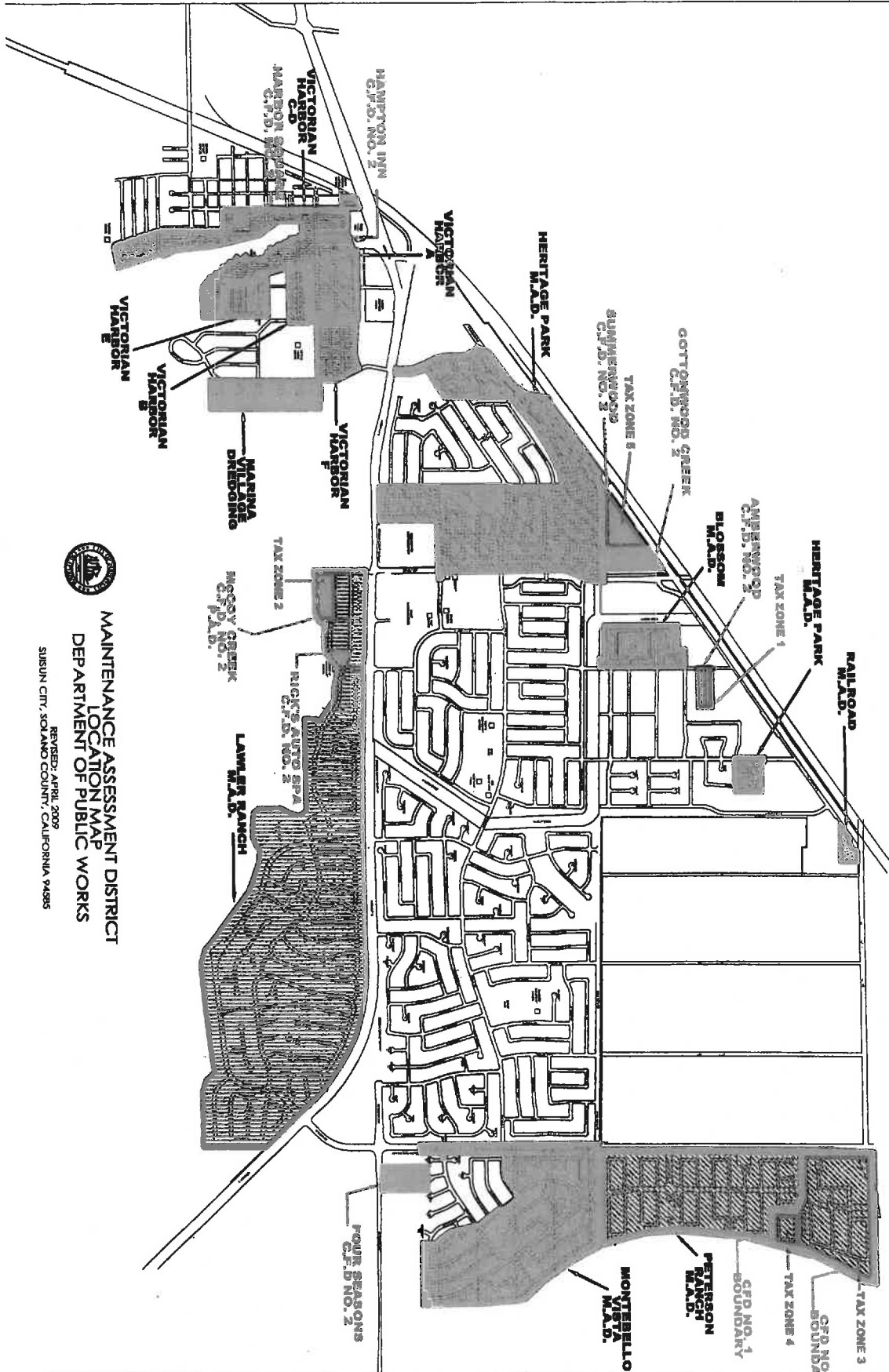
ATTACHMENTS:

1. Citywide Maintenance Assessment District Map.
 2. The original Contract Services Agreement effective 7/1/2013.
 3. New Contract with New Image Landscape Company for the Suisun City Maintenance Landscape Districts for FY 2014-15.
-

PREPARED BY:

REVIEWED/APPROVED BY:

Amanda Dum, Management Analyst I
Daniel Kasperson, Building & Public Works Director
Suzanne Bragdon, City Manager



AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of June, 2013, by and between the City of Suisun City, California, hereinafter called "City", and New Image Landscape Company hereinafter called "Contractor".

WITNESSETH: That the parties hereto do mutually agree as follows:

ARTICLE I

For and in consideration of the payments and agreements hereinafter mentioned to be made and performed by said City said Contractor agrees with said City to perform, and complete in a good and workmanlike manner all work required under the City's Specifications entitled:

MAINTENANCE LANDSCAPE DISTRICTS 2013-2014

BLOSSOM
AMBERWOOD
HERITAGE PARK
LAWLER RANCH
OLD RAILROAD
PETERSON RANCH
VICTORIAN HARBOR – ZONE A
VICTORIAN HARBOR – ZONE B
VICTORIAN HARBOR – ZONE D
VICTORIAN HARBOR – ZONE E
VICTORIAN HARBOR – ZONE F

in accordance with the Specifications and Drawings therefore, to furnish at his own expense all labor, materials, equipment and services as may be stipulated in said Specifications to be furnished by said City, and to do everything required by this Agreement and the said Specifications.

ARTICLE II

For furnishing all said labor, materials, equipment, tools and services, that are necessary and required for Landscape Maintenance in each and every District, and doing everything required by this Agreement and the said Specifications; also, for all losses and damage arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen difficulties which may arise during the prosecution of the work until its acceptance by said City, and for all risks of every description connected with the work; also, for all expenses resulting from the suspension or discontinuance of work, except as in the said Specifications are expressly stipulated to be borne by said City; and for completing the work in accordance with the requirements of said Specifications and Drawings as directed by the Engineer, said City will pay and said Contractor shall receive, in full compensation therefore, the price(s) named in the Proposal.

ARTICLE III

The City hereby employs said Contractor to perform the work according to the terms of this Agreement for price(s) named in the Proposal, and agrees to pay the same at the time, in the

manner, and upon the conditions stipulated in the said Specifications; and the said parties for themselves, their heirs, executors, administrators, successors, and assigns, do hereby agree to the full performance of the covenants herein contained.

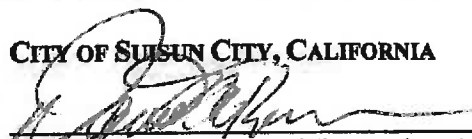
ARTICLE IV

The Notice to Contractors, General and Special Provisions Book, Bidder's Book including the Proposal, and Information Required of Bidder, along with the Contract Documents and all addenda issued by the City with respect to the foregoing prior to the opening of bids, are hereby incorporated in and made part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

Recommended for signature by:

CITY OF SUISUN CITY, CALIFORNIA


(Public Works Director/City Engineer)

Approved by:


(City Manager)


(City Clerk) - *Capacity*

(SEAL)

CONTRACTOR:

(Contractor)

By 
(Signature)

V.P.

(Title)

CITY OF SUISUN CITY
CONTRACT SERVICES AGREEMENT FOR

Maintenance Assessment District Contract

For

Blossom Meadows, Amberwood, Heritage Park/Summerwood, Lawler Ranch, Old Railroad Ave., Peterson Ranch, and Victorian Harbor Zones
A, B, C-D, E, & F

THIS CONTRACT SERVICES AGREEMENT (herein "Agreement") is made and entered into this _____ day of _____, 201_, by and between the CITY OF Suisun City, a Municipality herein ("City") and New Image Landscape Company, a California corporation (herein Contractor").

NOW, THEREFORE, the parties hereto agree as follows:

1. SERVICES OF CONTRACTOR

1.1 Scope of Services. In compliance with all of the terms and conditions of this Agreement, the Contractor shall perform the work or services set forth in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by reference. Contractor warrants that all work and services shall be performed in professional and satisfactory manner.

1.2 Compliance With Law. All work and services rendered hereunder shall be provide in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency of competent jurisdiction.

1.3 Licenses, Permits, Fees and Assessments. Contractor shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by the Agreement.

2. COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, Contractor shall be compensated in accordance with the "Schedule of Compensation" attached hereto as Exhibit "B" and incorporated herein by this reference, but not exceeding the maximum contract amount of One Hundred Eight Four Thousand, Eight Hundred and Three dollars and Thirty-six Cents (\$184,803.36) ("Contract Sum").

2.2 Method of Payment. Provided that Contractor is not in default under the terms of this Agreement, Contractor shall be paid per month per attached schedule.

3. COORDINATION OF WORK

3.1 Representative of Contractor. **Guillermo Ruvalcaba, Vice President or Designee** is hereby designated as being the principal and representative of Contractor authorized to act in its behalf with respect to the work and services specified herein and make all decisions in connection therewith.

3.2 Contract Officer. **Public Works Superintendent or Designee** is hereby designated as being the representative the City authorized to act in its behalf with respect to the work and services specified herein and make all decisions in connection therewith ("Contract Officer"). The City Manager of City shall have the right to designate another Contract Officer by providing written notice to Contractor.

3.3 Prohibition Against Subcontracting or Assignment. Contractor shall not contract with any entity to perform in whole or in part the work or services required hereunder without the express written approval of the City. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City. Any such prohibited assignment or transfer shall be void.

3.4 Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth. Contractor shall perform all services required herein as an independent contractor consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agent or employees are agents or employees of City.

4. INSURANCE AND INDEMNIFICATION

4.1 Insurance. The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance:

a. Comprehensive General Liability Insurance. A policy of comprehensive general liability insurance written on a per occurrence basis in an amount not less than either (i) a combined single limit of \$1,000,000.00 per occurrence and \$2,000,000.00 products and completed operations and property damage limits of \$100,000.00 per occurrence and \$2,000,000.00 in the aggregate.

b. Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Contractor and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.

c. Automotive Insurance. A policy of comprehensive automobile liability insurance written on a combined single limit liability of \$1,000,000.00. Said policy shall include coverage for owned, non-owned, leased, and hired cars.

All of the above policies of insurance shall be primary insurance and shall name the City, its officers, employees, and agents as additional insured's. The insurer shall waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or canceled without providing thirty (30) days prior written notice by registered mail to the City. In the event any of said policies of insurance are canceled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 4.1 to the Contract Officer. No work Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance of binders are approved by the City.

The Contractor agrees that the provisions of this Section 5.1 shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or persons for which the Contractor is otherwise responsible.

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Director of Administrative Services or designee of the City due to unique circumstances.

4.2 Indemnification. Contractor agrees to indemnify the City, its officers, agents and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, including paying any legal costs, attorneys fees, or paying any judgment (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work or services of Contractor, its agents, employees, subcontractors, or invites, provided for herein, or arising from the negligent acts or omissions of Contractor hereunder, or arising from Contractor's negligent performance of or failure to perform any term, provisions covenant liabilities to the extent caused by the sole negligence or willful misconduct of the City.

5. TERM

5.1 Term. Unless earlier terminated in accordance with Section 5.2 below, this Agreement shall continue in full force and effect until **June 30, 2015**.

5.2 Termination Prior to Expiration of Term. Either party may terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to the other party. Upon receipt of the notice of termination, the Contractor shall immediately cease all work or services hereunder except as may be specifically approved by the City, Contractor shall be entitled to compensation for all services rendered prior to the effectiveness of the notice of termination and for such additional services specifically authorized by the Contractor Officer and City shall be entitled to reimbursement for any compensation paid in excess of the services rendered.

6. MISCELLANEOUS

6.1 Covenant Against Discrimination. Contractor covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color creed, religion, sex, marital status, national origin, or ancestry.

6.2 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

6.3 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

6.4 Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, **Public Works Superintendent or Designee** and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement.

6.5 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

6.6 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement specifically supersedes the signed Agreement from June 4, 2013. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

6.7 Severability. In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the

parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

6.8 Waiver. No delay or omission in the exercise of any right or remedy by non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

6.9 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which any be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

6.10 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

CITY

CITY OF Suisun City, a Municipality

CITY MANAGER

ATTEST

City Clerk

APPROVED AS TO FORM:

City Attorney

CONTRACTOR

New Image Landscape Company, a California corporation

By: _____
Name

Its: _____

By: _____
Name

Its: _____

[END OF SIGNATURES]

**ADDENDUM TO
CONTRACT SERVICES AGREEMENT FOR
MAINTENANCE ASSESSMENT DISTRICT CONTRACT**

Upon execution by the parties, this Agreement shall be deemed to govern the relationship of the parties commencing as of June 1, 2014.

Section 1.2 Compliance with Laws. Contractor shall comply with all provisions required for public work contracts as set forth on Exhibit "C" attached hereto and incorporated herein by reference.

Section 2.1 Contract Sum. The Contract Sum is payable from July 1, 2014 through June 30, 2015.

Section 5.1 Term. The Term commenced as of June 1, 2014 and will terminate on June 30, 2015 ("Initial Term").

Section 5.2 Termination prior to Expiration of Term. If this Agreement is terminated under this section, Contractor agrees to provide to City a reasonably detailed summary of the work completed for each district to the date of termination.

Section 5.3 Extension of Term. At the option of the City, this Agreement may be extended for three (3) successive one (1) year periods. The City may exercise each option to extend by providing written notice to Contractor at least forty-five (45) days prior to the expiration of the existing term ("Exercise Notice"). Any proposed changes to the Agreement shall be made available to both negotiating parties in a timely fashion. The Contract Sum for each extension period shall be increased by the percentage increase of the Consumer Price Index (CPI) for San Francisco – Urban Wage Earner category (from April of the preceding year to April of the current term.) The calculation of the new Contract Sum for the extension period shall be specified in the Exercise Notice provided that the CPI information is available.

Section 6.6 Integration. The parties acknowledge that this Agreement supersedes in its entirety the prior written agreement dated _____, 2014 between the parties.

Section 6.11 Acknowledgement of Compliance. As of the date of execution of this Agreement, Contractor acknowledges that City is not in default of any provision of this Agreement. As of the date of execution of this Agreement, City acknowledges that, to the best of its knowledge, Contractor is not in default of this Agreement.

Contractor:

City:

Initials: _____

Initials: _____

CONTRACT-7

CONTRACT SVR AGR
WITH New Image Landscape

EXHIBIT "A"

SCOPE OF SERVICES

The scope of work and performance standards are defined in that certain "Bid Documents and Specifications for Maintenance Landscape Districts 2013-2014" for the Districts (defined below) issued by the City of Suisun City, Department of Public Works which is incorporated herein by reference ("**Bid Documents**").

Contractor acknowledges that it has a copy of the Bid Documents and has been performing the Services in accordance with the requirements.

The Bid Documents include the summary of required work as well as the level of service (including the tasks as well as the frequency of same) required for each of the following landscaping districts ("**Districts**"): Blossom; Meadows, Amberwood; Heritage Park/Summerwood; Lawler Ranch; Old Railroad Avenue; Peterson Ranch; Victorian Harbor – Zone A, Zone B, Zone C-D, E and F.

For convenience, the following are provided:

A. A summary of the Level of Service for each District:

District Name	Level of Service
Blossom Meadows	B
Amberwood	C
Heritage Park/Summerwood	C
Lawler Ranch	B
Old Railroad Ave.	C
Peterson Ranch	B
Victorian Harbor - Zone A	B
Victorian Harbor - Zone B	C
Victorian Harbor - Zone C-D	C
Victorian Harbor - Zone E	A
Victorian Harbor - Zone F	A

B. Work and Frequency for each Level of Service:

ATTACHMENT A-2
Maintenance Assessment District Frequency Charts
City of Suisun City

Work Item	Frequency A	Frequency B	Frequency C
Turf Areas			
Litter and Trash Removal	W	W	TM
Leaf Removal	W Nov & Dec Only	W Nov & Dec Only	TM Nov & Dec Only
Irrigation System Checks & Operation	Q Mar/Apr/Jun/Sept	TY Mar/July	TY Mar/Sept
Weed Control	Q Mar/Apr/Jun/Sept	1/3Y April/July/Sept	TY Apr/Sept
Fertilizing	Q Mar/Apr/Jun/Sept	1/3Y Mar/June/Oct	TY Mar/Sept
Mowing	W In Season	W In Season	TM In Season
Edging	TM In Season	TM In Season	M In Season
Aerates and Gypsum	TY Mar/Sept	Y March	-
Ground Cover/Vines/Planters			
Litter and Trash Removal	W	W	TM
Leaf Removal	W In Season	W In Season	TM In Season
Irrigation System Checks & Operation	TY Mar/July	TY Mar/July	TY Mar/July
Weed Control	2 + 2 As Needed	2 + 2 As Needed	2 + 2 As Needed
Fertilizing	Q Mar/June/Sept/Oct	TY Mar/Sept	TY Mar/Sept
Edging	EOM	EOM	Q
Pruning	Q Feb/May/Aug/Nov	Q Feb/May/Aug/Nov	1/3Y Mar/June/Oct
Trees and Shrubs			
Litter and Trash	W	W	TM
Leaf Removal	W In Season	W In Season	TM In Season
Irrigation System Checks & Operation	TY Mar/July	TY Mar/July	TY Mar/July
Weed Control	2 + 2 As Needed	2 + 2 As Needed	2 + 2 As Needed
Fertilizing	Q Mar/June/Sept/Oct	TY Mar/Sept	TY Mar/Sept
Pruning	Q Feb/May/Aug/Nov	Q Feb/May/Aug/Nov	1/3Y Mar/June/Oct
Staking	As Needed	As Needed	As Needed
Non-Vegetated Areas			
Litter and Trash Removal	W	W	TM
Weed Control	M In Season	W In Season	TM In Season
Pathways, Walkways, Curbs, Gutters & Playgrounds			
Litter and Trash Removal	W	W	TM
Leaf Removal	W	W	TM In Season
Weed Control	TM	TM	M May
Trash Cans	W Empty & Bag	W Empty & Bag	TM Empty & Bag
Native Grass Areas-Mowing Only			
Lester Ranch Park	EOM	Q	Q
Podrezo Cir.-Lester Ranch Pkwy	EOM	M	M
HWY 12	TY	TY	Y
Victorian Harbor E	TY	TY	Y
Peterson Ranch	TY	TY	TY
Blossom	TY	TY	Y


Legend:

W	Weekly (52 times/year)
TM	Twice Monthly (24 times/year)
M	Monthly (12 times/year)
EOM	Every Other Month (6 times/year)
Q	Quarterly (4 times/year)
1/3 Y	Three Times Yearly (3 times/year)
TY	Twice Yearly (2 times/year)
Y	Yearly (1 time/year)

EXHIBIT "B"

SCHEDULE OF COMPENSATION

(To be prepared by Contractor and attached hereto prior to execution.)

SCHEDULE B			
 NEW IMAGE LANDSCAPE COMPANY		3250 DARBY COMMON FREMONT, CA 94539 (510) 226-9191 FAX (510) 226-1298	
BILL TO: City of Suisun Attn: Accounts Payable 701 Civic Center Suisun City, CA 94585		JOB: 413-14 City of Suisun Suisun, CA	
DESCRIPTION	QUANTITY	PRICE	AMOUNT
Landscape maintenance			15,400.00
District Name	Monthly Charge	Level of Service	
Blossom Meadows	117.91	B	
Amberwood	371.31	C	
Heritage Park/Summerwood	2351.78	C	
Lawler Ranch	4186.06	B	
Old Railroad Ave	14.92	C	
Peterson Ranch	3526.16	B	
Victorian Harbor - Zone A	1313.24	B	
Victorian Harbor - Zone B	550.70	C	
Victorian Harbor - Zone C-D	957.20	C	
Victorian Harbor - Zone L	1174.98	A	
Victorian Harbor - Zone F	836.02	A	
New Image Landscape Company License #719106			
NET DUE:			15,400.00

CONTRACT-10

CONTRACT SVR AGR
WITH New Image Landscape

EXHIBIT "C"

**PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS
PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 ET SEQ.**

HOURS OF WORK:

- A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.
- B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.
- C. The Consultant and its subcontractors shall forfeit as a penalty to the City \$25 for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

- A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City Public Works Office and shall be made available on request. The Consultant and subcontractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services described in Exhibit A.
- B. In accordance with Labor Code Section 1775, the Consultant and any subcontractors engaged in performance of the services described in Exhibit A shall comply Labor Code Section 1775, which establishes a penalty of up to \$50 per day for each worker engaged in the performance of the services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Consultant or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record

of the Consultant or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Consultant or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Consultant or subcontractor had knowledge of their obligations under the California Labor Code. The Consultant or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the services described in Exhibit A is not paid the general prevailing per diem wages by the subcontractor, the Consultant is not liable for any penalties therefore unless the Consultant had knowledge of that failure or unless the Consultant fails to comply with all of the following requirements:

1. The contract executed between the Consultant and the subcontractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
2. The Consultant shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.
3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Consultant shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the services described in Exhibit A.
4. Prior to making final payment to the subcontractor, the Consultant shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.

C. In accordance with California Labor Code Section 1776, the Consultant and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the services described in Exhibit A. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

1. The information contained in the payroll record is true and correct.

2. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.

The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

- D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.
- E. In case it becomes necessary for the Consultant or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

AGENDA TRANSMITTAL**MEETING DATE:** January 6, 2015

CITY AGENDA ITEM: Adoption of Council Resolution No. 2015-___: Authorizing the City Manager to Enter into Purchase Agreements for Properties which Are Segments of Parcels 0037-080-060 & 0037-080-020.

FISCAL IMPACT: There would be no fiscal impact on the General Fund. This Project would be 100% funded through the Off-Site Street Improvement Program (OSSIP). The total cost of the Project would be \$12,600, including \$8,400 to be paid to Gary Walker for a segment of his property, as well as \$4,200 to be paid to Alice Hause for a segment of her property.

BACKGROUND: Railroad Avenue between Sunset Avenue and East Tabor Avenue is one of the older roadways in the City. At one time this area was primarily an agricultural area and Railroad Avenue probably started as a simple country trail. Over time it developed into what is currently a significant part of the City's transportation infrastructure. As it developed, the ownership of the roadway transferred piece by piece from the original adjacent property owners to City right of way (ROW). It was recently determined that there remain two properties where this routine transfer has not yet occurred. Thus a cleanup action is necessary.

STAFF REPORT: There remain two properties where the private parcel extends under the adjacent segment of Railroad Avenue. This causes the possibility of confusion when it comes to rights and responsibility. For example, it could be difficult for the City to construct underground utilities through the parcels. For the property owners, each is paying property taxes for a segment of their property that is not used by them. Public use as a roadway has been demonstrated historically and the transfer could be forced through court action, but the property owners are cooperative and willing to sell the areas under the roadway to the City at a nominal cost. In addition to the purchase of the roadway ROW there was a second issue that was discussed with the property owners.

The City of Fairfield is planning the construction of a water main in this area. The pipeline will be within the Suisun City ROW, but Fairfield needs a Temporary Construction Easement (TCE) outside of the ROW. To facilitate the Fairfield project and to simplify matters for our property owners, Suisun City staff combined the issues when negotiating with the owners. The costs for the TCE will be reimbursed to Suisun City from Fairfield.

