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**CITY OF DANA POINT, CALIFORNIA  
CITY COUNCIL REGULAR MEETING MINUTES  
NOVEMBER 8, 2006**

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**CALL TO ORDER**

The Regular Meeting of the City Council of the City of Dana Point, California, was called to order by Mayor Anderson at 5:01 p.m. in the Dana Point City Council Chamber, 33282 Golden Lantern, Suite 210, Dana Point.

**ROLL CALL**

PRESENT: Lara Anderson, Mayor  
Russell Chilton, Mayor Pro Tem  
Diane L. Harkey, Council Member  
James V. Lacy, Council Member (arrived at 6:01 p.m.)  
Wayne Rayfield, Council Member (arrived at 5:02 p.m.)

STAFF PRESENT: Douglas Chotkevys, City Manager; Patrick Muñoz, City Attorney; Sharie Apodaca, Director of Administrative Services; Kathy Ward, Acting City Clerk; Cathy Catlett, Assistant City Clerk; Kyle Butterwick, Director of Community Development; John Tilton, City Architect/Planning Manager; Brad Fowler, Director of Public Works/City Engineer; Matt Sinacori, City Engineer; Erica Williams, Senior Planner; Sgt. Mark Long; Christy Teague; Economic Development Manager; Jennifer Anderson, Management Analyst; Cathy Catlett, Assistant City Clerk; Jackie Littler, Acting Executive Secretary.

**CLOSED SESSION**

City Attorney Muñoz indicated there was a need for a Closed Session as follows:

- A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION,  
Government Code § 54956.9 (a), (1 case)

Name of Case: City of Dana Point v. The Sunshine Group, LLC, et al.,  
Orange County Superior Court Case No. 05CC08592

Mayor Anderson recessed the meeting into a Closed Session at 5:02 p.m. pursuant to Government Code Section 54956 *et. seq.*

**RECONVENE CITY COUNCIL MEETING**

Mayor Anderson reconvened the meeting at 6:02 p.m. All Council Members were present.

**PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Council Member Rayfield.

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**INVOCATION**

The Invocation was led by Pastor Ty Guy of South Shores Church.

**PRESENTATIONS AND PROCLAMATIONS**

Business of the Month – Dana Capistrano Animal Clinic

Management Analyst Anderson gave a PowerPoint presentation of November's Business of the Month, Dana Capistrano Animal Clinic. Mayor Anderson presented a Certificate of Recognition to Dr. James Bridge, his wife Leslie and their staff. Dana Capistrano Animal Clinic volunteers many hours and services to the San Clemente/Dana Point Animal Shelter & Pet Project Foundation. They are also sponsoring Santa Claws & Paws which is scheduled on December 9, from 10:00 a.m. – 4:00 p.m. at Aegis in Dana Point; proceeds will be given to the San Clemente/Dana Point Animal Shelter.

Presentation of Check from Senator Tom Harman

Senator Tom Harman presented a check for \$3,000,000 to the Mayor and the City for the grants from the State Water Quality Resources Board to fund a statewide water quality study.

**CONSENT CALENDAR**

Council Member Rayfield removed Item No. 10 from the Consent Calendar. A member of the public removed Item No. 14.

IT WAS MOVED BY COUNCIL MEMBER RAYFIELD, SECONDED BY COUNCIL MEMBER HARKEY, THAT THE RECOMMENDATIONS BE ACCEPTED FOR ALL ITEMS LISTED ON THE CONSENT CALENDAR WITH THE EXCEPTION OF ITEM NOS. 10 AND 14.

The motion carried by the following vote:

AYES: Council Members Harkey, Lacy, Rayfield,  
Mayor Pro Tem Chilton and Mayor Anderson  
NOES: None  
ABSENT: None  
ABSTAIN: None

1. **WAIVE THE READING OF ORDINANCES AND APPROVE READING BY TITLE ONLY**

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APPROVED THE READING BY TITLE ONLY OF ALL ORDINANCES ON THE CONSENT CALENDAR AND THAT FURTHER READING OF SUCH ORDINANCES BE WAIVED.

**2. REGULAR MEETING MINUTES, OCTOBER 25, 2006**

RECEIVED AND FILED.

**3. PLANNING COMMISSION MEETING MINUTES, OCTOBER 4, 2006**

RECEIVED AND FILED.

**4. PLANNING COMMISSION ACTIONS, MEETING OF NOVEMBER 1, 2006**

RECEIVED AND FILED.

**5. YOUTH BOARD MEETING MINUTES, OCTOBER 19, 2006**

RECEIVED AND FILED.

**6. MEETING CALENDAR / COMMUNITY SPECIAL EVENTS CALENDAR**

RECEIVED AND FILED.

**7. CITY TREASURER'S REPORT, SEPTEMBER 2006**

RECEIVED AND FILED THE CITY TREASURER'S REPORT FOR THE MONTH OF SEPTEMBER 2006.

**8. CLAIMS AND DEMANDS**

RECEIVED AND FILED THE CLAIMS AND DEMANDS.