There are two properties where Railroad Avenue crosses a strip of their land. They are as follows:

- 521 Railroad Avenue, APN# 0037-080-060, owned by Gary Walker.
- 519 Railroad Avenue, APN# 0037-080-020, owned by Alice Hause.

PREPARED BY:

REVIEWED/APPROVED BY:

Amanda Dum, Management Analyst I
Daniel Kasperson, Building & Public Works Director
Suzanne Bragdon, City Manager

The strips that need to be purchased by the City are along the northern edge of each of these parcels and are adjacent to the UPRR right of way.

The details are as follows:

	521 Railroad Avenue	519 Railroad Avenue
Approx. size of ROW purchase	50'x255'=12,750 sq. ft.	50'x114'=5,700 sq. ft.
ROW Purchase price	\$6,460	\$3,230
Size of Temp Const. Easement	15'x255'=3,825	15'x114'=1,710 sq. ft.
TCE Purchase price	\$1,940	\$970
Total Transaction	\$8,400	\$4,200

The appraisal firm of Garland & Associates has reviewed the transaction. Its opinion is that the purchase prices are not excessive and do not constitute a gift of public funds.

RECOMMENDATION: It is recommended that the City Council adopt Resolution No. 2015-__: Authorizing the City Manager to Enter into Purchase Agreements for Properties which Are Segments of Parcels 0037-080-060 & 0037-080-020.

ATTACHMENTS:

1. Resolution No. 2015-__: Authorizing the City Manager to Enter into Purchase Agreements for Properties which Are Segments of Parcels 0037-080-060 & 0037-080-020.

RESOLUTION NO. 2015-__

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUISUN CITY
AUTHORIZING THE CITY MANAGER TO ENTER INTO PURCHASE AGREEMENTS
FOR PROPERTIES WHICH ARE SEGMENTS OF PARCELS 0037-080-060 & 0037-080-020**

WHEREAS, Railroad Avenue between Sunset Avenue and East Tabor Avenue is one of the older roadways in the City and a significant segment of the City's transportation infrastructure; and

WHEREAS, there remain two private parcels, 0037-080-060 and 0037-080-020, where the public roadway traverses the privately owned property; and

WHEREAS, it is desirable and necessary for the City to secure ownership of this property to facilitate ongoing maintenance of Railroad Avenue and the utilities under the roadway; and

WHEREAS, Gary Walker, owner of 521 Railroad Avenue, 0037-080-060, has agreed to sell a strip along the northern edge of his property that is approximately fifty feet wide plus a temporary construction easement that is an additional fifteen feet wide for a total sum of \$8,400; and

WHEREAS, Alice Hause, owner of 519 Railroad Avenue, 0037-080-060, has agreed to sell a strip along the northern edge of her property that is approximately fifty feet wide plus a temporary construction easement that is an additional fifteen feet wide for a total sum of \$4,200; and

WHEREAS, Garland & Associates, a California State licensed appraiser, has evaluated the terms of the negotiated acquisition prices and has determined that they "are within the normal and customary prices paid for such nominal property rights acquisitions"; and

WHEREAS, pursuant to the provisions of Section 7267.2 of the California Government Code, the City has made an offer to the owner(s) of the Subject Property for just compensation.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Suisun City authorizes the City Manager to execute a purchase agreement with Gary Walker for a segment of parcel 0037-080-060 for the sum of \$8,400 and to take all other actions necessary or appropriate to implement this property acquisition; and

BE IT FURTHER RESOLVED, that the City Council of the City of Suisun City authorizes the City Manager to execute a purchase agreement with Alice Hause for a segment of parcel 0037-080-020 for the sum of \$4,200 and to take all other actions necessary or appropriate to implement this property acquisition.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Suisun City held on Tuesday the 6th day of January 2015 by the following vote:

AYES:	Councilmembers:	_____
NOES:	Councilmembers:	_____
ABSENT:	Councilmembers:	_____
ABSTAIN:	Councilmembers:	_____

WITNESS my hand and the seal of said City this 6th day of January 2015.

Linda Hobson, CMC
City Clerk

AGENDA TRANSMITTAL

MEETING DATE: January 6, 2015

CITY AGENDA ITEM: Extension of the BayREN Program into 2015:

- a. Council Adoption of Resolution No. 2015-__: Authorizing the City Manager to Execute a Memorandum of Understanding Regarding the San Francisco Bay Area Regional Energy Network (BayREN) for Calendar Year 2015 Program Implementation; and
- b. Council Adoption of Resolution No. 2015-__: Adopting the 5th Amendment to the Annual Appropriation Resolution No. 2014-47 to Appropriate Funds for the BayREN Grant Program.

FISCAL IMPACT: BayREN approved a funding allocation for program activities in Solano County of \$92,105 for CY 2015. It is anticipated approximately \$24,000 would be saved by the General Fund as a result of the reallocation of staff time to administer and implement the BayREN Program in calendar year 2015.

BACKGROUND: In 2012, the California Public Utilities Commission (CPUC) approved a portfolio of energy-efficiency programs and budgets for calendar years 2013 and 2014. To better leverage energy-efficiency expertise at the local government level, the CPUC created Regional Energy Networks (RENs) to complement the utility programs as pilot energy-efficiency programs administered by local governments.

The San Francisco Bay Area Regional Energy Network (BayREN or "Program") is administered by the Association of Bay Area Governments (ABAG) and is a collaboration of the nine counties within the Bay Area. On February 12, 2013, the City Council adopted resolution 2013-05 authorizing the City to be the lead agency representing the all of the cities and the unincorporated areas of Solano County.

As a result of the Program, activities conducted during calendar years 2013 and 2014 by City staff were:

- Participation in the development of BayREN administration of the available residential energy efficiency programs in addition to promotion of BayREN program and education to local municipalities regarding changes in the energy code.
- Management of the promotion of the single-family building enhancement rebates, also known as "Energy Home Upgrade" (now called Energy Upgrade California) to target market residents identified in conjunction with the outreach contractor, Solano Business Center Innovation (SBCI).
- Promotion of the multifamily building enhancement rebates to local multifamily properties.
- Promotion of the codes and standards subprogram.
- Review and evaluation of energy-efficiency financing opportunities for property owners.

PREPARED BY: Kathy Lawton, Housing Manager and Trishia Pascobillo, Assistant Planner
REVIEWED BY: Jason Garben, Development Services Director
APPROVED BY: Suzanne Bragdon, City Manager

“Energy Home Upgrade” is the residential single-family energy efficiency program of BayREN. Rebates to property owners through the “Energy Home Upgrade” program range from \$1,000 to \$3,000. To date, 82 Solano County homes have completed their building enhancements and received their rebates while there are an additional 39 homes located in various cities within Solano County currently undergoing their energy enhancements.

The residential multifamily energy rebate program is the first energy-efficiency upgrade program to be offered to owners of multifamily properties in California. Rebates for Multi-Family projects are \$750 per unit. The current project status for Solano County multifamily projects in the BayREN project pipeline is three projects (with a total of 106 units). The Solano County multifamily projects are located in Suisun, Fairfield and Vacaville. To date, two additional projects (with a collective total of 105 units) have contacted technical assistance for the CY 2015 program participation.

The Codes and Standards subprogram is for building and planning staff for local jurisdictions. The program provides assistance in interpreting and streamlining the requirements of the 2013 Title 24, Part 6 of the Energy Code. Energy code training workshops conducted by Benningfield Group (the building code consultant for ABAG) are hosted by the local jurisdictions to provide training to all city staff impacted by the changes in the energy codes. To date, Suisun City has hosted two energy code trainings with representatives from the County of Solano, County of Napa, City of Suisun, City of Fairfield, City of Vacaville, and the City of Winters in attendance. Additionally, regional forums are held by the ABAG on a variety of energy-related topics impacting the greater Bay Area. City staff and elected officials from the City of Vallejo, City of Benicia, and City of Suisun City have attended forums conducted in Oakland.

STAFF REPORT: On October 16, 2014, the CPUC authorized energy-efficiency program funding to continue in 2015 following the 2014 end of program date on December 31, 2014. BayREN’s 2015 portfolio will continue to include the three subprograms (Single-Family, Multifamily, & Codes and Standards) and three financing pilots (Multifamily Capital Advance, Commercial PACE, & Pay as You Save). Pursuant to the attached Memorandum of Understanding, the City will continue in its role as the lead agency for Solano County and its cities, which include continued participation in the administration of single-family and multifamily building enhancement rebates, financing, and codes and standards subprograms.

STAFF RECOMMENDATION: It is recommended that the City Council:

1. Adopt Resolution No. 2015-__: Authorizing the City Manager to Execute a Memorandum of Understanding Regarding the San Francisco Bay Area Regional Energy Network (BayREN) for Calendar Year 2015 Program Implementation; and
2. Adopt Resolution No. 2015-__: Adopting the 5th Amendment to the Annual Appropriation Resolution No. 2014-47 to Appropriate Funds for the BayREN Grant Program.

ATTACHMENTS:

1. Resolution No. 2015-__: Authorizing the City Manager to Execute a Memorandum of Understanding Regarding the San Francisco Bay Area Regional Energy Network (BayREN) for Calendar Year 2015 Program Implementation.
2. Resolution No. 2015-__: Adopting the 5th Amendment to the Annual Appropriation Resolution No. 2014-47 to Appropriate Funds for the BayREN Grant Program.
3. Restated and Revised Memorandum of Understanding – San Francisco Bay Regional Energy Network.
4. BayREN Budget.

RESOLUTION NO. 2015-__

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUISUN CITY
AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF
UNDERSTANDING REGARDING THE SAN FRANCISCO BAY AREA REGIONAL
ENERGY NETWORK (BAYREN) FOR CALENDAR YEAR 2015
PROGRAM IMPLEMENTATION**

WHEREAS, the Bay Area Regional Energy Network (BayREN) is a regional energy network comprised of the nine-county member governments of the ABAG geographic region; and

WHEREAS, previously the City of Suisun City served as the local lead agency for Solano County regarding the implementation of the California Energy Commission's grant for Energy Upgrade California (EUC), the Bay Area retrofit program which was designed to encourage the installation of energy upgrades in residential housing in the Bay Area; and

WHEREAS, under the referenced Restated and Revised Memorandum of Understanding (MOU), Suisun City would continue to serve as the local lead agency for Solano County related to the BayREN Energy Efficiency Program and Program Implementation Plan (PIP); and

WHEREAS, the California Public Utilities Commission (CPUC) has recognized the need to collaborate with local governments to achieve market transformation toward energy efficiency; and

WHEREAS, the purpose of the MOU is to define and formalize the working relationship among regional and local agencies with expertise and experience in the design and implementation of regional and local energy and sustainability programs within the San Francisco Bay region; and

WHEREAS, the City is willing to serve as the local lead agency for Solano County to ensure coordination of activities with other local government jurisdictions and other local government energy efficiency programs within the Bay Area region.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Suisun City does hereby authorize the City Manager to execute a Restated and Revised Memorandum of Understanding with regards to the San Francisco Bay Area Regional Energy Network and is authorized to take all actions necessary to implement the program.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Suisun City held on this 6th of January 2015 by the following vote:

AYES:	Councilmembers:	_____
NOES:	Councilmembers:	_____
ABSENT:	Councilmembers:	_____
ABSTAIN:	Councilmembers:	_____

WITNESS my hand and the seal of said Agency this 6th of January 2015.

Linda Hobson, CMC
City Clerk

RESOLUTION NO. 2015-__

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUISUN CITY
ADOPTING THE 5TH AMENDMENT TO THE ANNUAL APPROPRIATION
RESOLUTION NO. 2014-47 TO APPROPRIATE FUNDS FOR THE BAYREN GRANT
PROGRAM**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUISUN CITY:

THAT Section 137 of Part III of the Annual Appropriation Resolution No. 2014-47 be and is hereby amended as follows:

		<u>Increase/ (Decrease)</u>
TO:	COMMUNITY DEVELOPMENT DEPARTMENT	<u>\$ 92,100</u>
	BayREN	
	TOTAL Section 137	<u>\$ 92,100</u>

THAT account titles and numbers requiring adjustment by this Resolution are as follows:

	<u>Sources</u>	<u>Uses</u>
<u>BayREN FUND</u>		
Revenues:		
A/C No. 137-76950-3472 Grants/Other	\$ 92,100	\$ -
Appropriations:		
A/C No. 137-90160-3472 Salary Transfers	\$ -	\$ 74,000
A/C No. 137-93410-3472 Operating Contingency	<u>\$ -</u>	<u>\$ 18,100</u>
Total BayREN Fund	<u>\$ 92,100</u>	<u>\$ 92,100</u>

THAT the purpose is to appropriate funds for for the implementation of the BayREN grant program.

ADOPTED AND PASSED by the City Council of the City of Suisun City at a regular meeting thereof held on the 6th of January 2015 by the following vote:

AYES:	COUNCILMEMBERS
NOES:	COUNCILMEMBERS
ABSENT:	COUNCILMEMBERS
ABSTAIN:	COUNCILMEMBERS

WITNESS my hand and seal of the said City this 6th day of January 2015.

**LINDA HOBSON, CMC
CITY CLERK**

RESTATED AND REVISED MEMORANDUM OF UNDERSTANDING
WITH REGARDS TO THE
SAN FRANCISCO BAY AREA REGIONAL ENERGY NETWORK

This Restated and Revised Memorandum of Understanding ("MOU") is entered into by and between the following participating members:

Association of Bay Area Governments
City and County of San Francisco
Energy Council (on behalf of Alameda County)
County of Contra Costa
County of Marin
County of Napa
County of San Mateo
County of Santa Clara
City of Suisun City (on behalf of Solano County)
Sonoma County Regional Climate Protection Authority

A. Purpose. The purpose of this MOU is to define and formalize the working relationship among regional and local agencies with expertise and experience in the design and implementation of regional and local energy and sustainability programs within the San Francisco Bay region. This MOU defines the shared goals and objectives of these local and regional agencies working collaboratively in BayREN (Members) and establishes the necessary administrative and governance structure to promote a cooperative relationship and for ensuring successful implementation of the BayREN activities.

B. Background.

On November 8, 2012 the California Public Utilities Commission (CPUC) approved the statewide energy efficiency budgets and programs for calendar years 2013-2014 (D.12-11-015). This decision included approval of identified portions of the BayREN Program Implementation Plan (PIP) and budget, as well as identified roles and responsibilities for all approved regional energy networks and investor owned utilities (IOUs). Soon thereafter, the Members entered into the prior Memorandum of Understanding with Regards to the San Francisco Bay Area Regional Energy Network (Prior MOU). On behalf of BayREN ABAG entered into a contract with PG&E to receive and disburse funding for implementation of the approved 2013-14 PIP. Each Member, except ABAG, entered into an Implementation Agreement whereby the Member received funding to undertake activities to implement a component of the approved PIP.

The Members have been carrying out their responsibilities under the Prior MOU and the Implementation Agreements. At its October 16, 2014 meeting, the CPUC adopted D.14-10-046 which included approval of a 2015 BayREN PIP, a rollover of unspent funds from the 2012-14 BayREN PIP to the 2015 BayREN PIP, and additional funding for the 2015 BayREN PIP. At approximately the same time, the Coordinating Committee created under the Prior MOU decided to make refinements to the governance structure of BayREN and the process for managing the Implementation Agreements. This MOU documents these refinements.

C. Proposed Activities. The Members will undertake the following activities:

1. Coordinate with and support the efforts of the BayREN Administrator (described below) related to ongoing implementation of the 2013-14 and 2015 BayREN PIPs, applications for future BayREN PIPs and any other proceedings before the CPUC or other regulatory bodies..
2. Members with programmatic responsibilities will carry out such responsibilities pursuant to the contract or agreement between PG&E or CPUC and ABAG, and the contract(s) or agreement(s) between or among any Member(s) and ABAG.

D. Responsibilities. Each Member will have the following responsibilities

1. Assign a representative to the Coordinating Committee (renamed the Coordinating Circle) and participate in meetings thereof.
2. Coordinate activities with all other local government jurisdictions within the geographical boundaries of the county which the Member represents.
3. Coordinate with any local government energy efficiency program within the geographical boundaries of the county which the Member represents. In particular, coordinate with Local Government Partnership (LGP) programs administered by PG&E.

E. Structure and Governance. For ease of formation and administration and to maintain flexibility, BayREN is structured as an unincorporated association of local public entities whose membership benefits and responsibilities are set forth in this MOU. The Members agree that this MOU is independent of any other contract(s) or agreement(s) between PG&E or CPUC and ABAG, or the contract(s) or agreement(s) between or among any Member(s) and ABAG that are promulgated to implement the approved PIP.

1. BayREN activities will be established and supervised by a Coordinating Circle made up of one representative from each Member. Every Member will appoint as its representative(s) to the Coordinating Circle a staff person with expertise and experience in energy-related project management and implementation. Each representative to the Coordinating Circle is entitled to a single, unweighted vote. A majority of the Coordinating Circle constitutes a quorum. Except as otherwise required in this MOU, the Coordinating Circle may take action by a majority vote of those present at a meeting.

Every Member also has the right, but not the obligation, to appoint an alternate to the Coordinating Circle. The alternate may attend any meeting of the Coordinating Circle. However, the alternate is not included in the quorum count, is not entitled to vote and may not participate in the deliberations of the Coordinating Circle, except in the absence of the representative for whom he/she is an alternate.

The Coordinating Circle has the authority to appoint a Lead Link for each approved program in an approved PIP.

2. The Lead Link will have the following powers with respect to the program for which it is Lead Link subject only to the applicable BayREN PIP, regulatory requirements, the funding agreement with PG&E, and the initial budget allocated for the Program and other directions adopted by the Coordinating Circle:

1. power to allocate resources among Members (Budget),
2. assign programmatic roles for each Member (Implementation Plan),
3. revise the Budget and/or Implementation Plan,
4. assess and define priorities for the program, and
5. define and assign metrics for the program.

The Coordinating Circle has the authority to appoint the BayREN Administrator who will be charged with overall BayREN administration and with the following powers subject only to the applicable BayREN PIP, regulatory requirements, the funding agreement with PG&E, and the initial budget allocated for the BayREN administration and other directions adopted by the Coordinating Circle:

- (a) managing regional administrative activities and budget,
- (b) speaking on behalf of BayREN (distinguished from program) in state and regional contexts,
- (c) administering overall BayREN budget, including fund shifts among programs and members,
- (d) making recommendations to the Coordinating Circle related to BayREN budget and other pertinent information as necessary,
- (e) implementing decisions of Coordinating Circle,
- (f) coordinating with other RENs,
- (g) communicating meeting outcomes with state agencies, coordinating and working groups, and other convened processes that impact or affect the BayREN or energy programs, and
- (h) manage the contracts between it and the Members or consultants implementing the applicable BayREN PIP, provided that the BayREN Administrator consults with the applicable Lead Link, if any.

3. Each Lead Link will convene a Program Circle comprised of a Rep Link and representatives from Members which volunteer to participate in said Program Circle. The Program Circle will provide input to the Lead Link on the Budget and Implementation Plan.

F. Member Resources and Funding. The Members acknowledge that BayREN requires their investment of resources for it to be effective. Each Member will:

1. Assign staff to act as its representative to the Coordinating Circle.
2. In addition, from time to time, the Coordinating Circle may decide that Member funds are necessary to carry out its mission. The allocation of the required funding will be determined on a case by case basis. Members agree to make a good faith effort to secure payment of their allocated portion and acknowledge that failure to pay may result in a request that the Member withdraw from this MOU.

G. Hold Harmless and Liability; Incidental and Consequential Damages. Each Member shall indemnify and hold harmless the other Members from the indemnifying Member's share of liability, as determined by a court of law, for any and all claims, costs and liability for any damage caused by the negligence or willful misconduct of the indemnifying Member and its officers, employees or agents in the indemnifying Member's performance under this MOU. The obligations of the indemnifying Member under this section shall not apply to any claim, cost or liability caused by the negligence or willful misconduct of any other member. Under no circumstances shall the indemnifying Member be liable to any other Member or any other person or entity for consequential or special damages, or for any damages based on loss of use, revenue, profits or business opportunities arising from or in any way relating to performance of the indemnifying Member under this MOU.

H. Withdrawal and Termination. This MOU will continue until terminated by majority vote of the Coordinating Circle, but Members may withdraw from BayREN on 30 days' notice to other Members.

I. New Members. New Members may be added by majority vote of the current Members.

J. Amendments. This MOU may be amended by a written agreement executed by the Members in the same manner as this MOU.

K. Counterparts. This MOU may be executed in counterparts, each of which is an original and all of which constitute one and the same instrument.

L. Effective Date. This MOU is effective upon the date a minimum of four Members have executed the MOU.

IN WITNESS WHEREOF, the Members have caused this Memorandum of Understanding to be effective with the approval of their legally authorized representatives on the dates indicated below.

[Name of Organization]

By: _____ Date: _____
[Name and title of signatory]

BayREN - 2015 Aggregate Budget
(Version: 12/01/2014)

Solano

Program Elements

Single Family Residential

Admin	\$	10,000
Marketing & Outreach	\$	34,605
Incentives	\$	-
Total Single Family:	\$	44,605

Multi-Family Residential

Admin	\$	15,000
Marketing & Outreach	\$	5,000
Incentives	\$	-
Total Multi-family:	\$	20,000

Codes & Standards

Admin	\$	3,500
Implementation	\$	16,500
Marketing & Outreach	\$	6,000
Incentives	\$	-
Total C&S:	\$	26,000

Financing

Commercial PACE

Admin	\$	600
Incentives	\$	-
Total Total PACE:	\$	600

Pay As You Save

Admin	\$	900
Incentives	\$	-
Total PAYS:	\$	900

BayREN Total

Admin	\$	30,000
Implementation	\$	16,500
Marketing & Outreach	\$	45,605
Incentives	\$	-
BayREN Total:	\$	92,105

AGENDA TRANSMITTAL

MEETING DATE: January 6, 2015

CITY AGENDA ITEM: Council Adoption of Resolution 2015-___: Adopting Resolution of Intention to Annex Territory to Community Facilities District and to Authorize the Levy of Special Taxes Therein.

FISCAL IMPACT: If approved, the annexation of the Walmart parcel into Community Facilities District (CFD) No. 2 and the creation of Tax Zone No.6 will result in a total of \$165,568.65 being added to the City budget including the General Fund. CFD No. 2 would result in \$145,240.15 being added primarily to the General Fund. Tax Zone No. 6 would result in \$23,328.50 being added to various Public Works funds. The levy amounts would be adjusted annually based on inflation modifiers.

BACKGROUND: As part of the Walmart conditions of approval, the developer is required to mitigate the impact on City Services due to the new development. In accordance with the development conditions imposed on the project, the landowner is to annex into Community Facilities District No. 2 to offset municipal service costs for police, fire, paramedics, and to enter into the newly created Tax Zone No. 6 to cover costs associated with landscape and storm drainage maintenance around the new project.

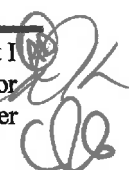
STAFF REPORT: Walmart is required to be annexed into the Community Facilities District No. 2 (Municipal Services). Additionally, Walmart is required to have a special tax assessment for maintenance of areas around the new development. This would be accomplished through the formation of Tax Zone No. 6. Tax Zone No. 6 is defined as the areas along Petersen Road adjacent to Walmart and including the north soundwall and along the west side of Walters Road from adjacent to the property to the center median.

The annexation of Walmart into Community Facilities District No. 2 meets the fiscal criteria as established by Resolution No. 2005-69 Cost Recovery Policy for New Development, dated October 4, 2005. The Community Facilities District is intended to offset Municipal Service costs, including administrative costs, thereby reducing the negative fiscal impact of new development on the City's General Fund. The creation of Tax Zone No. 6 is also intended to offset Public Works Maintenance costs, thereby reducing the negative fiscal impact of the new development on the Public Works Maintenance budgets.

Multiple steps are required in the annexation process, some which require Council action. The first step in the annexation process requires that the Council adopt a Resolution of Intention. There would be two additional Council actions required to complete the annexation process, which would occur at two future Council meetings.

PREPARED BY:
REVIEWED BY:
APPROVED BY:

Amanda Dum, Management Analyst I
Daniel Kasperson, Building & Public Works Director
Suzanne Bragdon, City Manager



STAFF RECOMMENDATION: It is recommended that the City Council adopt Resolution No. 2015-__: Adopting Resolution of Intention to Annex Territory to Community Facilities District and to Authorize the Levy of Special Taxes Therein.

ATTACHMENTS:

1. Resolution No. 2015-__: Adopting Resolution of Intention to Annex Territory to Community Facilities District and to Authorize the Levy of Special Taxes Therein.

RESOLUTION NO. 2015-__

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUISUN CITY
ADOPTING A RESOLUTION OF INTENTION TO ANNEX TERRITORY TO
COMMUNITY FACILITIES DISTRICT AND TO AUTHORIZE
THE LEVY OF SPECIAL TAXES THEREIN**

**CITY OF SUISUN CITY
Community Facilities District No. 2
(Municipal Services)**

Annexation No. 9 (Parcel Map PM 06-02 Parcel 2--Tax Zone No. 6)

WHEREAS, the City Council has conducted proceedings to establish Community Facilities District No. 2 (Municipal Services) (the "CFD") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the "Act"), Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing at Section 53311, of the California Government Code; and

WHEREAS, under the Act, the Council, as the legislative body for the CFD, is empowered with the authority to annex territory to the CFD, and now desires to undertake proceedings to annex territory to the CFD.

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

- 1. Findings.** The Council hereby finds and determines that public convenience and necessity require that territory be added to the CFD.
- 2. Territory Described.** The name of the existing CFD is "City of Suisun City Community Facilities District No. 2 (Municipal Services)." The territory originally included in the existing CFD is set forth in the map of the CFD heretofore recorded in the Solano County Recorder's Office on October 27, 2005, in Book 23 at Page 60 of Maps of Assessment and Community Facilities Districts, to which map reference is hereby made, as such map has been supplemented in connection with subsequent annexations.

The territory now proposed to be annexed to the CFD is as shown on the Annexation Map for the captioned Annexation No. 9 (Parcel Map PM 06-02 Parcel 2--Tax Zone No. 6) to the CFD, on file with the City Clerk, the boundaries of which territory are hereby preliminarily approved and to which map reference is hereby made for further particulars. The City Clerk is hereby directed to cause to be recorded such Annexation Map, showing the territory to be annexed, in the office of the County Recorder of the County of Solano within 15 days of the date of adoption of this resolution.

- 3. The Services.** The types of public services financed by the CFD and pursuant to the Act consist of those municipal services (the "Services") as described in Exhibit A to the Resolution of Formation with respect to the CFD adopted by the Council as Resolution No. 2005-89 on November 15, 2005 (the "Resolution of Formation"). It is presently intended that the Services will be provided, without preference or priority, to the existing territory in the CFD and the territory proposed to be annexed to the CFD.

4. **Special Tax.** Except to the extent that funds are otherwise available to the CFD to pay for the Services, a special tax sufficient to pay the costs thereof is intended to be levied annually within the CFD, and collected in the same manner as ordinary *ad valorem* property taxes.

The special tax proposed to pay for Services to be supplied within the territory proposed to be annexed will be equal to the special taxes levied to pay for the same Services in the CFD, except that a higher or lower tax may be levied within the territory proposed to be annexed or to be annexed in the future to the extent that the actual cost of providing the Services in that territory is higher or lower than the cost of providing those Services in the CFD.

The existing rate and method of apportionment of special tax (the "Existing Rate and Method") among the parcels of real property within the existing territory of the CFD, as described in Exhibit B to the Resolution of Formation, will be altered as described in Supplement No. 9 (Parcel Map PM 06-02 Parcel 2--Tax Zone No. 6) to Rate and Method of Apportionment of Special Tax ("Supplement No. 9"), which Supplement No. 9 is attached to this Resolution as Exhibit A (as supplemented, the "Rate and Method"). Supplement No. 9 will not cause the maximum tax rate in the existing territory of the CFD to increase.

The proposed rate and method of apportionment of the special tax among the parcels of real property within the CFD, as now in existence and following the annexation proposed herein, in sufficient detail to allow each landowner within the territory proposed to be annexed to the CFD to estimate the maximum amount such owner will have to pay, are described in the Rate and Method.

5. **Hearing.** Tuesday, February 17, 2015 at 7:00 p.m. or as soon as possible thereafter, in the City Hall, Council Chambers, 701 Civic Center Boulevard, Suisun City, California, be, and the same are hereby appointed and fixed as the time and place when and where this Council, as legislative body for the CFD, will conduct a public hearing on the matters described in this Resolution.

6. **Notice.** The City Clerk is hereby directed to cause notice of said public hearing to be given by publication one time in a newspaper of general circulation in the area of the CFD, including the area to be annexed to the CFD. The publication of said notice shall be completed at least 7 days before the date herein set for said hearing. The City Clerk may also cause a copy of such notice and a copy of this Resolution to be mailed to each landowner within the territory proposed to be annexed, which notice and resolution shall be mailed at least 15 days before the date of said hearing. Such notice shall be substantially in the form specified in Section 53339.4 of the Act, with a summary form specifically authorized.

7. **Effective Date.** This Resolution shall take effect upon its adoption.

PASSED AND ADOPTED at a Regular Meeting of the City Council of the City of Suisun City duly held on Tuesday, the 6th day of January 2015, by the following vote:

AYES: COUNCILMEMBERS
NOES: COUNCILMEMBERS
ABSTAIN: COUNCILMEMBERS
ABSENT: COUNCILMEMBERS

WITNESS my hand and the seal of the City of Suisun City this 6th day of January 2015.

Linda Hobson, CMC
City Clerk

EXHIBIT A

**CITY OF SUISUN CITY
Community Facilities District No. 2
(Municipal Services)**

Annexation No. 9 (Parcel Map PM 06-02 Parcel 2--Tax Zone No. 6)

**SUPPLEMENT NO. 9 (PARCEL MAP PM 06-02 PARCEL 2--TAX ZONE No. 6)
TO
RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX**

This Supplement No. 9 (Parcel Map PM 06-02 Parcel 2--Tax Zone No. 6) to Rate and Method of Apportionment of Special Tax (this "Supplement No. 9") supplements the Rate and Method of Apportionment of Special Tax as supplemented by previous Supplements related to previous annexations (the "Existing Rate and Method," and together with Supplement No. 9, the "Rate and Method") for City of Suisun City Community Facilities District No. 2 (Municipal Services) (the "CFD") in connection with Annexation No. 9 (Parcel Map PM 06-02 Parcel 2--Tax Zone No. 6) ("Annexation No. 9") to the CFD. The Existing Rate and Method, excluding previous supplements, is attached as Attachment No. 1.

This Supplement No. 9 supplements the Existing Rate and Method as set forth below. Except as expressly set forth in this Supplement No. 9, all provisions of the Existing Rate and Method shall govern the area added to the CFD by Annexation No. 9, which area shall constitute Tax Zone No. 6 for purposes of the Rate and Method.

Capitalized terms that are used but not defined in this Supplement No. 9 have the meaning given them in the Existing Rate and Method.

The Existing Rate and Method is hereby supplemented to add the following Section C.2. Section C.2 of the Existing Rate and Method shall not apply to the area added to the CFD as a result of Annexation No. 9.

2. Tax Zone No. 6 Special Tax

Table 2 below identifies the Maximum Tax Zone Special Tax for Tax Zone No. 6.

**Table 2
City of Suisun City
Community Facilities District No. 2
(Municipal Services)
Maximum Tax Zone Special Taxes for Tax Zone No. 6
Median Landscape Maintenance**

Land Use Category	Maximum Tax Zone Special Tax Tax Zone No. 6 Fiscal Year 2014-15 *
Single Family Detached Property	\$0.00
Single Family Attached Property with Commercial	\$0.00
Multi-Family Property	\$0.00
Live/Work Property	\$0.00
Non-Residential Property	\$23,328.50

* Beginning in January 2015 and each January thereafter, this Maximum Special Tax shall be adjusted by applying the Average Increase, if any, in the Indices. Each annual adjustment of the Maximum Special Tax shall become effective on the subsequent July 1.

Attachment No. 1

CITY OF SUISUN CITY Community Facilities District No. 2 (Municipal Services)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax applicable to each Assessor's Parcel in Community Facilities District No. 2 (Municipal Services) (the "CFD") shall be levied and collected according to the tax liability determined by the City Council, through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in the CFD, unless exempted by law or by the provisions of Section E below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to the CFD unless a separate Rate and Method of Apportionment of Special Tax is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Acre or Acreage" means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable final subdivision map or other parcel map recorded at the Solano County Recorder's Office.

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 commencing at Section 53311 of the California Government Code.

"Administrator" means the individual(s) designated by the City to administer the CFD in accordance with the authority and powers granted by the City Council.

"Assessor's Parcel" or "Parcel" means a lot or parcel shown on an Assessor's Parcel Map with an assigned Assessor's Parcel number.

"Assessor's Parcel Map" means an official map of the County Assessor of the County of Solano designating parcels by Assessor's Parcel number.

"Average Increase" means the annual average increase in the Indices that shall be applied to escalate the Maximum Special Tax each Fiscal Year. The Average Increase shall be calculated in January of each year by (1) referencing the Bureau of Labor Statistics Data to identify the annual percentage increase in each Index as of the end of the prior year, and (2) taking the average of these two percentages. If either Index decreases from one year to the next, the percentage change from the prior year shall be assumed to be zero for purposes of calculating the Average Increase.

"Building Square Footage" means the total gross square footage of the floor area of the buildings on any Parcel of Non-Residential Property determined by calculating the combined floor area contained within a building's exterior walls including the area of an addition where floor area is increased. Parking areas and exterior walkways shall not be included in the calculation of Building Square Footage. The determination of Building Square Footage shall be made by reference to appropriate records kept by the City's Building Department.

"CFD-Wide Special Tax" means the Maximum Special Tax identified in Section C.1 below that shall be levied on all Developed Property within the CFD.

"CFD-Wide Special Tax Requirement" means the amount necessary in any Fiscal Year to (i) pay the cost of authorized police, fire, paramedical, storm drain and City-wide landscaping services, (ii) pay administrative expenses of

the CFD, and (iii) cure delinquencies in the payment of Special Taxes levied in prior Fiscal Years or (based on delinquencies in the payment of Special Taxes which have already taken place) are expected to occur in the Fiscal Year in which the tax will be collected.

“City” means the City of Suisun City.

“City Council” means the City Council of the City of Suisun City, acting as the legislative body of the CFD.

“Developed Property” means, in any Fiscal Year, all Taxable Property for which a building permit for new construction has been issued prior to July 1 of the preceding Fiscal Year.

“Fiscal Year” means the period starting July 1 and ending on the following June 30.

“Indices” means the Consumer Price Indexes for the San Francisco-Oakland-San Jose Urban Wage Earners and Clerical Workers Category and the U.S. City Average Urban Wage Earners and Clerical Workers Category.

“Live/Work Property” means a Parcel on which all or a portion of a Unit is deed-restricted for commercial use, as determined in the sole discretion of the City.

“Maximum CFD-Wide Special Tax” means the maximum CFD-Wide Special Tax, determined in accordance with Section C.1 below, that can be levied on Taxable Property in any Fiscal Year.

“Maximum Tax Zone Special Tax” means the maximum Tax Zone Special Tax, determined in accordance with Section C.2 below, that can be levied on Taxable Property in any Fiscal Year.

“Multi-Family Property” means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued for construction of a residential structure with Units that are offered for rent to the general public.

“Non-Residential Property” means any Taxable Property within the boundaries of the CFD that is not Live/Work Property, Single Family Detached Property, Single Family Attached Property or Multi-Family Property, as defined herein.

“Public Agency” means the federal government, State of California or other local governments or public agencies.

“RMA” means this Rate and Method of Apportionment of Special Tax.

“Single Family Attached Property” means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued for construction of a residential structure consisting of two or more Units that share common walls and are offered as for-sale units, including such residential structures that meet that statutory definition of a condominium contained in Civil Code Section 1351.

“Single Family Detached Property” means, in any Fiscal Year, all Parcels of Developed Property which meet both of the following criteria: (i) a building permit was issued for construction of a Unit that does not share a common wall with another Unit, and (ii) the Parcel has not been designated as Live/Work Property.

“Special Tax” means a special tax levied in any Fiscal Year to pay the CFD-Wide Special Tax Requirement or the Tax Zone Special Tax Requirement.

“Taxable Property” means all Assessor’s Parcels within the boundaries of the CFD which are not exempt from the Special Tax pursuant to law or Section E below.

“Tax Zone” means a mutually exclusive geographic area within which a particular Tax Zone Special Tax may be levied pursuant to this RMA. All of the property within the CFD at the time of the CFD formation is within Tax Zone No.1; additional Tax Zones may be created when property is annexed into the CFD, and a separate Tax Zone Special Tax shall be identified for property within a new Tax Zone at the time of such annexation.

“Tax Zone Special Tax” means a Special Tax that shall be levied within a particular Tax Zone or Tax Zones but not necessarily levied at a consistent rate throughout the entire CFD.

"Tax Zone Special Tax Requirement" means the amount necessary in any Fiscal Year to pay the cost of authorized landscaping services within a particular Tax Zone. A separate Tax Zone Special Tax Requirement shall be determined each Fiscal Year for each Tax Zone within which a Tax Zone Special Tax is authorized to be levied.

"Unit" means a residential dwelling unit, including individual single-family detached, duplex, triplex, fourplex, townhome, condominium, or apartment units.

B. DATA FOR ANNUAL ADMINISTRATION OF SPECIAL TAX

After July 1 of each Fiscal Year, the Administrator shall categorize all Parcels of Taxable Property in the CFD as Single Family Detached Property, Single Family Attached Property, Multi-Family Property, Live/Work Property or Non-Residential Property. For each Parcel of Single Family Attached Property, Live/Work Property and Multi-Family Property, the Administrator shall determine the number of Units on the Parcel by referencing the building permit, site plan, condominium plan, apartment plan or other development plan for the Parcel. The Administrator shall determine the Building Square Footage for all Parcels of Non-Residential Property. The Administrator shall also determine the Tax Zone within which each Parcel of Taxable Property is located.

C. MAXIMUM SPECIAL TAX

1. CFD-Wide Special Tax

Table 1 below identifies the Maximum CFD-Wide Special Taxes.

Table 1
City of Suisun City
Community Facilities District No. 2
(Municipal Services)
Maximum CFD-Wide Special Taxes

Land Use Category	Maximum CFD-Wide Special Tax
	Fiscal Year 2005-06 *
Single Family Detached Property	\$629.90 per Unit
Single Family Attached Property with Commercial	\$472.43 per Unit
Multi-Family Property	\$236.21 per Unit
Live/Work Property	\$629.90 per Unit plus \$629.90 per 1,000 square feet (or portion thereof) of non-residential building and ancillary improvements
Non-Residential Property	The greater of \$629.90 per parcel or \$629.90 per 1,000 Square Feet (or portion thereof) of Building Square Footage

* Beginning in January 2006 and each January thereafter, this Maximum Special Tax shall be adjusted by applying the Average Increase, if any, in the Indices. Each annual adjustment of the Maximum Special Tax shall become effective on the subsequent July 1.

2. Tax Zone No.1 Special Tax

Table 2 below identifies the Maximum Tax Zone Special Tax for Tax Zone No.1. A different Maximum Tax Zone Special Tax shall be identified for Tax Zones added to the CFD as a result of future annexations.

Table 2
City of Suisun City
Community Facilities District No. 2
(Municipal Services)
Maximum Tax Zone Special Taxes for Tax Zone No.1

Land Use Category	Maximum CFD-Wide Special Tax Tax Zone No.1 Fiscal Year 2005-06 *
Single Family Detached Property	\$386.04 per Unit
Single Family Attached Property	\$289.53 per Unit
Multi-Family Property	\$144.77 per Unit
Live/Work Property	\$386.04 per Unit plus \$386.04 per 1,000 square feet (or portion thereof) of non-residential space
Non-Residential Property	The greater of \$386.04 per Parcel or \$386.04 per 1,000 Square Feet (or portion thereof) of Building Square Footage

* Beginning in January 2006 and each January thereafter, this Maximum Special Tax shall be adjusted by applying the Average Increase, if any, in the Indices. Each annual adjustment of the Maximum Special Tax shall become effective on the subsequent July 1.

D. METHOD OF LEVY AND COLLECTION OF THE SPECIAL TAX

1. CFD-Wide Special Tax

Each Fiscal Year, the CFD-Wide Special Tax shall be levied on all Parcels of Developed Property within the CFD as follows:

- Step 1:** Determine the CFD-Wide Special Tax Requirement for the Fiscal Year in which the CFD-Wide Special Tax will be collected;
- Step 2:** Calculate the total CFD-Wide Special Tax revenues that could be collected from Developed Property within the CFD based on application of the Maximum CFD-Wide Special Tax rates determined pursuant to Section C.1 above;
- Step 3:** If the amount determined in Step 1 is **greater than or equal to** the amount calculated in Step 2, levy the Maximum CFD-Wide Special Tax on all Parcels of Developed Property in the CFD.
- Step 4:** If the amount determined in Step 1 is **less than** the amount calculated in Step 2, levy the CFD-Wide Special Tax against all Parcels of Developed Property in equal percentages up to 100% of the Maximum CFD-Wide Special Tax for each Parcel until the amount of the CFD-Wide Special Tax levy equals the CFD-Wide Special Tax Requirement for that Fiscal Year.

2. Tax Zone Special Tax

Each Fiscal Year, the Tax Zone Special Tax shall be levied on all Parcels of Developed Property within each Tax Zone as follows:

- Step 1:** Separately for each Tax Zone, determine the Tax Zone Special Tax Requirement for the Fiscal Year in which the Tax Zone Special Tax will be collected;
- Step 2:** Calculate separately for each Tax Zone the total Tax Zone Special Tax revenues that could be collected from Developed Property within the Tax Zone based on application of the Maximum Tax Zone Special Tax rates for that Tax Zone;
- Step 3:** If the amount determined in Step 1 is **greater than or equal to** the amount calculated in Step 2, levy the Maximum Tax Zone Special Tax on all Parcels of Developed Property in the Tax Zone.
- Step 4:** If the amount determined in Step 1 is **less than** the amount calculated in Step 2, levy the Tax Zone Special Tax against all Parcels of Developed Property within the Tax Zone in equal percentages up to 100% of the Maximum Tax Zone Special Tax for each Parcel until the amount of the Tax Zone Special Tax levy equals the Tax Zone Special Tax Requirement for that Fiscal Year.

The CFD-Wide Special Tax and the Tax Zone Special Tax within the CFD shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that the CFD may (under the authority provided in the Act), in any particular case, bill the taxes directly to the property owner off the County tax roll, and the Special Taxes will be equally subject to penalties and foreclosure if delinquent.

E. LIMITATIONS

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Tax, no Special Tax shall be levied on land that has been conveyed to a Public Agency, except as otherwise provided in Sections 53317.3 and 53317.5 of the Act.

F. INTERPRETATION OF SPECIAL TAX FORMULA

The City reserves the right to make minor administrative and technical changes to this document that do not materially affect the rate and method of apportioning Special Taxes. In addition, the interpretation and application of any section of this document shall be left to the City's discretion. Interpretations may be made by the City by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this Rate and Method of Apportionment.

AGENDA TRANSMITTAL

MEETING DATE: January 6, 2015

CITY AGENDA ITEM: PUBLIC HEARING: Draft 2015-2023 Housing Element:

- a. Council Adoption of Resolution 2015-___: Authorizing the Submittal of the Draft 2015-2023 Housing Element to the State Department of Housing and Community Development for its Initial 60-Day Review.

FISCAL IMPACT: A Housing Element Update consulting services budget was adopted in the FY 2014-15 budget for \$39,200. The City Council authorized a contract with Pacific Municipal Consultants (PMC) on July 15, 2014.

BACKGROUND: Every city and county in California is required by State law to update its Housing Element. The law also requires that the Housing Element be reviewed and certified by the State Department of Housing and Community Development (HCD). As part of the Housing Element Update, the City is required to identify and designate in its General Plan and Zoning Ordinance sufficient sites at sufficient densities to accommodate its Regional Housing Needs Allocation (RHNA), as determined by the Association of Bay Area Governments (ABAG).

Importantly, the State does not mandate the actual construction of the housing units by law. However, local governments must make a good faith effort to remove governmental constraints to the development of affordable housing. It is the State's policy that local governments should be actively supporting the development of affordable housing.

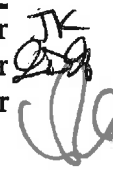
In updating the City's current Housing Element, the City is required to look at the following:

1. Review of the existing housing needs using population and household characteristics, income and employment and housing trends.
2. Review of the projected housing needs using ABAG's regional housing needs allocation (RHNA), conduct a site inventory and analysis, as well as looking at current policies and programs for "special needs" populations, such a senior or transitional housing.
3. Review of land use and other regulatory constraints that might limit meeting affordable housing needs, such as existing and projected demographics, income and market trends.

Once completed, HCD is required to review all updates and then certify the Draft Housing Elements. By certifying the update, this enables the City to maintain its eligibility for various funding sources and to comply with the state mandate that every city and county have a certified Housing Element. The most recent example of an affordable housing project is the Cottonwood Creek project which was constructed through the combination of supportive policies (e.g., PUD flexibility, fast track processing, etc.), the involvement of a non-profit housing provider, housing subsidies from state or federal sources, and the use of housing set-a-side funds. Without a certified Housing Element this project would not have been eligible for affordable housing funding sources, such as our housing set-a-side funds.

PREPARED BY:
REVIEWED BY:
APPROVED BY:

John Kearns, Associate Planner
 Jason Garben, Development Services Director
 Suzanne Bragdon, City Manager

JK


Workshop

City staff conducted a Planning Commission study session and community workshop on September 23, 2014. A workshop flyer was posted on the City's website and notifications were sent to 35 stakeholders. The consultant gave a presentation on the Housing Element update including an overview of the Housing Element components, new legislation, the Regional Housing Needs Allocation (RHNA), the update process and schedule, and demographic information. Following the presentation, members of the Planning Commission and public were invited to ask questions or provide comments. Comments received included:

- Provide information on per capita income data.
- Provide an analysis of the housing units that were provided in the 4th round Housing Element and the carry-over required for the 5th round Housing Element.

Staff has worked with the consultant team, Pacific Municipal Consultants (PMC), taking into consideration the direction received at the public workshop. In addition, staff and the consultant have reviewed the necessary programs as required by HCD to gain certification and we have provided a detailed discussion below on the recommended programs for the housing element update.

STAFF REPORT: The Housing Element is one of seven elements mandated under state law to be included in the General Plan. The purpose of the Housing Element is to establish a comprehensive plan to address housing needs in the City. The Element is to address the housing needs of all economic segments of the city including low- and moderate-income households and populations with special housing needs. The Housing Element is the only component of the General Plan requiring state certification.

This Planning Period for the 5th Cycle of the Housing Element is January 31, 2015 to January 31, 2023. This differs slightly from the Regional Housing Needs Allocation (RHNA) which is from January 1, 2014 to October 31, 2022. Below is a comparison of the 2007 and 2014 RHNA which is the state-mandated process to identify the total number of housing units (by affordability level) that each local jurisdiction must accommodate in its Housing Element.

Income Level	2007 RHNA	2014 RHNA
Very Low	173	147
Low	109	57
Moderate	94	60
Above Moderate	234	241
Total	610	505

2009-2014 Housing Element

In order for the City to have the upcoming Housing Element certified by HCD, the City needed to complete implementation of the existing Housing Element Programs found below:

- Pursuant to Senate Bill 2 (SB 2), staff will amend the City Zoning Ordinance to allow emergency shelters as a permitted use in the ML (Manufacturing Light) district without a conditional use permit or other discretionary review. In addition the City will evaluate adopting development and managerial standards that will be consistent with Government Code Section 65583(a)(4) and consistent with the development standards in the ML district. This will be accomplished by amending the Suisun City Code.
- Pursuant to SB 2, the City must explicitly allow both supportive and transitional housing types in all residential zones. Both transitional and supportive housing types will be allowed as a permitted use subject only to the same restrictions on residential uses contained in the same type of structure. This will be accomplished by amending the Suisun City Code.
- Further the City must develop and formalize a general process that a person with disabilities may need to go through in order to make a reasonable accommodation request in order to accommodate the needs of persons with disabilities and streamline the permit review process. The City will provide information to individuals with disabilities regarding reasonable accommodation policies, practices, and procedures based on the guidelines from the California Housing and Community Development Department (HCD). This information will be available through postings and pamphlets at the City and on the City's website. This can be accomplished by adopting a procedure, a policy, or an ordinance.
- To promote the financial feasibility of producing affordable housing units utilizing density bonuses and incentives and concessions, the City will adopt a density bonus ordinance in compliance with Government Code Section 65915. The City will reserve the option of granting an additional density bonus to increase the financial feasibility of an affordable housing project that includes extremely low-; very low-; and low-income units. This will be accomplished by adding an ordinance to the Suisun City Code.

All of these programs were implemented with the passage of Ordinance No. 728, which the City Council adopted on November 18, 2014.

2015-2023 Housing Element

A majority of the programs from the 2009-2014 Housing Element have been found to be effective and are proposed to be carried over to the proposed Housing Element. With the fact that the General Plan Update has taken longer than anticipated (originally scoped for an 18-month process), the necessary rezonings that the 2009-2014 Housing Element programmed for were not completed that resulted in a shortfall of 108-units. Program 1.A.1, explains that the City must provide the proper rezoning to accommodate the 108-unit shortfall by January 31, 2016. In addition, there are 204 units that the City needs to accommodate within three years (anticipated to be completed by Spring 2018) of final adoption. In the Housing Element, it is noted that these rezonings are anticipated to be completed by May 31, 2016 (the deadline of the grant funding the Specific Plan Update). In both cases, the sites need to allow for a minimum of 20 and up to 45 units per acre by right. The tables below list the sites for rezoning in both the 4th and 5th cycle cases. These sites are also shown graphically in Appendix A, Figures 2 and 3 for reference.

RHNA 4th Cycle Sites - Modified Table 33, Page 73-74				
Site #	APN	Size	Assumed Density	Capacity
1	0032-081-310	2.63 acres	20 units/acre	53 units
	0032-081-060			
	0032-081-050			
	0032-081-070			
	0032-081-320			
	0032-081-140			
2	0032-411-070	3.22 acres	20 units/acre	64 units
	0032-411-090			
	0032-411-100			
	0032-411-110			
	0032-411-080			
Total				117 units

RHNA 5th Cycle Sites - Modified Table 39, Page 81				
Site #	APN	Size	Assumed Density	Capacity
3	0032-042-120	3.31 units	25 units/acre	83 units
	0032-042-130			
	0032-042-640			
4	0032-281-060	4.05 units	30 units/acre	122 units
	0032-281-130			
	0032-281-110			
Total				205 units

Maps of the tables above are attached hereto (Attachments 3 and 4).

In evaluating the above sites, staff and the consultant took the following policy documents into consideration:

- Development Feasibility Study, The Planning Center/DC&E and BAE 2012.
- Senior Housing Feasibility Study, Principle Valuation LLC 2011.
- Transit-Oriented Development Feasibility Study, ADE 2009.

It is also important to note the proposed rezoning of these properties is consistent the proposed Preferred Land Use Alternative used in the Draft 2035 General Plan Update, approved by Planning Commission and City Council.

No other significant changes are proposed compared to the existing Housing Element. For any local jurisdiction that does not have its Housing Element certified within 120 days following the

January 31, 2015 deadline, that local jurisdiction would need to update its Housing Element every four years (versus the newly allowed eight years) until the jurisdiction has adopted at least two revisions by the statutory deadline.

Planning Commission Comments – December 22, 2014 Meeting

The Planning Commission held a Public Hearing on Monday December 22, 2014 to consider a recommendation to the City Council to authorize the submittal of the 2015-2023 Draft Housing Element. During the Public Hearing, comments received from the public included:

- Moving an inclusionary housing ordinance forward and forming a working group.
- Being more specific with timelines/timeframes that programs would be completed.
- Favorable feedback for senior housing on the site located at the southwest corner of Marina Boulevard and Highway 12.

At the conclusion of the Public Hearing, the Commission voted 6-0 (with one absence) recommending City Council authorize the submittal of the Draft 2015-2023 Housing Element to the State of California Housing and Community Development Department with two revisions. First, delete Table 39 which references underutilized properties; and second, amend Figure 1 to remove the properties referenced in Table 39. Both Table 39 and the original Figure 1 were part of a program from the previous Housing Element and inadvertently were carried over. The draft housing element has been revised to reflect these changes and is attached hereto as Attachment 2.

Next Steps

Any suggested changes or revisions from the City Council will be incorporated into the document to forward to HCD for review and consideration. HCD when then have 60-days to review the document. Any revisions suggested by HCD would then be incorporated for certification and once certified, the City Council would consider adopting the Final Housing Element in Spring 2015.

RECOMMENDATION: It is recommended that the City Council:

1. Open the Public Hearing; and
2. Take Public Comment; and
3. Close Public Hearing; and
4. Adopt Resolution 2015-____: Authorizing the Submittal of the Draft 2015-2023 Housing Element to the State Department of Housing and Community Development for its Initial 60-Day Review.

ATTACHMENTS:

1. Resolution 2015-____: Authorizing the Submittal of the Draft 2015-2023 Housing Element to the State Department of Housing and Community Development for its Initial 60-Day Review.
2. Draft 2015-2023 Housing Element (under separate cover).
3. 4th Cycle Sites Map.
4. 5th Cycle Sites Map.

RESOLUTION NO. 2015-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUISUN CITY
AUTHORIZING THE SUBMITTAL OF THE DRAFT 2015-2023 HOUSING ELEMENT
TO THE STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
FOR ITS INITIAL 60-DAY REVIEW**

WHEREAS, the Planning Commission at its special meeting of December 22, 2014, held a public hearing to review the Draft 2015-2023 Housing Element; and

WHEREAS, the City Council at its regular meeting of January 6, 2014, held a public hearing to review the Draft 2015-2023 Housing Element and directed staff to submit the document to the Department of Housing and Community Development; and

WHEREAS, based on evidence presented at the Public Hearing by City staff, and the public, the following Findings are hereby made:

1. That the Draft of the Suisun City Housing Element is drafted in accordance with State housing laws, California Government Code Sections 65580-65589.8 as required.
2. That public hearings were held in accordance with State requirements.
3. That the Housing Element is consistent with the Goals, Objectives, and Policies of the General Plan and Zoning Ordinance. Once certified, the City shall work towards implementations of the necessary programs.
4. That the Housing Element will not be detrimental to the public health, safety, and general welfare.

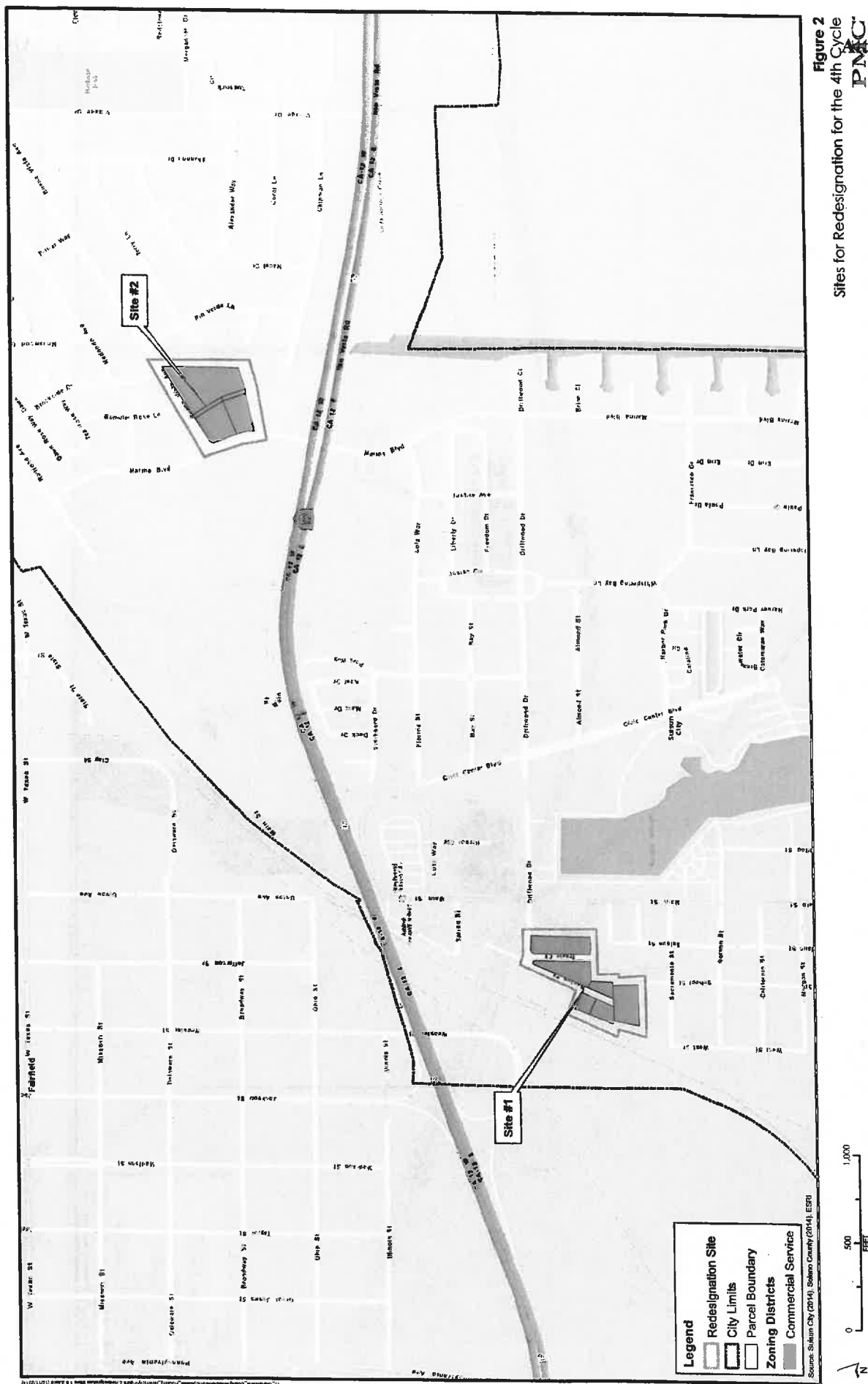
NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Suisun City hereby directs staff to submit the Draft 2015-2023 Housing Element to the State of California Department of Housing and Community Development for review and comment.

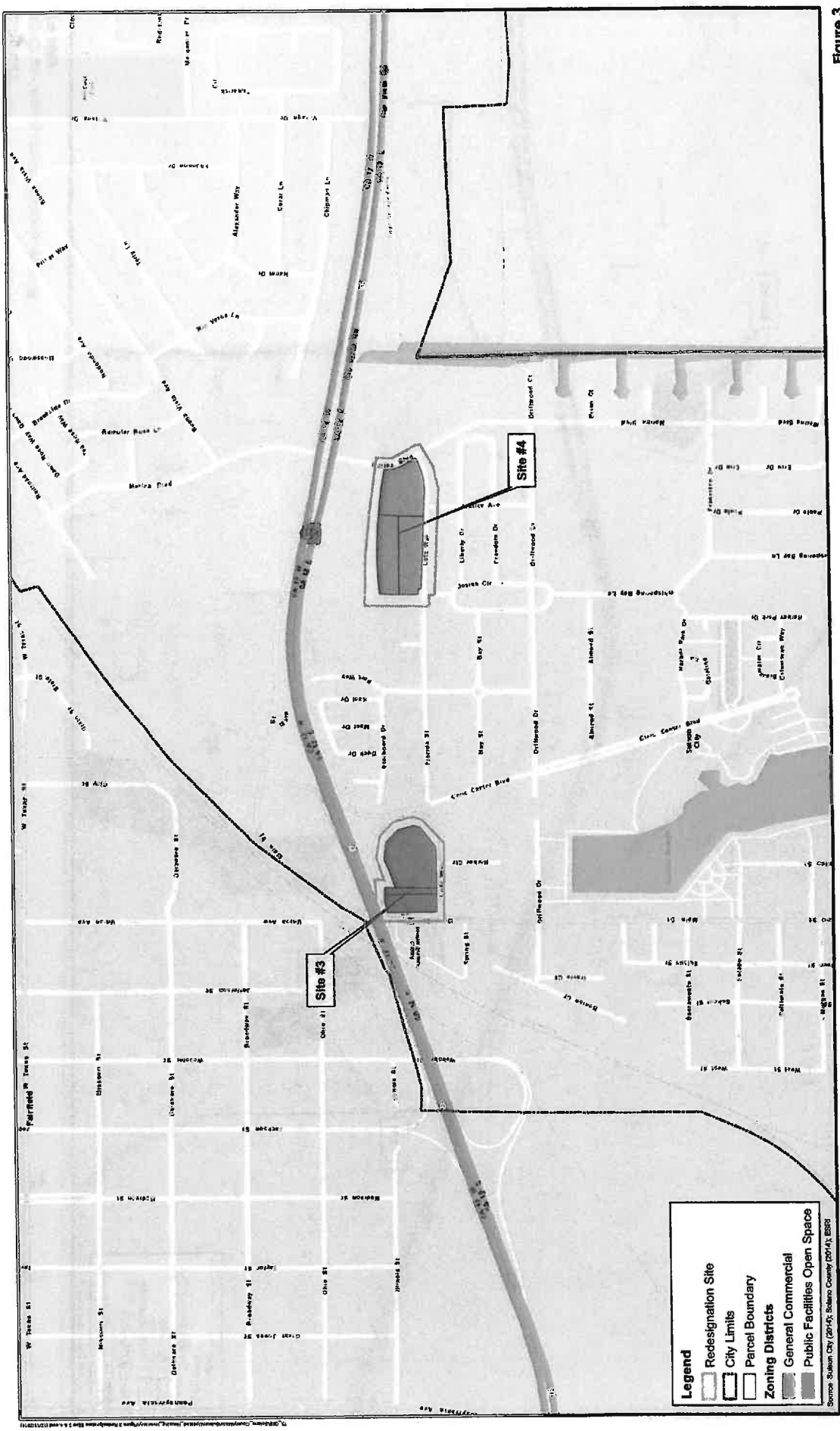
PASSED AND ADOPTED by a Regular Meeting of said City Council of the City of Suisun City duly held on Tuesday, the 6th of January 2015, by the following vote:

AYES: Councilmembers
NOES: Councilmembers
ABSTAIN: Councilmembers
ABSENT: Councilmembers

WITNESS my hand and the seal of the City of Suisun City this 6th day of January 2015.

Linda Hobson, CMC
City Clerk





AGENDA TRANSMITTAL

MEETING DATE: January 6, 2015

CITY AGENDA ITEM: Prohibition Against Smoking at Special Events:

Council Introduction and Waive Reading of Ordinance-__: Amending Title 12, Chapter 12.12 of the Suisun City Code Regulating the Smoking of Tobacco Products during Special Events in Parks and Recreational Areas.

FISCAL IMPACT: There would be no fiscal impacts to the General Fund to amend the ordinance adding sections 12.12.005, 12.12.080, and 12.12.085. There may be a slight increase in revenue to the General Fund in issuing citations for the infractions.

BACKGROUND: On July 15, 2014, staff brought to Council a Discussion and Direction Local Land Use item regarding smoking of hookah and e-cigarettes and the dangers of their use in public places. The Council directed staff to come back with a discussion and direction item on regulating the use of tobacco in public places such as parks and the downtown plaza during events sponsored by the City and that of the Suisun City Historic Waterfront Business Improvement District.

On October 7, 2014, staff brought the item back to the Council for discussion and direction. The City Council directed staff to present the Council with an ordinance that will be unique to Suisun City in restricting smoking at special events open to the general public in the Marina Plaza area and within the event boundaries only at any City Park.

On December 16, 2014, the City Council opened a public hearing on the proposed ordinance, but ended up continuing the item to January 6, 2015, due to concerns about the designation of certain areas as parks or recreational areas. This item focusses solely on the smoking ordinance. The actual designation of the specific sites that the ordinance will apply to would occur on January 20, 2015, when the ordinance is adopted. At that time the City Council may adopt a resolution which specifies those sites.

STAFF REPORT: Staff has researched current municipal codes and zoning and has crafted an ordinance we believe to be unique to Suisun City. This ordinance would restrict smoking in designated areas and it would provide event participants a smoke-free environment, yet it would smokers the opportunity to smoke in areas where smoking is permitted outside of the boundaries of the special event. As we have indicated in the past Council presentations, outdoor smoking creates a public nuisance, both because of the health hazard of second-hand smoke as a "Toxic Air Contaminant" which is defined as an air pollutant by the California Air Resources Board (CARB) and California Health and Safety Code section 39650 *et seq.*, which may cause or contribute to an increase in deaths or in serious illness, and the pervasiveness of cigarette butts, which constitute the most common form of plastic litter in our communities.

Staff also has stated in the past presentations, that the City currently follows State laws regulating smoking and tobacco products. However, State laws do not regulate outdoor smoking in public locations such as parks and other outdoor venues.

PREPARED BY:

REVIEWED/APPROVED BY:

Tim Mattos, Police Chief
Suzanne Bragdon, City Manager



Regulation of Smoking during Special Events Open to the Public in City Parks

Staff reviewed the Suisun City Code to determine the best location to address the Council's interest. It was determined that Title 12, Section 12.12 – Parks and Recreational Facilities would be the most appropriate. The proposed ordinance would prohibit smoking during Special Events open to the public in Parks and Recreational areas, including the Suisun City Marina area. After enactment of this ordinance, should the Council be desirous of changing which facilities are designated as non-smoking during Special Events open to the public, such changes could be accomplished via resolution.

Staff would suggest that the City Council review the following list of parks and recreational areas and indicate to staff which you would like to regulate smoking during special events open to the public. This list includes, but is not limited to, the following parks and recreational areas:

- Municipal Boat Launch
- Downtown Courtyard
- Old Town Waterfront Plaza
- Sheldon Plaza
- Mike Day Playground
- City Hall Point
- Reverend Claybon Lea, Sr. Park
- Heritage Park
- Carl E. Hall Park
- McCoy Creek Park
- Lawler Ranch Park
- Lawler Falls Park
- Samuel W. Geopp Park
- Montebello Vista Park
- Patriot Park
- Independence Park
- Irving H. Lambrecht Sports Complex

Council may give staff feedback about which areas it wishes to regulate smoking in during special events open to the public, and staff will prepare a resolution for the City Council consideration on January 20, 2015. That resolution would declare all of those locations that the Council wishes to designate as subject to the smoking restrictions. The resolution may be amended by the Council in any subsequent resolution to add, or delete from the list.

RECOMMENDATION: It is recommended that the City Council:

1. Reopen the continued Public Hearing; and
2. Take any testimony; and
3. Close the Public Hearing; and
4. Introduce and Waive Reading of Ordinance-___: Amending Title 12, Chapter 12.12 of the Suisun City Code Regulating the Smoking of Tobacco Products during Special Events in Parks and Recreational Areas and the City Marina Area.

ATTACHMENTS:

1. Ordinance ____: Amending Title 12, Chapter 12.12 of the Suisun City Code Regulating the Smoking of Tobacco Products during Special Events in Parks and Recreational Areas and the City Marina Area.
2. Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant as Approved by the Scientific Review Panel.
3. Health and Safety Section 39650 *et seq.*
4. Suisun City Parks map.

ORDINANCE NO. __

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUISUN CITY,
CALIFORNIA, AMENDING TITLE 12, CHAPTER 12.12 OF THE SUISUN CITY
CODE REGULATING THE SMOKING OF TOBACCO PRODUCTS DURING
SPECIAL EVENTS IN PARKS AND RECREATIONAL AREAS**

WHEREAS, the City is concerned that secondhand smoke and litter during Special Events in Parks and Recreational Areas detracts from the overall enjoyment of Special Events open to the public; and

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health challenge, as evidenced by the following:

- Approximately 480,000 people die in the United States from tobacco-related diseases every year, making tobacco use the nation's leading cause of preventable death; and
- Tobacco use can cause disease in nearly all organ systems and is responsible for 87% of lung cancer deaths, 32% of coronary heart disease deaths, 79% of chronic obstructive pulmonary disease, and third of all cancer deaths; and
- Some of the most common types of cancers including stomach, liver, uterine, cervix, and kidney are related to tobacco use; and

WHEREAS, secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke and separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposures of nonsmokers to secondhand smoke; and
- The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure (California Health and Safety Code 39650 *et seq.*); and
- The California Environmental Protection Agency included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm; and

WHEREAS, exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Secondhand smoke is responsible for an estimated 50,000 deaths among nonsmokers each year in the United States; and
- Exposure to secondhand smoke increases the risk of coronary heart disease by about 25% to 30% and increases the risk of stroke by 20% to 30%. Secondhand smoke exposure causes lower respiratory tract infections, such as pneumonia and bronchitis, in as many as 300,000 children in the United States under the age of 18 months each year and exacerbates childhood asthma; and

AMENDING TITLE 12, CHAPTER 12.12 – “SMOKING AT SPECIAL EVENTS”

WHEREAS, tobacco use and exposure to secondhand smoke impose great social and economic costs, as evidenced by the following:

- Between 2009 and 2012, the total annual economic burden of smoking in the United States was between \$289 billion and \$332.5 billion; and
- From 2005–2009, the average annual health care expenditures attributable to smoking were approximately \$132.5 billion to \$175.9 billion in direct medical care costs for adults and \$151 billion in lost productivity; and
- The medical and other costs to nonsmokers due to exposure to secondhand smoke were estimated at over \$10 billion per year in the United States in 2005; and
- The total annual cost of smoking in California was estimated at \$548 per resident or between \$2,262 and \$2,904 per smoker per year; and
- California’s Tobacco Control Program saved the state and its residents \$134 billion in health care expenditures between the year of its inception, 1989, and 2008, with savings growing yearly; and

WHEREAS, exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke does occur at significant levels outdoors, as evidenced by the following:

- Levels of secondhand smoke exposure outdoors can reach levels attained indoors depending on direction and amount of wind and number and proximity of smokers; and
- Irritation from secondhand smoke begins at levels as low as 4 micrograms per cubic meter, and in some outdoor situations this level can be found as far away as 13 feet from the burning cigarette; and
- Smoking cigarettes near building entryways can increase air pollution levels by more than two times as compared with background levels, with maximum levels reaching the “hazardous” range on the U.S. EPA’s Air Quality Index; and
- To be completely free from exposure to secondhand smoke in outdoor places, a person may have to move nearly 23 feet away from the source of the smoke, about the width of a two-lane road; and

WHEREAS, cigarette butts pose a health threat to young children, as evidenced by the following:

- In 2012, American poison control centers received nearly 8,648 reports of poisoning by the ingestion of cigarettes, cigarette butts, and other tobacco products and 84.5% of these poisonings were in children age 5 and younger; and
- Children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging; and

1 **WHEREAS**, cigarette butts are a major and persistent source of litter, as evidenced by
2 the following:

- 3 • In 2007, it was estimated that Americans consume 360 billion cigarettes each year;
4 and
- 5 • 55.7% of smokers admit to littering cigarettes in the last month; and
- 6 • In an observational study of 9,757 individuals, after cigarettes were smoked, 45% of
7 cigarettes ended up as litter; and
- 8 • In 2011, 22.6% of all debris collected from beaches and coastal areas are smoking
9 related products; and
- 10 • Cigarette butts are often cast onto sidewalks and streets, and frequently end up in
11 storm drains that flow into streams, rivers, bays, lagoons, and ultimately the ocean;
12 and
- 13 • These discarded cigarette butts have been found to adversely impact the health of
14 both pets and wildlife; and
- 15 • Cigarette filters, made of plastic cellulose acetate, can take up to several years to
16 degrade; and

17 **WHEREAS**, laws restricting the use of tobacco products have recognizable benefits
18 to public health and medical costs, as evidenced by the following:

- 19 • Cities with smoke-free laws see an appreciable reduction in hospital admittances for
20 heart attacks in the months and years after such laws are passed; and
- 21 • Smoking bans help people reduce the number of cigarettes they smoke or quit
22 altogether; and
- 23 • Strong smoking regulations for restaurants decrease the number of children who
24 transition from experimenting with smoking to becoming actual smokers; and

25 **WHEREAS**, while smokers would be restricted from smoking during Special Events
26 open to the public during the period of the event, they would not be restricted from smoking
27 in areas where smoking is permitted outside of the Special Event boundaries.

28 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUISUN
CITY, CALIFORNIA, DOES ORDAIN AS FOLLOWS:**

SECTION 1.

**Title 12, Chapter 12.12 of the Suisun City Code relating to the Use of Parks and
Recreational Facilities is hereby amended as follows:**

Sections

12.12.005 – Definitions, added

12.12.080 – Smoking Tobacco during Special Events, added

AMENDING TITLE 12, CHAPTER 12.12 – “SMOKING AT SPECIAL EVENTS”

12.12.005 - Definitions.

The following words and phrases, as used in this Chapter, are defined as follows:

- A. “Park” is defined as any open space designated as such by resolution of the City Council.
- B. “Recreational Area” is defined as any open space designated as such by resolution of the City Council.
- C. “Smoke” means the gases, or particles released into the air as a result of combustion, when the apparent or usual purpose of the combustion is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine *and* the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term “Smoke” includes, but is not limited to, tobacco smoke, marijuana smoke, and crack cocaine smoke.
- D. “Smoking” means engaging in an act that generates Smoke, such as, for example: possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, or a lighted cigarette of any kind; or lighting or igniting a pipe, a hookah pipe, a cigar, or a cigarette of any kind.
- E. “Special Event” is defined as a planned occasion or activity (such as a social gathering) sponsored by the City or any other public or private entity or organization, which is open to the public.
- F. “Suisun City Marina” shall mean the land area as defined in Chapter 21, Section 21.10.010 of the Suisun City Code including all real property from the foot of the shoreline protection to the exterior of the landscape areas bordered generally by west curb of Civic Center Boulevard to the east, the south easement of State Route 12 to the north, the west sidewalk of Main Street, the south curb of Morgan Street and the west curb of Kellogg Street, to the west. This area includes all parks, wetlands, city hall, the public promenade, parking lots, the rail station and plaza, as well as all other marina-related property controlled by the City. Diagram A found in Section 21.10.010 depicts the Suisun City Marina.
- G. “Toxic Air Contaminant” is defined as an air pollutant, identified in regulation by the California Air Resources Board (CARB) and California Health and Safety Code section 39650 *et seq.*, which may cause or contribute to an increase in deaths or in serious illness, or which may pose a present or potential hazard to human health.

12.12.080 – Smoking Tobacco During Special Events.

Except as authorized by City permit or license, no person shall smoke any tobacco product emitting second-hand smoke, which is a Toxic Air Contaminant as defined by the California Air Resources Board, in the Suisun City Marina area during a Special Event open to the public, or at any City Park or Recreational Area during a Special Event open to the public within the specific event boundary. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this ordinance of the City is guilty of an infraction. Any person convicted of an infraction for violation of an ordinance of the City is punishable by:

- A. Fine not exceeding fifty dollars for a first violation.

B. Fine not exceeding one hundred dollars for a second violation of the same ordinance within one year.

C. Fine not exceeding two hundred fifty dollars for each additional violation of the same ordinance within one year.

SECTION 2. EFFECTIVE DATE.

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect and be in force thirty (30) days from and after the date of its passage.

SECTION 3.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause, and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4.

This ordinance shall be posted in at least three (3) public places within the City or published in a county newspaper that is circulated in the City within fifteen (15) days after its passage, there being no newspaper of general circulation printed and published within the City.

PASSED, APPROVED, AND ADOPTED as an Ordinance at a regular meeting of the City Council of the City of Suisun City, California, on this 20th day of January 2015.

Pete Sanchez
Mayor

CERTIFICATION

I, Linda Hobson, City Clerk of the City of Suisun City, California, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council on January 6, 2015 and passed, approved, and adopted by the City Council of the City of Suisun City at a regular meeting held on the 20th day of January 2015 by the following vote:

AYES: Councilmembers: _____
NOES: Councilmembers: _____
ABSENT: Councilmembers: _____
ABSTAIN: Councilmembers: _____

WITNESS my hand and the seal of said City this 20th day of January 2015.

Linda Hobson, CMC
City Clerk

State of California
AIR RESOURCES BOARD

APPENDIX III

**PROPOSED IDENTIFICATION OF
ENVIRONMENTAL TOBACCO SMOKE
AS A TOXIC AIR CONTAMINANT**

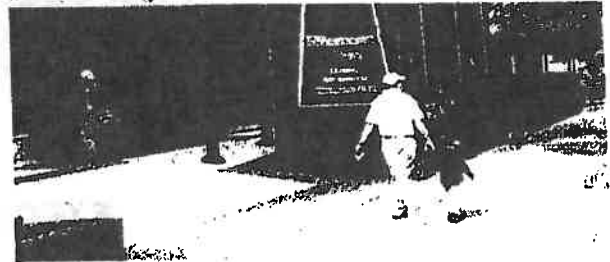
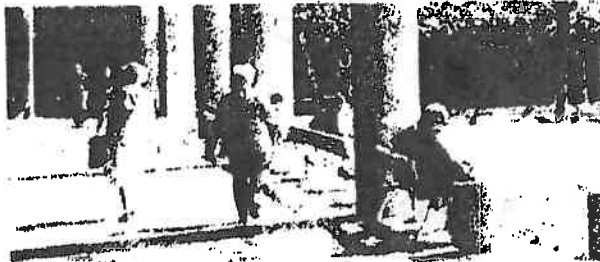
EXECUTIVE SUMMARY

As Approved by the Scientific Review Panel
On June 24, 2005

The SRP approved Executive Summary is a supporting technical document which is incorporated by reference in the Initial Statement of Reasons (Staff Report)

State of California

Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant



Executive Summary



As Approved
Scientific Review
on June 24, 2005



California Environmental Protection Agency

Air Resources Board

Part A- Exposure Assessment

Office of Environmental Health Assessment

Part B- Health Effects



EXECUTIVE SUMMARY

For the "Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant"

California Environmental Protection Agency
Air Resources Board
Office of Environmental Health Hazard Assessment

Introduction

In 1983, the State of California established a program to identify the health effects of toxic air contaminants (TACs) and to reduce exposure to these contaminants to protect the public health (Assembly Bill 1807: Health and Safety Code sections 39650-39674). The program includes a two-step process to address the potential health effects from TACs. The first step involves the evaluation of a substance, by the Air Resources Board (ARB) and the Office of Environmental Health Hazard Assessment (OEHHA), to determine if it is toxic and to estimate public exposure. This step is the risk assessment (or identification) phase. Under state law, the ARB is authorized to identify a substance as a TAC if it determines the substance is "an air pollutant which may cause or contribute to an increase in mortality, in serious illness, or which may pose a present or potential hazard to human health (Health and Safety Code section 39655)."

The second step, determining the need for and appropriate degree of control measures, occurs only if the ARB identifies the substance as a toxic air contaminant. This step is the risk management (or control) phase of the process (Health and Safety Code sections 39665 and 39666). This report does not address the need for control measures to reduce ETS exposure, nor contain any recommendations in that regard.

The ARB and the OEHHA are evaluating environmental tobacco smoke (ETS) as a candidate toxic air contaminant under the State's air toxics identification program. This report presents the information upon which this assessment is based.

What is Contained in This Report?

This report, prepared by the staff of the Air Resources Board (ARB) and the Office of Environmental Health Hazard Assessment (OEHHA), presents an evaluation of exposures to environmental tobacco smoke and the potential health effects associated with these exposures.

Part A of the report, prepared by the staff of the ARB, addresses the exposures to ETS in California. Some of the information in this document is based on data presented in the OEHHA's 1997 report: "Health Effects of Exposure to Environmental Tobacco Smoke." Specifically, Chapter 2 (Exposure Measurement and Prevalence) of the

OEHHA report was updated to include ETS exposure information developed subsequent to the data presented in the report.

Part B of the report, prepared by the staff of the OEHHA, evaluates the potential health impacts from exposures to ETS. In this document, information from their 1997 report, which was later published by the U.S. National Cancer Institute in 1999, has been updated to include more recent literature. OEHHA's evaluation includes numerous published papers on ETS-related health effects since their initial 1997 ETS review.

Part C of the report, prepared by both ARB and OEHHA staff, addresses the comments received on the first public version of the report. The Part C document contains the staff responses to comments and the comment letters.

The Part A and B of this report will serve as the basis for the identification of ETS as a toxic air contaminant (TAC) under the authority of California's TAC Program (Assembly Bill 1807: Health and Safety Code sections 39660-39662).

How Does the ARB Identify a Substance as a TAC?

With input from the public, industry, and the scientific community, the ARB and the OEHHA gather all of the relevant scientific information on a substance. Under the requirements of law (Health and Safety Code sections 39660-39662), the ARB and OEHHA must answer the following questions:

- ☐ Is the substance used in California?
- ☐ Who is exposed to the substance?
- ☐ How many people are exposed?
- ☐ How much is emitted into the air?
- ☐ How long does the substance stay in the air?
- ☐ How much of a substance can be measured in the air?
- ☐ Does exposure to the substance cause increased health impacts in children?
- ☐ Does the substance pose a potential health risk to Californians?

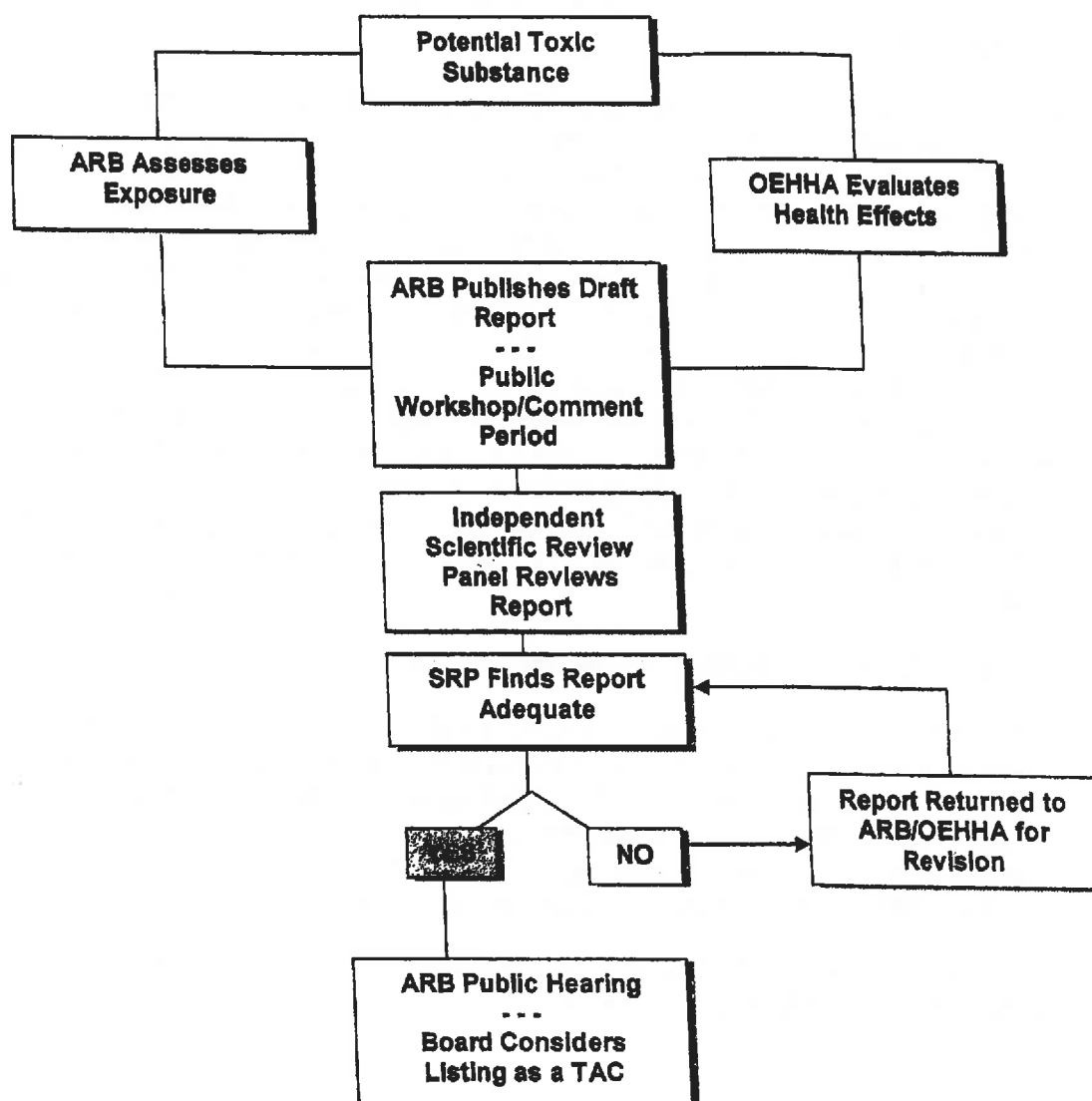
The ARB staff determines the public's potential exposure to the substance while the OEHHA must determine if exposure to the substance poses a potential health risk. Both agencies then prepare a draft report which serves as the basis for identifying a substance.

Once the draft report is released, the public review process begins. The public review is a critical step in identifying a substance. After the release of the report, a workshop is held to discuss the report during a formal comment period. After receiving public comments, both verbal and written, we carefully review all comments, incorporate new information, and revise the report where appropriate.

After the comment period and public workshop, the report is then submitted to the Scientific Review Panel (SRP) on Toxic Air Contaminants. The SRP is an independent group of scientists, who review the report for its scientific accuracy. If the SRP

determines that the report is not based on sound scientific information, it is sent back to the staff for revisions. If the SRP approves the revised report, the SRP prepares its "findings" which are submitted, along with the staff report, to the ARB for consideration at a public hearing. The Board then decides whether to identify a substance as a TAC (see illustration below). If the substance is identified as a TAC, it is listed in title 17 of the California Code of Regulations under section 93000.

The Identification Process



What Happens When a Substance is Identified as a TAC by the Air Resources Board?

After a substance is identified as a TAC, the Health and Safety Code provides for the development of a needs analysis to determine if any regulatory action is warranted. Specifically, the law requires the ARB to prepare a report which assesses the need and appropriate degree of control of a TAC, in consultation with the local districts, affected industry, and the public.

Where is Environmental Tobacco Smoke in the Toxic Air Contaminant Process?

Environmental Tobacco Smoke has undergone a thorough and extensive evaluation since it entered the identification program in June 2001. In December 2003, the draft report, which included the Executive Summary, Part A (exposure assessment), and Part B (health assessment), was released to the public for a three month comment period. In March 2004, a public workshop was held to discuss the report. On November 30, 2004, the SRP held a meeting to discuss the report and the comments received on the draft report (Part C - responses to public comments). The meeting was continued on January 6, 2005 and on March 14, 2005. On June 24, 2005, the SRP held a fourth meeting to discuss and approve the revised draft report. The SRP findings recommend that the ARB take the necessary steps to list ETS as a TAC. Furthermore, the SRP recommends to OEHHA that ETS, once listed, be added to the list of toxic air contaminants that may disproportionately impact children (pursuant to Health and Safety Code section 39669.5(c)). As indicated by the preceding graphic, the next step in the toxic air contaminant process is to notice a public hearing of the Air Resources Board.

What is Environmental Tobacco Smoke?

Environmental Tobacco Smoke is a complex mixture of thousands of gases and fine particles emitted by the burning of tobacco products and from smoke exhaled by the smoker. Other minor contributors are from the smoke that escapes while the smoker inhales and some vapor-phase related compounds that diffuse from the tobacco product. The composition will vary depending on the heat of combustion, the tobacco content, additives present, and the type of filter material used.

Many of the substances found in ETS have known adverse health effects. The table below lists some of these compounds.

**Some Substances in Environmental Tobacco Smoke with
Known Adverse Health Effects**

1,3-butadiene	Chromium VI
2-Naphthylamine	Ethyl benzene
4-Aminobiphenyl	Formaldehyde
4-nitrobiphenyl	Hydrazine
Acetaldehyde	Methyl chloride
Acrolein	N-Nitrosornicotine
Aniline	Nickel
Arsenic (Inorganic)	Nicotine
Benzene	NNK
Benz[a]anthracene	Phenol
Benzo[a]pyrene	Styrene
Cadmium	Toluene

The size of ETS particles range from 0.01 to about 1 μ m. Freshly produced ETS undergoes complex atmospheric changes such as coagulation, evaporation, dilution and condensation. However, ETS fine particles essentially remain below 1 μ m in size.

What are the Total ETS Emissions in California?

ETS emissions were characterized using the most widely measured components of ETS: nicotine, respirable particulate matter (RSP), and carbon monoxide (CO). Total emissions, as a result of combustion of tobacco products, were estimated using data from the California Tobacco Surveys, emission rates from the scientific literature, and cigarette sales data from the State Board of Equalization.

2002 California Statewide ETS Emissions (tons/year)

	California	United States	World
Nicotine	36	4	40
RSP	335	30	365
CO	1475	432	1907

How much ETS is Emitted Outdoors in California?

The amount of ETS emitted into the outdoor environment depends in large part on the smoking public's behavior. Outdoor ETS emissions include direct emissions from outdoor smoking, plus ETS emissions generated indoors which eventually ventilate outside. Apportioning ETS emissions as either outdoor or indoor emissions is difficult to determine due to limited information. However, existing information shows that most smoking in California occurs outdoors. This is demonstrated by the fact that most workplaces (including bars and restaurants) in California, through the enactment of Assembly Bill 13 (AB13) in 1998, are now smoke-free. In addition, data from the 2002 California Adult Tobacco Survey (CATS), shows that over 80% of all California homes

with children are now smokefree and that about 50% of California smokers report that they do not smoke in their own homes. For ETS generated indoors, building ventilation studies show that 50 – 80 percent of ETS (including ETS constituents) is exchanged with outdoor air over a given time period. From all of the available information, the ARB staff estimates that at least 80% of total ETS emissions (including those directly emitted outdoors and emissions ventilated from indoors) are emitted to the outdoor environment.

What is the Prevalence of Smokers in California?

The California Tobacco Survey (CTS), developed by the California Department of Health Services (CDHS), indicates that during the past decade, smoking prevalence among adults (over age 18) and adolescents (12 to 17 years) has gradually decreased.

Starting in 2001, CDHS began measuring adolescent prevalence through their California Student Tobacco Survey (CSTS). The CSTS was incorporated by CDHS since it samples school populations and provides better statistical accuracy. The most recent CTS and CSTS surveys show that both the adult (2002 data) and adolescent (2001 data) smoking prevalence is about 16%. The CSTS data also shows that the range of adolescent smokers varies from 10% in 9th grade to 23% in 12th grade.

How does California Compare to the Rest of the Nation?

Since the passage of Proposition 99 in 1988, the annual adult per capita cigarette consumption has declined by over 60% in California. Adult smoking prevalence in California has dropped at a faster rate relative to the rest of the nation.

Comparison of Reduction In Cigarette Consumption: California versus U.S.

Fiscal Year	1988	2001	% Reduction
California	126.6 packs	47.7 packs	62.3
U.S.	154.8 packs	99.2 packs	35.9

What is the Prevalence of ETS Exposure in California?

Smoking behavior and other factors that change smoking patterns such as smoking regulations, affect present and future exposure patterns. Information from several smoking behavior related surveys indicate that many of California's adults, adolescents, and children are exposed to ETS during some time of the day.

According to studies from the late 1980s and the early 1990s, on a given day, 56% of adults (over age 18), 64% of adolescents (12-17 years), and 38% of children (0-11 years) reported exposure to ETS during their daily activity. Actual incidence is assumed to be lower today due to decreases in workplace smoking and in public locations such as restaurants, bars, and gaming clubs due to California smoking

restrictions. However, up to 20% of adolescents may still be exposed to ETS in their homes.

How do we Measure ETS Exposure in the Environment?

Exposure to ETS is difficult to characterize because it is a complex mixture of substances and the difficulty in determining an appropriate marker that is representative of ETS as a whole. Due to its complex nature, it is necessary to select a surrogate measure of exposure that is representative of ETS as a whole.

Several components of ETS have been studied as surrogates or markers for ETS. Nicotine has been most widely studied as a potential marker because its source is primarily tobacco smoke. Other ETS markers that have been studied include: solanesol, 3-ethenylpyridine (3-EP), carbon monoxide, iso- and anteisoalkanes (C₂₉-C₃₄), polycyclic aromatic hydrocarbons, fluorescing particulate matter, respirable suspended particles, and ultraviolet particulate matter.

Are there Studies that have Determined Outdoor Air Concentrations of ETS in California?

Yes. There are studies that have either measured or modeled outdoor air concentrations of ETS constituents. One study estimated concentrations of fine smoke particles in the Los Angeles air using tobacco-specific iso- and anteisoalkanes. Using the measurements from these marker compounds, the annual average ambient fine (less than 2.5 microns) ETS particles in the Los Angeles air was estimated to range from 0.28 to 0.36 microgram of ETS particle per cubic meter of air ($\mu\text{g}/\text{m}^3$). The levels were based on annual measurement data from 1982. Another study used personal badge monitors to measure personal nicotine levels. This study reported a 7-day median nicotine concentration in the outdoor environment of 0.025 $\mu\text{g}/\text{m}^3$, based on those study participants who reported no indoor exposure.

One study used a chemical mass balance receptor model based on organic compounds to estimate source contributions to fine particle mass concentrations in the Los Angeles air. The modeled annual average concentration for the Los Angeles air was estimated to be 0.21 $\mu\text{g}/\text{m}^3$ fine ETS particulate matter in 1982.

Has the ARB Measured Outdoor Concentrations of ETS in California?

Yes. To obtain data on current levels of ETS in ambient air where people spend part of their day, the ARB monitored nicotine concentrations at several outdoor smoking areas in California. The study gathered two 8-hour samples and six 1-hour samples per site tested. Depending on the site location and number of smokers present, the results showed a range of nicotine concentrations from 0.013-3.1 $\mu\text{g}/\text{m}^3$ for the 8-hour samples and 0.016-4.6 $\mu\text{g}/\text{m}^3$ for the 1-hour measurements. Overall, the results indicate that concentrations of nicotine corresponded mainly to the number of smokers in the smoking areas, the size of the smoking area and meteorological conditions.

What are the Outdoor Air Levels of ETS that Most Californians Breathe?

The scenario-based approach used to characterize the range of the public's exposure to ETS in this report showed that Californians who neither smoke nor associate with many smokers will have very limited ETS exposure. In this case, individuals will likely experience the majority of their lifetime ETS exposure from background levels of ETS which result from occasional or steady state near-source emissions. Since most Californians live and work in urban areas, the ARB staff has estimated an outdoor annual average ambient ETS particle concentration for the Los Angeles air for 2003. The staff used the two Los Angeles studies discussed above as a basis for this estimate. The staff applied an adjustment factor to the 1982 fine particle estimates presented in the two Los Angeles studies to reflect reductions in cigarette sales and cigarette emission rates that have occurred since 1982. The results show that estimated annual average fine ETS particle concentrations in Los Angeles in 2003 likely decreased to between 0.06 to 0.10 $\mu\text{g}/\text{m}^3$. The table below summarizes the outdoor air concentration data for ETS nicotine and fine particles from all outdoor estimates.

Estimates of ETS Outdoor Ambient Concentrations

Method/Reference	Year	Concentrations ($\mu\text{g}/\text{m}^3$)	
		Fine PM _{2.5}	Nicotine
Fine PM – Source Apportionment Schauer <i>et al.</i> , 1996	1982	0.21 $\mu\text{g}/\text{m}^3$ annual average	*0.026 $\mu\text{g}/\text{m}^3$ annual average
Iso- and anteisoalkanes – measurement Rogge <i>et al.</i> , 1994	1982	0.28 – 0.36 $\mu\text{g}/\text{m}^3$ annual average	*0.035 – 0.044 $\mu\text{g}/\text{m}^3$ annual average
Nicotine – measurement Eisner <i>et al.</i> , 2001	2001	*0.20 $\mu\text{g}/\text{m}^3$ 7-day median conc.	0.025 $\mu\text{g}/\text{m}^3$ 7-day median conc.
Nicotine – measurement ARB, 2003	2003	*0.11 – 25 $\mu\text{g}/\text{m}^3$ 8-hour range *0.073 – 0.97 $\mu\text{g}/\text{m}^3$ 8-hour background	0.013 – 3.1 $\mu\text{g}/\text{m}^3$ 8-hour range 0.009 – 0.12 $\mu\text{g}/\text{m}^3$ 8-hour background
Los Angeles background - Estimate ARB, 2004	2003	0.06 – 0.10 $\mu\text{g}/\text{m}^3$ annual average	*0.008 - 0.013 $\mu\text{g}/\text{m}^3$ annual average

* Calculated value using: PM_{2.5}/Nicotine concentration = 8

Are There Estimates of Indoor Air Exposure to ETS?

Yes. A number of studies have estimated ETS levels in different indoor environments using nicotine and respirable particulate matter (RSP), and other markers for ETS exposure. Current typical indoor concentrations of nicotine in California are estimated to range from near zero to about 6.0 $\mu\text{g}/\text{m}^3$ in the home environment. Because of California's workplace smoking ban, California office buildings will generally have very

low smoking concentrations. However, certain workplaces, such as the small (but documented) percentage of free-standing bars that still do not comply with California's workplace smoking ban, would likely have higher levels of ETS. Based on measurements from several studies, average nicotine levels could be as high as $76.0 \mu\text{g}/\text{m}^3$ for bars and bingo parlors where smoking still occurs.

RSP concentrations in certain entertainment venues (such as casinos and bingo parlors) are estimated to range from less than $15 \mu\text{g}/\text{m}^3$, where smoking is prohibited, up to $350 \mu\text{g}/\text{m}^3$, where smoking is allowed. In the home environment, short-term peak RSP levels have been found up to $300 \mu\text{g}/\text{m}^3$, where just one cigarette was smoked. Likewise, in-vehicle ETS RSP concentrations are estimated to range from about $90 \mu\text{g}/\text{m}^3$ to well over $1,000 \mu\text{g}/\text{m}^3$, depending on ventilation and position of windows.

How do we Estimate the California Public's Exposure to ETS?

An individual's exposure depends on the air concentration of a pollutant in a given environment, and the time they spend in that environment. An individual's total daily exposure is the sum of all the exposures they experience across their 24-hour day, including both indoor and outdoor environments.

A scenario-based approach was used to characterize the range of the public's exposure to ETS during a 24-hour period. The scenario-based exposure method uses the results from ARB's ETS air monitoring study, available indoor ETS concentration data, and scenario-based activity patterns to estimate exposures under different situations. The results show a wide range of possible population subgroup daily exposures. For individuals living in non-smoking homes and having only brief encounters with ETS, their average 24-hour exposure concentrations are low, and are estimated to be less than $0.01 \mu\text{g}/\text{m}^3$. For those living in homes with indoor smokers and experiencing in-vehicle exposures, the average exposure concentration to which they are exposed to over 24-hours can easily range up to $7.4 \mu\text{g}/\text{m}^3$, and up to $19.4 \mu\text{g}/\text{m}^3$ in a realistic, "maximally exposed" situation. Such exposures are especially of concern for developing young children because they are likely to recur daily and may result in serious health consequences.

This approach differs from previous TAC exposure assessments, which were based on California population-weighted exposures to outdoor average ambient concentrations. That approach was appropriate for TACs emitted from area-wide or region-wide sources such as motor vehicles and industrial plants. However, cigars and cigarettes, the primary sources of ETS, are smaller sources that emit pollutants near people. As a result, the highest exposures to ETS are very localized. Therefore, because exposures are localized and ETS is not monitored at ambient monitoring stations, we believe the scenario-based approach provides better and more informative estimates of public exposure to ETS.

The primary and often the only exposure for individuals who do not spend time near smokers is outdoors in locations over which the individual typically has little control. For nonsmokers whose work or other activities bring them into contact with outdoor

smokers regularly, 100% of their exposure can be attributable to proximity to outdoor smoking.

Are There Other Methods for Estimating Human Exposure to ETS?

One of the most accurate methods for estimating ETS exposure in a person is through the use of biological markers. Biological markers of ETS exposure are metabolites of tobacco smoke ingredients found in physiological fluids or attached to DNA or proteins. The ability to quantify exposure objectively is an important step in linking exposure to relative risk of adverse outcomes.

Cotinine, a metabolite of nicotine, is the biological marker of choice in most epidemiological studies. Physiological fluid levels correlate very well with ETS exposure documented both by questionnaire and by personal exposure monitoring. Cotinine levels differ between smokers and ETS-exposed nonsmokers by 2 to 3 orders of magnitude. From an epidemiological perspective, this difference is useful to determine when people misrepresent their smoking status. Cotinine assays are sensitive enough that individuals without ETS exposure can be distinguished from those persons with low exposure.

The nicotine concentration in hair is emerging as another viable biological marker of ETS exposure. In some instances, hair nicotine has been shown to better correlate with exposure than cotinine, especially where exposure is highly episodic.

What is the Persistence of ETS in the Atmosphere?

Gaseous chemicals that are present in ETS can react in the atmosphere with other pollutants and sunlight to form new chemical species. The ETS particles and particle-associated chemicals (those with low vapor pressure that deposit or chemically bind onto the particles) are subject to wet and dry deposition and atmospheric transformation of species adsorbed to the particles.

Nicotine, the principal alkaloid in tobacco, is most commonly found in the gas phase in the environment. In the ambient air, nicotine may react with hydroxyl radicals to have a half-life of approximately one day.

What are the Health Effects Associated with Exposure to ETS?

ETS exposure is causally associated with a number of health effects, including effects on infants and children. ETS has a number of serious impacts on children's health including sudden infant death syndrome (SIDS), induction and exacerbation of asthma, increased respiratory tract infections, increased middle ear infections, and causes developmental toxicity resulting in low birth weight, and impaired lung function growth, predisposition to SIDS (to the extent that this is a developmental effect), and other developmental impacts.

Listed in Table ES.1 are the developmental, respiratory, carcinogenic and cardiovascular effects for which there is sufficient evidence of a causal relationship, including fatal outcomes such as SIDS, heart disease mortality and lung cancer death, as well as serious chronic diseases, such as childhood asthma. There are a number of effects for which evidence is suggestive of a causal association, but further research is needed for confirmation, including spontaneous abortion, decreased lung function growth, cervical cancer, and chronic respiratory symptoms in adults. Finally, it is not possible to judge on the basis of the current evidence the impact of ETS on a number of endpoints, including congenital malformations, adverse male reproductive effects, and rare childhood cancers.

Many Californians are exposed to ETS, and the number of people adversely affected may be correspondingly large. Table ES.2 presents morbidity and mortality estimates for health effects causally associated with ETS exposure. For lung cancer, where certain California-specific data are unavailable, estimates are derived from figures published for the U.S. population, assuming that the number affected in California would be 12% of the total. The estimates for cardiovascular disease, middle ear infection, asthma episodes, SIDS, pre-term delivery, and low birth weight were derived using information on prevalence of ETS exposure in California and the U.S.

Relative risk estimates associated with some of these endpoints are small, but because the diseases are common and ETS exposure is frequent and widespread, the overall impact can be quite large. The relative risk is a measure of the relation between exposure to a substance and the incidence of a disease. A relative risk of 1.0 indicates no relationship. For ETS, a relative risk estimate of 1.2-1.7 for heart disease mortality in nonsmokers is supported by the collective evidence; this corresponds to approximately 1,700-5,500 deaths annually in California. The relative risk estimate of 1.38 associated with low birth weight implies that ETS may impact fetal growth of 1,600 newborns in California. It is estimated that at least 31,000 children in California experience one or more ETS-related asthma episodes (new onset or exacerbation) each year. Large impacts are also associated with relative risks for respiratory effects in children such as middle ear infection (RR \approx 1.62) (about 50,000 children annually), and lower respiratory infection in young children (RR \approx 1.5 to 2) (18,000 to 36,000 children annually). ETS exposure is implicated in 21 SIDS deaths per year in California (RR \approx 3.5). About 400 to 1,100 lung cancer deaths in California are ETS-related. For nasal sinus cancers, observed relative risks have ranged from 1.7 to 3.0. This is as high as or higher than the relative risks observed for lung cancer. Finally, for breast cancer, when evaluating younger, primarily premenopausal women at diagnosis, a pooled risk estimate of 1.68 is derived in the meta-analysis, and when restricted to the studies with better exposure assessment, an estimate of 2.20 is obtained (see Table 1). These estimates of association could represent a significant number of cases as this is a relatively common cancer in women. Adding the mid-point of the ranges for lung cancer deaths and heart disease deaths, and including the SIDS point estimate, one can attribute about 50,000 deaths per year in the U.S. and 4,000 deaths per year in California from ETS-associated disease. This does not include the estimates for other ETS-associated cancer deaths.

TABLE ES.1
HEALTH EFFECTS ASSOCIATED WITH EXPOSURE
TO ENVIRONMENTAL TOBACCO SMOKE

Effects Causally Associated with ETS Exposure

Developmental Effects

Fetal growth: Low birth weight and decrease in birth weight
Sudden Infant Death Syndrome (SIDS)
Pre-term Delivery

Respiratory Effects

Acute lower respiratory tract infections in children
(e.g., bronchitis and pneumonia)
Asthma induction and exacerbation in children and adults
Chronic respiratory symptoms in children
Eye and nasal irritation in adults
Middle ear infections in children

Carcinogenic Effects

Lung cancer
Nasal sinus cancer
Breast cancer in younger, primarily premenopausal women

Cardiovascular Effects

Heart disease mortality
Acute and chronic coronary heart disease morbidity
Altered vascular properties

Effects with Suggestive Evidence of a Causal Association with
ETS Exposure

Reproductive and Developmental Effects

Spontaneous abortion, Intrauterine Growth Retardation
Adverse impact on cognition and behavior
Allergic sensitization
Decreased pulmonary function growth
Adverse effects on fertility or fecundability

Cardiovascular and Hematological Effects

Elevated risk of stroke in adults

Respiratory Effects

Exacerbation of cystic fibrosis
Chronic respiratory symptoms in adults

Carcinogenic Effects

Cervical cancer
Brain cancer and lymphomas in children
Nasopharyngeal cancer
All cancers – adult and child

Table ES.2 Attributable Risks Associated with ETS

	Conclusion OEHHA 1997	Conclusion OEHHA 1997	Conclusion Update	Conclusion Update
Outcome	Annual Excess # in CA	Annual Excess # in US	Annual Excess # in CA	Annual Excess # in US
Pregnancy: Low birth weight Pre-term delivery	1,200-2,200	9,700-18,600	1,600 ¹ 4,700 ¹	24,500 ² 71,900 ²
Asthma (in children): # Episodes ³			31,000 ⁴	202,300 ⁵
# New cases	960-3120	8,000-26,000	N/A	N/A
#Exacerbations	48,000-120,000	400,000- 1,000,000		
Lower respiratory illness	18,000-36,000	150,000- 300,000	N/A	N/A
Otitis media visits	78,600-188,700	700,000- 1,600,000	50,200	790,000 ⁶
SIDS	120	1,900-2,700	21 ⁷	430 ⁸
Cardiac death (Ischemic heart disease death)	4,200-7,440	35,000-62,000	3,600 (range: 1,700- 5,500) ⁹	46,000 (range: 22,700-69,600) ¹⁰
Lung cancer death	360	3000	400 ¹¹	3400
Breast cancer – diagnosis in younger, primarily premenopausal women			All studies: OR 1.68 (95% CI 1.31-2.15) ¹² Best studies: OR 2.20 (95% CI 1.69-2.87) Approximate 68-120% increased risk	

¹ Based on California Dept Health Services (CDHS, 2000a), Table 2-6, Number and percent of live births with selected medical characteristics by race/ethnic group of mother, California 2000, and Gilpin et al. (2001).

² Based on CDC (2002b) National Vital Statistics Report, Vol 51(2) 2002. Births: Final data for 2001, and on adult females reporting exposure to ETS in NHANES III for 1995 (Pirkle et al., 1996).

³ The data to distinguish number of new cases from number of exacerbations were not available for the updated calculations; thus, OE-HA considered that these estimates were best described as number of episodes.

⁴ Based on number of asthma attacks or episodes in previous 12 months for 0-17 year olds. Calculated from California Health Interview Survey for 2001.

⁵ Based on number of asthma attacks or episodes in previous 12 months for 0-14 year olds in Mannino et al. (2002b) CDC-MMMR 51(SS01)).

⁶ Based on Freid et al. (1996) National Center for Health Statistics Series 13 No. 137. Ambulatory Health Care Visits by Children: Principal Diagnosis and Place of Visit for yrs 1993-1995.

⁷ Based on California Dept Health Services (CDHS, 2000b), Table 4-10 for yr 2000 Leading causes of infant death by race/ethnic group of child, California 2000.

⁸ Based on CDC (2002a) National Center for Health Statistics (2002). www.cdc.gov/nchs/estats/infor.htm for yr 2000.

⁹ Based on California Dept Health Services (CDHS, 2000c), Table 5-7, Deaths, death rates, and age-adjusted death rates for leading causes by sex, California, 1999-2000.

¹⁰ Based on Anderson and Aries (2003). National Vital Statistics Report, Vol 51(9) Table 2 for yr 2000 Ischemic heart diseases including AMI.

¹¹ Assuming California exposure and death rates are similar to national rates and California population is 12% of national population.

¹² OE-HA is unable at this time to calculate an attributable risk as it is not possible to account accurately for the portion attributable to other known risk factors. The OR for all studies is based on our meta-analysis of all studies with risk estimates for younger primarily premenopausal women. The OR for best studies is based on the OR for studies which evaluated younger primarily premenopausal women and which did a better job of ascertaining exposure – see Part B Section 7.4.1.3.2 and Table 7.4.11.

NA = data not available.

Citations for documents cited in above table appear in Part B Chapter 1 references.

What Perinatal Health Effects have been Observed?

ETS causes developmental toxicity. ETS exposure adversely affects fetal growth, with elevated risks of low birth weight or "small for gestational age" observed in numerous epidemiological studies. The primary effect observed, reduction in mean birth weight, is small in magnitude. But if the distribution of birth weight is shifted lower with ETS exposure, as it appears to be with active smoking, infants who are already compromised may be pushed into even higher risk categories. Low birth weight is associated with many well-recognized problems for infants, and is strongly associated with perinatal mortality. ETS is also associated with pre-term delivery. Premature babies are also at higher risk for a number of health problems.

The impact of ETS on perinatal manifestations of development other than fetal growth and pre-term delivery is less clear. The few studies examining the association between ETS and perinatal death are relatively non-informative. Studies on spontaneous abortion are suggestive of a role for ETS, but further work is needed. Although epidemiological studies suggest an association of severe congenital malformations with paternal smoking, the findings are complicated by the use of paternal smoking status as a surrogate for ETS exposure, since a direct effect of active smoking on sperm cannot be ruled out. In general, the defects implicated differed across the studies, with the most consistent association seen for neural tube defects.

What Postnatal Developmental Effects of ETS Exposure have been Observed?

Numerous studies have demonstrated an increased risk of sudden infant death syndrome, or "SIDS", in infants of mothers who smoke. Until recently, it has not been possible to separate the effects of postnatal ETS exposure from those of prenatal exposure to maternal active smoking. Recent epidemiological studies now have demonstrated that postnatal ETS exposure is an independent risk factor for SIDS, and many of these studies demonstrated a dose-response gradient.

Although definitive conclusions regarding causality cannot yet be made on the basis of available epidemiological studies of cognition and behavior, there is suggestive evidence that ETS exposure may pose a hazard for neuropsychological development. With respect to physical development, while small but consistent effects of active maternal smoking during pregnancy have been observed on height growth, there is no evidence that postnatal ETS exposure has a significant impact on growth in otherwise healthy children. As discussed in greater detail below, developmental effects of ETS exposure on the respiratory system include childhood asthma induction and possibly adverse effects on lung growth and development.

What are the Effects of ETS Exposure on Female and Male Reproductive Systems?

Active smoking by women has been found to be associated with decreased fertility in a number of studies, and active tobacco smoking appears to be anti-estrogenic. The epidemiological data on ETS exposure, though not conclusive, are suggestive of adverse effects on fecundability and fertility, and possibly on menstrual cycle disorders, although not many studies are available on this endpoint. Although associations have been seen epidemiologically between active smoking and sperm parameters, conclusions cannot be made regarding ETS exposure and male reproduction, as there is very limited information available on this topic.

What are the Effects on the Respiratory System?

ETS exposure produces a variety of acute effects involving the upper and lower respiratory tract. In children, ETS exposure can exacerbate asthma, and increases the risk of lower respiratory tract illness, and acute and chronic middle ear infection. Eye and nasal irritation are the most commonly reported symptoms among adult nonsmokers exposed to ETS. Odor annoyance has been demonstrated in several studies.

Regarding chronic health effects, there is compelling evidence that ETS is a risk factor for induction of new cases of asthma (in children and adolescents/adults) as well as for increasing the severity of disease among children and adults with established asthma. In addition, chronic respiratory symptoms in children, such as cough, phlegm, and wheezing, are associated with parental smoking. While the results from all studies are not wholly consistent, there is evidence that childhood exposure to ETS affects lung growth and development, as measured by small, but statistically significant decrements in pulmonary function tests; associated reductions may persist into adulthood. The effect of chronic ETS exposure on pulmonary function in otherwise healthy adults is likely to be small, and unlikely by itself to result in clinically significant chronic disease. However, in combination with other insults (e.g., prior smoking history, exposure to occupational irritants or ambient air pollutants), ETS exposure could contribute to chronic respiratory impairment in adults. In addition, regular ETS exposure in adults has been reported to increase the risk of occurrence of a variety of lower respiratory symptoms.

Children are especially sensitive to the respiratory effects of ETS exposure. Children with cystic fibrosis are likely to be more sensitive than healthy individuals. Several studies of patients with cystic fibrosis, a disease characterized by recurrent and chronic pulmonary infections, suggest that ETS can exacerbate the condition. Several studies have shown an increased risk of atopy (a predisposition to develop IgE antibodies against common allergens, which can then be manifested as a variety of allergic conditions) in children of smoking mothers, though the evidence regarding this issue is mixed.

What Carcinogenic Effects does ETS have?

The role of ETS in the etiology of cancers in nonsmokers was explored, because active smoking has been recognized as an established cause of cancers in a number of organs including: lung, larynx, oral cavity, naso-, oro-, and hypo-pharynx, nasal cavity and sinuses, esophagus, kidney, urinary bladder and ureter, uterine cervix, pancreas, liver, bone marrow (myeloid leukemia), and stomach (IARC, 2004). Also, ETS contains a number of constituents that have been identified as carcinogens in animals and humans.

Reviews published in the 1986 *Report of the Surgeon General* (U.S. DHHS, 1986), by the National Research Council (NRC, 1986g), and by the United States Environmental Protection Agency (U.S. EPA) (1992i), as well as the original OEHHA report (Cal/EPA, 1997) concluded that ETS exposure causes lung cancer. Since the previous OEHHA review (Cal/EPA, 1997), numerous epidemiological studies and several meta-analyses have examined the association between passive smoking and lung cancer. The population-based studies were designed to and have successfully addressed many of the weaknesses for which the previous studies on ETS and lung cancer have been criticized. Results from these studies are compatible with the causal association between ETS exposure and lung cancer already reported by the U.S. EPA, Surgeon General, and National Research Council. The studies examining the effect of ETS exposure on nasal sinus cancers consistently (though not uniformly) show statistically significant associations, presenting strong evidence that ETS exposure increases the risk of nasal sinus cancers in non-smoking adults. Finally, studies suggest an association between ETS exposure and elevated risks of nasopharyngeal cancers.

Many population-based case-control studies (as well as three cohort studies), controlling for several important reproductive, dietary and other potential confounding factors, have identified elevated breast cancer risks for residential and occupational exposure overall or in individual strata. Higher risks were noted in several studies for breast cancer diagnosed in women under age fifty (primarily premenopausal), or with long duration or high intensity exposure. The toxicological data on carcinogenicity of tobacco smoke constituents strongly support that the risk associated with ETS exposure is highly plausible. Overall, the weight of evidence (including toxicology of ETS constituents, epidemiological studies, and breast biology) is consistent with a causal association between ETS exposure and breast cancer in younger, primarily premenopausal women. In contrast to the findings in younger women, in studies which reported statistics for women diagnosed with breast cancer after menopause, risk estimates cluster around a null association (see Figure 7.4.4). There are, however, elevated risk estimates in some studies for postmenopausal women either overall or in specific strata. The evidence to date for older/postmenopausal women is, therefore, considered inconclusive. Further research indicating a positive association would be necessary prior to altering this finding.

The epidemiological and biochemical evidence suggest that exposure to ETS may increase the risk of cervical cancer. Positive associations were observed in three of four case-control studies and a statistically nonsignificant positive association was observed in the only cohort study conducted. A new population-based cross-sectional

study found statistically significant elevated risks for cervical cancer. Findings of DNA adducts in the cervical epithelium as well as nicotine and cotinine in the cervical mucus of ETS-exposed nonsmokers supports biological plausibility.

In adults, the epidemiological evidence for an association between ETS exposure and risk of brain tumor remains weak and inadequately researched. More recent studies have focused on the potential association between ETS and childhood brain tumors. In children, recent studies or others not previously reviewed by OEHHA, provide no substantial evidence for an association between maternal smoking and childhood brain tumors, with risk estimates generally near the null. Several studies indicated a slightly stronger association with paternal smoking and brain cancer, although the association is still somewhat weak. Overall, the generally positive, but inconsistent, associations reported between paternal smoking and childhood brain tumors, in combination with biological plausibility, provide suggestive evidence of an association between ETS and brain cancer in children. Similarly, suggestive evidence of an association between exposure to ETS and childhood cancer is noted for lymphomas and acute lymphocytic leukemia (children of paternal smokers). These observed associations may reflect an effect of pre-conceptional paternal smoking on sperm, rather than an effect of ETS exposure.

For other cancer sites in adults, there has been limited ETS-related epidemiological research in general. The evidence to date regarding the relationship between ETS exposure and the risk of occurrence of cancer in sites other than lung, nasal cavity, breast, and possibly brain and lymphoma and leukemia, is inconclusive. A review of the available literature clearly indicates the need for more research. For example, although compounds established as important in the etiology of stomach cancer are present in tobacco smoke, only a single well designed population based study has been performed for this site. In biochemical studies of nonsmokers, higher levels of hemoglobin adducts of the established bladder carcinogen, 4-aminobiphenyl, have been found in those exposed to ETS. However, no significant increases in bladder cancer were seen in the two case-control studies and one cohort study conducted to date, although both studies were limited in their ability to detect an effect.

The epidemiological data are insufficient to assess potential associations between ETS exposure and rare childhood cancers. Some studies found small increased risks in children in relation to parental smoking for neuroblastoma, Wilm's tumor, bone and soft-tissue sarcomas, but not for germ cell tumors. Studies to date on these rare cancers have been limited in their power to detect effects. The impact of ETS exposure on childhood cancer would benefit from far greater attention than it has received to date.

What are the Effects on the Cardiovascular System?

The epidemiological data, from prospective and case-control studies conducted in diverse populations, in males and females and in western and eastern countries, support a conclusion that there is a causal association between ETS exposure from spousal smoking and coronary heart disease (CHD) mortality in nonsmokers. To the extent possible, estimates of risk were determined with adjustment for demographic factors, and often for other factors related to heart disease, such as blood pressure,

serum cholesterol level and obesity index. Risks associated with ETS exposure were almost always strengthened by adjustment for other confounders. The association between CHD and risk is stronger for mortality than for non-fatal outcomes, including angina. It is also evident that these effects exacerbate or are exacerbated by underlying conditions, and individuals with other chronic conditions such as diabetes, vascular disease or hypertension comprise a susceptible population at even greater risk from ETS exposure.

Data from clinical and animal studies suggest various mechanisms by which ETS causes heart disease. In a number of studies in which nonsmokers were exposed to ETS, carotid wall thickening, lesion formation, aortic distensibility and reactivity, and compromise of endothelial function were similar to, but less extensive than those experienced by active smokers. Other effects observed include impaired exercise performance, altered lipoprotein profiles, enhanced platelet aggregation, and increased endothelial cell counts. These findings may account for both the short- and long-term effects of ETS exposure on the heart. The data reviewed also suggests that the effects of ETS may also contribute to stroke, the etiology of which includes atherosclerosis of the carotid and large arteries of the brain, and degeneration of intracerebral arteries.



California

LEGISLATIVE INFORMATION

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[Up^](#)[Add To My Favorites](#)**HEALTH AND SAFETY CODE - HSC****DIVISION 26. AIR RESOURCES [39000 - 44474]** (*Division 26 repealed and added by Stats. 1975, Ch. 957.*)**PART 2. STATE AIR RESOURCES BOARD [39500 - 39945]** (*Part 2 added by Stats. 1975, Ch. 957.*)**CHAPTER 3.5. Toxic Air Contaminants [39650 - 39675]** (*Chapter 3.5 added by Stats. 1983, Ch. 1047, Sec. 1.*)**ARTICLE 1. Findings, Declarations and Intent [39650- 39650.]** (*Article 1 added by Stats. 1983, Ch. 1047, Sec. 1.*)**39650.** The Legislature finds and declares the following:

- (a) That public health, safety, and welfare may be endangered by the emission into the ambient air of substances which are determined to be carcinogenic, teratogenic, mutagenic, or otherwise toxic or injurious to humans.
- (b) That persons residing in California may be exposed to a multiplicity of toxic air contaminants from numerous sources which may act cumulatively to produce adverse effects, and that this phenomenon should be taken into account when evaluating the health effects of individual compounds.
- (c) That it is the public policy of the state that emissions of toxic air contaminants should be controlled to levels which prevent harm to the public health.
- (d) That the identification and regulation of toxic air contaminants should utilize the best available scientific evidence gathered from the public, private industry, the scientific community, and federal, state, and local agencies, and that the scientific research on which decisions related to health effects are based should be reviewed by a scientific review panel and members of the public.
- (e) That, while absolute and undisputed scientific evidence may not be available to determine the exact nature and extent of risk from toxic air contaminants, it is necessary to take action to protect public health.
- (f) That the state board has adopted regulations regarding the identification and control of toxic air contaminants, but that the statutory authority of the state board, the relationship of its proposed program to the activities of other agencies, and the role of scientific and public review of the regulations should be clarified by the Legislature.
- (g) That the Department of Food and Agriculture has jurisdiction over pesticides to protect the public from environmentally harmful pesticides by regulating the registration and uses of pesticides.
- (h) That while there is a statewide program to control levels of air contaminants subject to state and national ambient air quality standards, there is no specific statutory framework in this division for the evaluation and control of substances which may be toxic air contaminants.
- (i) That the purpose of this chapter is to create a program which specifically addresses the evaluation and control of substances which may be toxic air contaminants and which complements existing authority to establish, achieve, and maintain ambient air quality standards.
- (j) That this chapter is limited to toxic air contaminants and nothing in the chapter is to be construed as expanding or limiting the authority of any agency or district concerning pesticides which are not identified as toxic air contaminants.
- (k) That a statewide program to control toxic air contaminants is necessary and desirable in order to provide technical and scientific assistance to the districts, to achieve the earliest practicable control of toxic air contaminants, to promote the development and use of advanced control technologies and alternative processes and materials, to identify the toxic air contaminants of concern and determine the priorities of their control, and to minimize inconsistencies in protecting the public health in various areas of the state.

(*Added by Stats. 1983, Ch. 1047, Sec. 1.*)

ARTICLE 2. Definitions [39655- 39655.] (*Article 2 repealed and added by Stats. 1992, Ch. 1161, Sec. 2.)*

39655. As used in this chapter:

(a) "Toxic air contaminant" means an air pollutant which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health. A substance that is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412(b)) is a toxic air contaminant. A toxic air contaminant which is a pesticide shall be regulated in its pesticidal use by the Department of Pesticide Regulation pursuant to Article 1.5 (commencing with Section 14021) of Chapter 3 of Division 7 of the Food and Agricultural Code.

(b) "Airborne toxic control measure" means either of the following:

(1) Recommended methods, and, where appropriate, a range of methods, that reduce, avoid, or eliminate the emissions of a toxic air contaminant. Airborne toxic control measures include, but are not limited to, emission limitations, control technologies, the use of operational and maintenance conditions, closed system engineering, design, equipment, or work practice standards, and the reduction, avoidance, or elimination of emissions through process changes, substitution of materials, or other modifications.

(2) Emission standards adopted by the Environmental Protection Agency pursuant to Section 112 of the federal act (42 U.S.C. Sec. 7412).

(c) "Pesticide" means any economic poison as defined in Section 12753 of the Food and Agricultural Code.

(d) "Federal act" means the Clean Air Act (42 U.S.C. 7401 et seq.), as amended by the Clean Air Act Amendments of 1990 (P.L. 101-549), and as the federal act may be further amended.

(e) "Office" means the Office of Environmental Health Hazard Assessment.

(Repealed and added by Stats. 1992, Ch. 1161, Sec. 2. Effective January 1, 1993.)

ARTICLE 2.5. Coordination With the Federal Act [39656 - 39659] (*Article 2.5 added by Stats. 1992, Ch. 1161, Sec. 3.)*

39656. It is the intent of the Legislature that the state board and the districts implement a program to regulate toxic air contaminants that will enable the state to receive approval to implement and enforce emission standards and other requirements for air pollutants subject to Section 112 of the federal act (42 U.S.C. Sec. 7412). The state board and the districts may establish a program that is consistent with the requirements for state programs set forth in subsection (l) of Section 112 and Section 502 of the federal act (42 U.S.C. Secs. 7412(l) and 7661a). Nothing in this chapter requires that the program be identical to the federal program for hazardous air pollutants as set forth in the federal act.

(Repealed (by Sec. 1) and added by Stats. 1992, Ch. 1161, Sec. 3. Effective January 1, 1993.)

39657. (a) Except as provided in subdivision (b), the state board shall identify toxic air contaminants which are emitted into the ambient air of the state using the procedures and following the requirements prescribed by Article 3 (commencing with Section 39660).

(b) The state board shall, by regulation, designate any substance that is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412(b)) as a toxic air contaminant. A regulation that designates a hazardous air pollutant as a toxic air contaminant shall be deemed to be a regulation mandated by federal law and is not subject to Sections 11346.2 and 11346.9 of the Government Code, Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, or Article 3 (commencing with Section 39660).

(Amended by Stats. 1995, Ch. 938, Sec. 71. Effective January 1, 1996.)

39658. The state board shall establish airborne toxic control measures for toxic air contaminants in accordance with all of the following:

(a) If a substance is identified as a toxic air contaminant pursuant to Article 3 (commencing with Section 39660), the airborne toxic control measure applicable to the toxic air contaminant shall be adopted following the

procedures and meeting the requirements of Article 4 (commencing with Section 39665).

(b) If a substance is designated as a toxic air contaminant because it is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412(b)), the state board shall establish the airborne toxic control measure applicable to the substance as follows:

(1) If an emission standard applicable to the hazardous air pollutant has been adopted by the Environmental Protection Agency pursuant to Section 112 of the federal act (42 U.S.C. Sec. 7412), except as provided in paragraphs (2), (3), and (4), that emission standard adopted pursuant to Section 112 of the federal act (42 U.S.C. Sec. 7412) for the hazardous air pollutant is also the airborne toxic control measure for the toxic air contaminant. The state board shall implement the relevant emission standard and it shall be the airborne toxic control measure for purposes of this chapter. The implementation of the emission standard is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code or Article 4 (commencing with Section 39665).

(2) If an emission standard applicable to the hazardous air pollutant has been adopted by the Environmental Protection Agency pursuant to Section 112 of the federal act (42 U.S.C. Sec. 7412) and the state board finds that the emission standard does not achieve the purposes set forth in subdivision (b) or (c), as applicable, of Section 39666, the state board shall adopt an airborne toxic control measure for the toxic air contaminant that it finds will achieve those purposes. The state board shall, when it adopts an airborne toxic control measure pursuant to this paragraph, follow the procedures and meet the requirements of Article 4 (commencing with Section 39665).

(3) If the state board implements an airborne toxic control measure applicable to the substance pursuant to paragraph (1) and later finds that the purposes set forth in subdivision (b) or (c), as applicable, of Section 39666 are not achieved by the airborne toxic control measure, the state board may revise the airborne toxic control measure to achieve those purposes. The state board shall, when it revises an airborne toxic control measure pursuant to this paragraph, follow the procedures and meet the requirements of Article 4 (commencing with Section 39665). The state board may revise an airborne toxic control measure pursuant to this paragraph only if it first finds that the reduction in risk to the public health that will be achieved by the revision justifies the burden that will be imposed on persons who are in compliance with the airborne toxic control measure previously implemented pursuant to paragraph (1).

(4) If an emission standard applicable to the hazardous air pollutant has not been adopted by the Environmental Protection Agency pursuant to Section 112 of the federal act (42 U.S.C. Sec. 7412), the state board may adopt an airborne toxic control measure applicable to the toxic air contaminant pursuant to Article 4 (commencing with Section 39665).

(Added by Stats. 1992, Ch. 1161, Sec. 3. Effective January 1, 1993.)

39659. (a) The state board and the districts may adopt regulations which do both of the following:

(1) Impose monitoring requirements, establish procedures for issuing, reissuing, and enforcing permits, and take any other action that may be necessary to establish, implement, and enforce programs for the regulation of hazardous air pollutants which have been listed as toxic air contaminants pursuant to subdivision (b) of Section 39657.

(2) Meet the requirements of subsection (1) of Section 112 and Section 502 of the federal act (42 U.S.C. Secs. 7412(1) and 7661a) and the guidelines and regulations adopted by the Environmental Protection Agency pursuant to those sections.

(b) In adopting regulations pursuant to subdivision (a), the state board and the districts shall, to the extent necessary to ensure that the requirements of the federal act are met, use the definitions contained in subsection (a) of Section 112 of the federal act (42 U.S.C. Sec. 7412(a)).

(Added by Stats. 1992, Ch. 1161, Sec. 3. Effective January 1, 1993.)

ARTICLE 3. Identification of Toxic Air Contaminants [39660 - 39664] (Article 3 added by Stats. 1983, Ch. 1047, Sec. 1.)

39660. (a) Upon the request of the state board, the office, in consultation with and with the participation of the state board, shall evaluate the health effects of and prepare recommendations regarding substances, other than pesticides in their pesticidal use, which may be or are emitted into the ambient air of California and that may be determined to be toxic air contaminants.

(b) In conducting this evaluation, the office shall consider all available scientific data, including, but not limited to, relevant data provided by the state board, the State Department of Health Services, the Occupational Safety and Health Division of the Department of Industrial Relations, the Department of Pesticide Regulation, international and federal health agencies, private industry, academic researchers, and public health and environmental organizations. The evaluation shall be performed using current principles, practices, and methods used by public health professionals who are experienced practitioners in the fields of epidemiology, human health effects assessment, risk assessment, and toxicity.

(c) (1) The evaluation shall assess the availability and quality of data on health effects, including potency, mode of action, and other relevant biological factors, of the substance, and shall, to the extent that information is available, assess all of the following:

(A) Exposure patterns among infants and children that are likely to result in disproportionately high exposure to ambient air pollutants in comparison to the general population.

(B) Special susceptibility of infants and children to ambient air pollutants in comparison to the general population.

(C) The effects on infants and children of exposure to toxic air contaminants and other substances that have a common mechanism of toxicity.

(D) The interaction of multiple air pollutants on infants and children, including the interaction between criteria air pollutants and toxic air contaminants.

(2) The evaluation shall also contain an estimate of the levels of exposure that may cause or contribute to adverse health effects. If it can be established that a threshold of adverse health effects exists, the estimate shall include both of the following factors:

(A) The exposure level below which no adverse health effects are anticipated.

(B) An ample margin of safety that accounts for the variable effects that heterogeneous human populations exposed to the substance under evaluation may experience, the uncertainties associated with the applicability of the data to human beings, and the completeness and quality of the information available on potential human exposure to the substance. In cases in which there is no threshold of significant adverse health effects, the office shall determine the range of risk to humans resulting from current or anticipated exposure to the substance.

(3) The scientific basis or scientific portion of the method used by the office to assess the factors set forth in this subdivision shall be reviewed in a manner consistent with this chapter by the Scientific Review Panel on Toxic Air Contaminants established pursuant to Article 5 (commencing with Section 39670). Any person may submit any information for consideration by the panel, which may receive oral testimony.

(d) The office shall submit its written evaluation and recommendations to the state board within 90 days after receiving the request of the state board pursuant to subdivision (a). The office may, however, petition the state board for an extension of the deadline, not to exceed 30 days, setting forth its statement of the reasons that prevent the office from completing its evaluation and recommendations within 90 days. Upon receipt of a request for extension of, or noncompliance with, the deadline contained in this section, the state board shall immediately transmit to the Assembly Committee on Rules and the Senate Committee on Rules, for transmittal to the appropriate standing, select, or joint committee of the Legislature, a statement of reasons for extension of the deadline, along with copies of the office's statement of reasons that prevent it from completing its evaluation and recommendations in a timely manner.

(e) (1) The state board or a district may request, and any person shall provide, information on any substance that is or may be under evaluation and that is manufactured, distributed, emitted, or used by the person of whom the request is made, in order to carry out its responsibilities pursuant to this chapter. To the extent practical, the state board or a district may collect the information in aggregate form or in any other manner designed to protect trade secrets.

(2) Any person providing information pursuant to this subdivision may, at the time of submission, identify a portion of the information submitted to the state board or a district as a trade secret and shall support the claim of a trade secret, upon the written request of the state board or district board. Subject to Section 1060 of the Evidence Code, information supplied that is a trade secret, as specified in Section 6254.7 of the Government Code, and that is so marked at the time of submission, shall not be released to any member of the public. This section does not prohibit the exchange of properly designated trade secrets between public agencies when those trade secrets are relevant and necessary to the exercise of their jurisdiction if the public agencies exchanging those trade secrets preserve the protections afforded that information by this paragraph.

(3) Any information not identified as a trade secret shall be available to the public unless exempted from

disclosure by other provisions of law. The fact that information is claimed to be a trade secret is public information. Upon receipt of a request for the release of information that has been claimed to be a trade secret, the state board or district shall immediately notify the person who submitted the information, and shall determine whether or not the information claimed to be a trade secret is to be released to the public. The state board or district board, as the case may be, shall make its determination within 60 days after receiving the request for disclosure, but not before 30 days following the notification of the person who submitted the information. If the state board or district decides to make the information public, it shall provide the person who submitted the information 10 days' notice prior to public disclosure of the information.

(f) The office and the state board shall give priority to the evaluation and regulation of substances based on factors related to the risk of harm to public health, amount or potential amount of emissions, manner of, and exposure to, usage of the substance in California, persistence in the atmosphere, and ambient concentrations in the community. In determining the importance of these factors, the office and the state board shall consider all of the following information, to the extent that it is available:

- (1) Research and monitoring data collected by the state board and the districts pursuant to Sections 39607, 39617.5, 39701, and 40715, and by the United States Environmental Protection Agency pursuant to paragraph (2) of subsection (k) of Section 112 of the federal act (42 U.S.C. Sec. 7412(k)(2)).
- (2) Emissions inventory data reported for substances subject to Part 6 (commencing with Section 44300) and the risk assessments prepared for those substances.
- (3) Toxic chemical release data reported to the state emergency response commission pursuant to Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. Sec. 11023) and Section 6607 of the Pollution Prevention Act of 1990 (42 U.S.C. Sec. 13106).
- (4) Information on estimated actual exposures to substances based on geographic and demographic data and on data derived from analytical methods that measure the dispersion and concentrations of substances in ambient air.

(Amended by Stats. 1999, Ch. 731, Sec. 5. Effective January 1, 2000.)

39660.5. (a) In evaluating the level of potential human exposure to toxic air contaminants, the state board shall assess that exposure in indoor environments as well as in ambient air conditions.

(b) The state board shall consult with the State Department of Health Services, pursuant to the program on indoor environmental quality established under Chapter 7 (commencing with Section 105400) of Part 5 of Division 103, concerning what potential toxic air contaminants may be found in the indoor environment and on the best methodology for measuring exposure to these contaminants.

(c) When the state board identifies toxic air pollutants that have been found in any indoor environment, the state board shall refer all available data on that exposure and the suspected source of the pollutant to the State Department of Health Services, the Division of Occupational Safety and Health of the Department of Industrial Relations, the State Energy Resources Conservation and Development Commission, the Department of Housing and Community Development, and the Department of Consumer Affairs.

(d) In assessing human exposure to toxic air contaminants in indoor environments pursuant to this section, the state board shall identify the relative contribution to total exposure to the contaminant from indoor concentrations, taking into account both ambient and indoor air environments.

(Amended by Stats. 1996, Ch. 1023, Sec. 301. Effective September 29, 1996.)

39661. (a) (1) Upon receipt of the evaluation and recommendations prepared pursuant to Section 39660, the state board, in consultation with, and with the participation of, the office, shall prepare a report in a form that may serve as the basis for regulatory action regarding a particular substance pursuant to subdivisions (b) and (c) of Section 39662.

(2) The report shall include and be developed in consideration of the evaluation and recommendations of the office.

(b) The report, together with the scientific data on which the report is based, shall, with the exception of trade secrets, be made available to the public and shall be formally reviewed by the scientific review panel established pursuant to Section 39670. The panel shall review the scientific procedures and methods used to support the data, the data itself, and the conclusions and assessments on which the report is based. Any person may submit any information for consideration by the panel, which may, at its discretion, receive oral testimony. The panel shall submit its written findings to the state board within 45 days after receiving the report. The panel may,

however, petition the state board for an extension of the deadline, which may not exceed 15 working days.

(c) If the scientific review panel determines that the health effects report is not based upon sound scientific knowledge, methods, or practices, the report shall be returned to the state board, and the state board, in consultation with, and with the participation of, the office, shall prepare revisions to the report, which shall be resubmitted within 30 days following receipt of the panel's determination to the scientific review panel, which shall review the report in conformance with subdivision (b) prior to a formal proposal by the state board pursuant to Section 39662.

(Amended by Stats. 2004, Ch. 183, Sec. 217. Effective January 1, 2005.)

39662. (a) Within 10 working days following receipt of the findings of the scientific review panel pursuant to subdivision (c) of Section 39661, the state board shall prepare a hearing notice and a proposed regulation which shall include the proposed determination as to whether a substance is a toxic air contaminant.

(b) After conducting a public hearing pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the state board shall list, by regulation, substances determined to be toxic air contaminants.

(c) If a substance is determined to be a toxic air contaminant, the regulation shall specify a threshold exposure level, if any, below which no significant adverse health effects are anticipated, and an ample margin of safety which accounts for the factors described in subdivision (c) of Section 39660.

(d) In evaluating the nature of the adverse health effect and the range of risk to humans from exposure to a substance, the state board shall utilize scientific criteria which are protective of public health, consistent with current scientific data.

(e) Any person may petition the state board to review a determination made pursuant to this section. The petition shall specify the additional scientific evidence regarding the health effects of a substance which was not available at the time the original determination was made and any other evidence which would justify a revised determination.

(Amended by Stats. 1992, Ch. 1161, Sec. 6. Effective January 1, 1993.)

39664. The State Department of Health Services shall conduct an epidemiological study, over a period of up to 10 years, of possible long-term health effects related to the aerial application of pesticides in urban areas, including, but not limited to, cancer, birth defects, and respiratory illnesses.

(Added by Stats. 1990, Ch. 1678, Sec. 6.)

ARTICLE 4. Control of Toxic Air Contaminants [39665 - 39669] (Article 4 added by Stats. 1983, Ch. 1047, Sec. 1.)

39665. (a) Following adoption of the determinations pursuant to Section 39662, the executive officer of the state board shall, with the participation of the districts, and in consultation with affected sources and the interested public, prepare a report on the need and appropriate degree of regulation for each substance which the state board has determined to be a toxic air contaminant.

(b) The report shall address all of the following issues, to the extent data can reasonably be made available:

(1) The rate and extent of present and anticipated future emissions, the estimated levels of human exposure, and the risks associated with those levels.

(2) The stability, persistence, transformation products, dispersion potential, and other physical and chemical characteristics of the substance when present in the ambient air.

(3) The categories, numbers, and relative contribution of present or anticipated sources of the substance, including mobile, industrial, agricultural, and natural sources.

(4) The availability and technological feasibility of airborne toxic control measures to reduce or eliminate emissions, the anticipated effect of airborne toxic control measures on levels of exposure, and the degree to which proposed airborne toxic control measures are compatible with, or applicable to, recent technological improvements or other actions which emitting sources have implemented or taken in the recent past to reduce emissions.

(5) The approximate cost of each airborne toxic control measure, the magnitude of risks posed by the substances as reflected by the amount of emissions from the source or category of sources, and the reduction in

risk which can be attributed to each airborne toxic control measure.

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- (6) The availability, suitability, and relative efficacy of substitute compounds of a less hazardous nature.
- (7) The potential adverse health, safety, or environmental impacts that may occur as a result of implementation of an airborne toxic control measure.
- (8) The basis for the finding required by paragraph (3) of subdivision (b) of Section 39658, if applicable.
- (c) The staff report, and relevant comments received during consultation with the districts, affected sources, and the public, shall be made available for public review and comment at least 45 days prior to the public hearing required by Section 39666.

(Amended by Stats. 1992, Ch. 1161, Sec. 7. Effective January 1, 1993.)

39666. (a) Following a noticed public hearing, the state board shall adopt airborne toxic control measures to reduce emissions of toxic air contaminants from nonvehicular sources.

(b) For toxic air contaminants for which the state board has determined, pursuant to Section 39662, that there is a threshold exposure level below which no significant adverse health effects are anticipated, the airborne toxic control measure shall be designed, in consideration of the factors specified in subdivision (b) of Section 39665, to reduce emissions sufficiently so that the source will not result in, or contribute to, ambient levels at or in excess of the level which may cause or contribute to adverse health effects as that level is estimated pursuant to subdivision (c) of Section 39660.

(c) For toxic air contaminants for which the state board has not specified a threshold exposure level pursuant to Section 39662, the airborne toxic control measure shall be designed, in consideration of the factors specified in subdivision (b) of Section 39665, to reduce emissions to the lowest level achievable through application of best available control technology or a more effective control method, unless the state board or a district board determines, based on an assessment of risk, that an alternative level of emission reduction is adequate or necessary to prevent an endangerment of public health.

(d) Not later than 120 days after the adoption or implementation by the state board of an airborne toxic control measure pursuant to this section or Section 39658, the districts shall implement and enforce the airborne toxic control measure or shall propose regulations enacting airborne toxic control measures on nonvehicular sources within their jurisdiction which meet the requirements of subdivisions (b), (c), and (e), except that a district may, at its option, and after considering the factors specified in subdivision (b) of Section 39665, adopt and enforce equally effective or more stringent airborne toxic control measures than the airborne toxic control measures adopted by the state board. A district shall adopt rules and regulations implementing airborne toxic control measures on nonvehicular sources within its jurisdiction in conformance with subdivisions (b), (c), and (e), not later than six months following the adoption of airborne toxic control measures by the state board.

(e) District new source review rules and regulations shall require new or modified sources to control emissions of toxic air contaminants consistent with subdivisions (b), (c), and (d) and Article 2.5 (commencing with Section 39656).

(f) Where an airborne toxic control measure requires the use of a specified method or methods to reduce, avoid, or eliminate the emissions of a toxic air contaminant, a source may submit to the district an alternative method or methods that will achieve an equal or greater amount of reduction in emissions of, and risk associated with, that toxic air contaminant. The district shall approve the proposed alternative method or methods if the operator of the source demonstrates that the method is, or the methods are, enforceable, that equal or greater amounts of reduction in emissions and risk will be achieved, and that the reductions will be achieved within the time period required by the applicable airborne toxic control measure. The district shall revoke approval of the alternative method or methods if the source fails to adequately implement the approved alternative method or methods or if subsequent monitoring demonstrates that the alternative method or methods do not reduce emissions and risk as required. The district shall notify the state board of any action it proposes to take pursuant to this subdivision. This subdivision is operative only to the extent it is consistent with the federal act.

(Amended by Stats. 1992, Ch. 1161, Sec. 8. Effective January 1, 1993.)

39667. Based on its determinations pursuant to Section 39662, the state board shall consider the adoption of revisions in the emission standards for vehicular sources and regulations specifying the content of motor vehicle fuel, to achieve the maximum possible reduction in public exposure to toxic air contaminants. Except for regulations affecting new motor vehicles which shall be based upon the most advanced technology feasible for the model year, regulations developed pursuant to this section shall be based on the utilization of the best available control technologies or more effective control methods, unless the state board determines, based on an

assessment of risk, that an alternative level of emission reduction is adequate or necessary to prevent an endangerment of public health. Those regulations may include, but are not limited to, the modification, removal, or substitution of vehicle fuel, vehicle fuel components, or fuel additives, or the required installation of vehicular control measures on new motor vehicles.

(Amended by Stats. 1996, Ch. 736, Sec. 3. Effective January 1, 1997.)

39662. (a) The state board shall, on or before January 1, 1989, prepare a written report on the availability and effectiveness of toxic air contaminant monitoring options in consultation with the Scientific Review Panel on Toxic Air Contaminants, the districts, the Department of Food and Agriculture, and the State Department of Health Services. In preparing the report, the state board shall conduct at least one public workshop. The report shall include, but not be limited to, all of the following:

(1) An evaluation of existing toxic air contaminant monitoring capacity and assessment capabilities within the state, including, but not limited to, existing monitoring stations and equipment of the state board and of the districts.

(2) An analysis of the available options for monitoring and assessing current levels of exposure to identified and all potential toxic air contaminants in urban areas of the state, taking into consideration the technical feasibility and costs of these monitoring options. The report shall evaluate the extent to which the establishment of additional monitoring capacity is appropriate and feasible to facilitate the identification and control of toxic air contaminants.

(3) A list of all substances or classes of substances addressed by the state board pursuant to paragraph (2), including, but not limited to, a discussion of the appropriateness and availability of monitoring for those substances or classes of substances.

(4) An analysis of the feasibility and costs of establishing an indoor toxic air contaminant monitoring program to facilitate the implementation of Section 39660.5.

(b) Based on the findings in the report prepared pursuant to subdivision (a), the state board shall develop, by July 1, 1989, in conjunction with the districts, guidelines for establishing supplemental toxic air contaminant monitoring networks to be implemented by the districts. The board shall develop the guidelines only to the extent that it determines, pursuant to paragraph (2) of subdivision (a), that establishing additional monitoring capacity is appropriate and feasible.

(c) The guidelines established pursuant to subdivision (b) shall include a priority list for establishing and implementing the supplemental toxic air contaminant monitoring networks. The state board shall give priority to that supplemental monitoring capacity it determines to be most needed to identify and control toxic air contaminants. The state board shall allocate to districts, in the priority order included in the guidelines, state funds provided in subdivision (b) of Section 3 of the act adding this section and in subsequent Budget Acts for establishing and implementing the supplemental toxic air contaminant monitoring networks. The state board shall allocate state funds to the districts, upon appropriation by the Legislature, on a 50 percent matching basis, and shall not provide state funds for the supplemental toxic air contaminant monitoring program established by Section 40715 to any district in excess of district funds allocated by the district in establishing and implementing the supplemental monitoring networks created pursuant to Section 40715.

(d) The state board shall request in its annual budget sufficient state funds, in addition to those provided in subdivision (b) of Section 3 of the act adding this section, to match, on a 50 percent basis, those district funds allocated by the districts for establishing and implementing the supplemental monitoring program specified in the guidelines adopted pursuant to subdivision (b).

(Added by Stats. 1987, Ch. 1219, Sec. 1. Note: See this section as modified on July 17, 1991, in Governor's Reorganization Plan No. 1 of 1991.)

39669. Nothing in this chapter is a limitation on the authority of the state board or a district to implement and enforce an airborne toxic control measure adopted prior to January 1, 1993.

(Added by Stats. 1992, Ch. 1161, Sec. 9. Effective January 1, 1993.)

ARTICLE 4.5. Special Provisions For Infants And Children [39669.5- 39669.5.] (Article 4.5 added by Stats. 1999, Ch. 731, Sec. 6.)

39669.5. The Legislature finds and declares that certain toxic air contaminants may pose risks that cause infants and children to be especially susceptible to illness and that certain actions are necessary to ensure their safety from toxic air contaminants. **ITEM 9**
Attachment 3

(a) By July 1, 2001, the following shall occur:

(1) The office, in consultation with the state board, shall establish a list of up to five toxic air contaminants identified or designated by the state board pursuant to Section 39657 that may cause infants and children to be especially susceptible to illness. In developing the list, the office shall take into account public exposures to toxic air contaminants, whether by themselves or interacting with other toxic air contaminants or criteria pollutants, and the factors listed in subdivision (c) of Section 39660. The office shall submit a report containing the list and its reasons for including the toxic air contaminants on the list to the Scientific Review Panel on Toxic Air Contaminants established pursuant to Article 5 (commencing with Section 39670).

(2) The scientific review panel, in a manner consistent with this chapter, shall review the list of toxic air contaminants submitted by the office pursuant to paragraph (1). As part of the review, any person may submit any information for consideration by the panel, which may receive oral testimony.

(b) (1) Within two years of the establishment of the list required pursuant to subdivision (a), the state board shall review and, as appropriate, revise any control measures adopted for the toxic air contaminants identified on the list, to reduce exposure to those toxic air contaminants pursuant to Article 4 (commencing with Section 39665), to protect public health, and particularly infants and children.

(2) Within three years of the establishment of the list required pursuant to subdivision (a), for up to five of those toxic air contaminants for which no control measures have been previously adopted, the state board shall prepare a report on the need for regulations, following the procedure specified in Section 39665. The state board shall adopt within that same three-year timeframe, as appropriate, any new control measures to reduce exposure to those toxic air contaminants pursuant to Article 4 (commencing with Section 39665), to protect public health, particularly infants and children.

(c) Beginning July 1, 2004, the office shall annually evaluate at least 15 toxic air contaminants identified or designated by the state board pursuant to Section 39657, and provide threshold exposure levels and nonthreshold health values, as appropriate, for those toxic air contaminants. The activities required pursuant to this subdivision shall continue until all toxic air contaminants are evaluated. The levels shall be established pursuant to the procedures adopted for health and risk assessments pursuant to paragraph (2) of subdivision (b) of Section 44360, and taking into account the factors listed in subdivision (c) of Section 39660. Based on this evaluation, and after review by the scientific review panel as prescribed in paragraph (2) of subdivision (a), the office shall update the list established pursuant to subdivision (a), by July 1, 2005, and each year thereafter. Within three years of the initial or subsequent listing update, for up to five of the toxic air contaminants contained on that list for which no control measures have been previously adopted, or for at least five of the toxic air contaminants if more than five toxic air contaminants have been identified, the state board shall prepare a report on the need for regulation, following the procedure specified in Section 39665. The state board shall adopt within that three-year timeframe, as appropriate, new control measures, pursuant to Article 4 (commencing with Section 39665), to reduce exposure to those toxic air contaminants, to protect public health, and particularly infants and children.

(d) Toxic air contaminants evaluated and listed pursuant to this section shall not include substances in those uses that are not subject to regulation by the state board pursuant to this chapter.

(Added by Stats. 1999, Ch. 731, Sec. 6. Effective January 1, 2000.)

ARTICLE 5. Scientific Review Panel [39670 - 39671] (Article 5 added by Stats. 1983, Ch. 1047, Sec. 1.)

39670. (a) A nine-member Scientific Review Panel on Toxic Air Contaminants shall be appointed to advise the state board and the Department of Pesticide Regulation in their evaluation of the health effects toxicity of substances pursuant to Article 3 (commencing with Section 39660) of this chapter and Article 1.5 (commencing with Section 14021) of Chapter 3 of Division 7 of the Food and Agricultural Code.

(b) The members of the panel shall be highly qualified and professionally active or engaged in the conduct of scientific research, and shall be appointed as follows, subject to Section 39671, for a term of three years:

(1) Five members shall be appointed by the Secretary for Environmental Protection, one of whom shall be qualified as a pathologist, one of whom shall be qualified as an oncologist, one of whom shall be qualified as an

epidemiologist, one of whom shall be qualified as an atmospheric scientist, and one of whom shall have relevant scientific experience and shall be experienced in the operation of scientific review or advisory bodies.

(2) Two members shall be appointed by the Senate Committee on Rules, one of whom shall be qualified as a biostatistician and one of whom shall be a physician or scientist specializing in occupational medicine.

(3) Two members shall be appointed by the Speaker of the Assembly, one of whom shall be qualified as a toxicologist and one of whom shall be qualified as a biochemist or molecular biologist.

(4) Members of the panel shall be appointed from a pool of nominees submitted to each appointing body by the President of the University of California. The pool shall include, at a minimum, three nominees for each discipline represented on the panel, and shall include only individuals who hold, or have held, academic or equivalent appointments at universities and their affiliates in California.

(c) The Secretary for Environmental Protection shall appoint a member of the panel to serve as chairperson.

(d) The panel may utilize special consultants or establish ad hoc committees, which may include other scientists, to assist it in performing its functions.

(e) Members of the panel, and any ad hoc committee established by the panel, shall submit annually a financial disclosure statement that includes a listing of income received within the preceding three years, including investments, grants, and consulting fees derived from individuals or businesses which might be affected by regulatory actions undertaken by the state board or districts pursuant to this chapter. The financial disclosure statements submitted pursuant to this subdivision are public information. Members of the panel shall be subject to the disqualification requirements of Section 87100 of the Government Code.

(f) Members of the panel shall receive one hundred dollars (\$100) per day for attending panel meetings and meetings of the state board, or upon authorization of the chairperson of the state board while on official business of the panel, and shall be reimbursed for actual and necessary travel expenses incurred in the performance of their duties.

(g) The state board and the office, and, in the case of economic poisons, the Department of Pesticide Regulation, shall provide sufficient resources for support of the panel, including technical, administrative, and clerical support, which shall include, but not be limited to, office facilities and staff sufficient for the maintenance of files, scheduling of meetings, arrangement of travel accommodations, and preparation of panel findings, as required by subdivision (b) of Section 39661.

(Amended by Stats. 1992, Ch. 1161, Sec. 10. Effective January 1, 1993.)

39671. The terms of the members of the Scientific Review Panel on Toxic Air Contaminants appointed pursuant to subdivision (b) of Section 39670 shall be staggered so that the terms of three members expire each year.

(Amended by Stats. 2000, Ch. 890, Sec. 8. Effective January 1, 2001.)

ARTICLE 6. Penalties [39674 - 39675] (Article 6 added by Stats. 1983, Ch. 1047, Sec. 1.)

39674. (a) Except as otherwise provided in subdivision (b), any person who violates any rule or regulation, emission limitation, or permit condition adopted pursuant to Section 39659 or Article 4 (commencing with Section 39665) or which is implemented and enforced as authorized by subdivision (b) of Section 39658 is strictly liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

(b) (1) Any person who violates any rule or regulation, emission limitation, permit condition, order fee requirement, filing requirement, duty to allow or carry out inspection or monitoring activities, or duty to allow entry for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (1) of Section 112 of the Clean Air Act (42 U.S.C. Section 7412(1)) or the regulations adopted pursuant thereto, adopted pursuant to Section 39659 or Article 4 (commencing with Section 39665) or which is implemented and enforced as authorized by subdivision (b) of Section 39658 is strictly liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where a civil penalty in excess of one thousand dollars (\$1,000) for each day of violation is sought, there is no liability under paragraph (1) if the person accused of the violation alleges by affirmative defense and establishes that the violation is caused by an act which was not the result of intentional or negligent conduct. In a district in which a Title V permit program has been fully approved, this paragraph shall not apply to a violation of federally enforceable requirements that occur at a Title V source.

(3) Paragraph (2) shall not apply to a violation of a toxic air contaminant rule, regulation, permit, order, fee **ITEM 9** requirement, filing requirement, duty to allow or carry out inspection or monitoring activities, or duty to allow **Attachment 3** entry for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subdivision (l) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(l)), or the regulations adopted pursuant thereto.

(Amended by Stats. 1994, Ch. 727, Sec. 1. Effective January 1, 1995.)

39675. (a) Sections 42400, 42400.1, 42400.2, and 42402.2 apply to violations of regulations or orders adopted pursuant to Section 39659 or Article 4 (commencing with Section 39665) or that are implemented and enforced as authorized by subdivision (b) of Section 39658.

(b) The adoption of this section does not constitute a change in, but is declaratory of, existing law.

(Amended by Stats. 2000, Ch. 805, Sec. 2. Effective January 1, 2001.)

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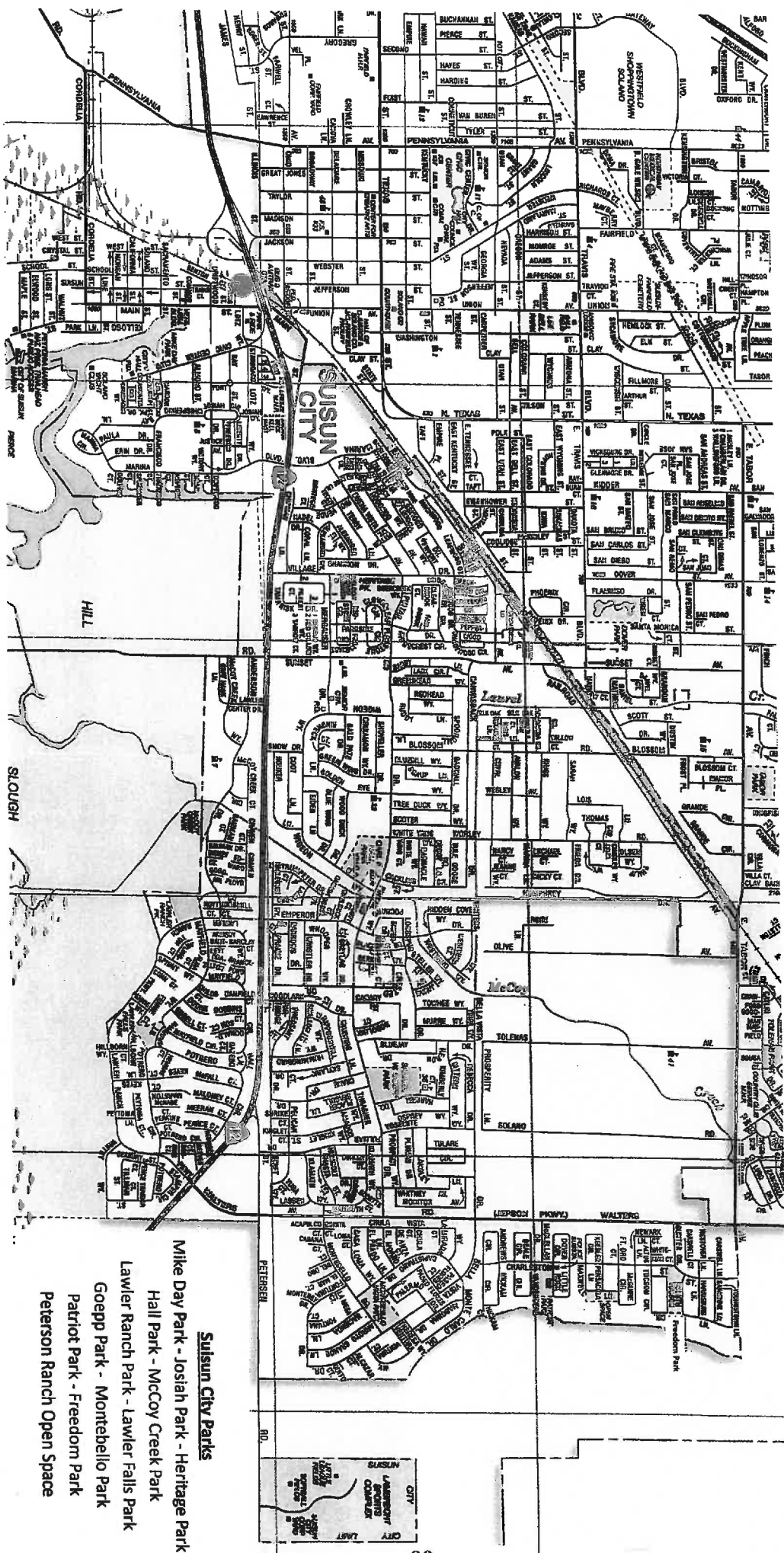
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Suisun City Parks & Recreational Areas



Suisun City Parks

- Mike Day Park - Josiah Park - Heritage Park
- Hall Park - McCoy Creek Park
- Lawler Ranch Park - Lawler Falls Park
- Goepp Park - Montebello Park
- Patriot Park - Freedom Park
- Peterson Ranch Open Space