**9. PRELIMINARY APPROVAL OF \$100,000 FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT APPLICATION THROUGH COUNTY OF ORANGE FOR ADA IMPROVEMENTS TO FOUR CITY FACILITIES TO SUPPLEMENT ANTICIPATED CITY FUNDS FOR ADA IMPROVEMENTS IN FISCAL YEAR 2007-2008**

ADOPTED RESOLUTION NO. 06-11-08-01 ENTITLED:

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, TO SEEK PRELIMINARY APPROVAL OF \$100,000 FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT APPLICATION THROUGH COUNTY OF ORANGE FOR ADA IMPROVEMENTS TO FOUR CITY FACILITIES TO SUPPLEMENT ANTICIPATED CITY FUNDS FOR ADA IMPROVEMENTS IN*

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*2007-2008 FISCAL YEAR.*

**10. CHARITABLE GRANT FUNDING APPLICATIONS**

Council Member Rayfield removed this item from the Consent Calendar. City Manager Chotkevys provided a staff report.

Council Member Rayfield was concerned that these non-profit groups are outside the City and are well funded, and are not in the best interest of the City. Council Member Harkey and Mayor Pro Tem Chilton agreed with Council Member Rayfield.

IT WAS MOVED BY MAYOR PRO TEM CHILTON, SECONDED BY COUNCIL MEMBER RAYFIELD, THAT THE CITY COUNCIL DENY FUNDING FOR THE FOLLOWING REQUESTS:

THE LAGUNA PLAYHOUSE	\$3,600
SOUTH COAST MEDICAL CENTER	\$1,400

The motion carried by the following vote:

AYES:	Council Members Harkey, Lacy, Rayfield, Mayor Pro Tem Chilton and Mayor Anderson
NOES:	None
ABSENT:	None

**11. ADOPTION OF A RESOLUTION APPROVING A NOTICE OF COMPLETION FOR ARTERIAL HIGHWAY REHABILITATION PROJECT ON COAST HIGHWAY BETWEEN DOHENY PARK ROAD AND CAMINO CAPISTRANO**

**ADOPTED RESOLUTION NO. 06-11-08-02 ENTITLED:**

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING A NOTICE OF COMPLETION FOR THE CONSTRUCTION OF THE ARTERIAL ROADWAY RESURFACING PROJECT – COAST HIGHWAY BETWEEN DOHENY PARK ROAD AND CAMINO CAPISTRANO*

AND DIRECTED STAFF TO TRANSFER ALL PROJECT SAVINGS TO THE CAPITAL IMPROVEMENT PROGRAM RESERVES.

**12. APPROVAL OF A FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT FOR PART-TIME, AS-NEEDED TRAFFIC ENGINEERING SERVICES**

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APPROVED THE FIRST AMENDMENT TO THE CONSULTANT SERVICES AGREEMENT WITH CONRAD LAPINSKI FOR PART-TIME, AS-NEEDED TRAFFIC ENGINEERING SERVICES; AUTHORIZED THE CITY MANAGER TO SIGN THE AMENDMENT; AUTHORIZED THE CITY MANAGER TO APPROVE THE FOUR ANNUAL EXTENSIONS ALLOWED IN THE AGREEMENT PROVIDED THAT SATISFACTORY SERVICES HAVE BEEN PROVIDED; AND AUTHORIZED THE EXPENDITURE FOR TRAFFIC ENGINEERING SERVICES AS NOTED IN ACTION DOCUMENT A AND THE FISCAL IMPACT SECTION OF THIS REPORT.

**13. DISPOSITION OF NONESSENTIAL CITY RECORDS**

APPROVED THE 2006 DISPOSITION OF NONESSENTIAL CITY RECORDS IN ACCORDANCE WITH CALIFORNIA STATE LAW AND THE CITY'S APPROVED RECORDS RETENTION SCHEDULE AND ADOPTED **RESOLUTION NO. 06-11-08-03** ENTITLED:

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AUTHORIZING THE DISPOSITION OF CERTAIN INACTIVE CITY RECORDS AS PROVIDED BY SECTION 34090 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA.*

**14. PROPOSED ANTI-LITTERING ORDINANCE**

A member of the public removed this item from the Consent Calendar. City Manager Chotkevys provided a staff report.

Reverend Paul Peck, Dana Point, spoke in favor of this ordinance to keep Dana Point beautiful.

IT WAS MOVED BY COUNCIL MEMBER RAYFIELD, SECONDED BY MAYOR PRO TEM CHILTON, TO INTRODUCE AND HOLD FIRST READING OF AN ORDINANCE ENTITLED:

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ADDING CHAPTER 6.45 OF THE MUNICIPAL CODE ENTITLED THE "ANTI-LITTERING ORDINANCE."*

The motion carried by the following vote:

AYES:	Council Members Harkey, Lacy, Rayfield, Mayor Pro Tem Chilton and Mayor Anderson
NOES:	None
ABSENT:	None

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**PUBLIC COMMENTS**

Mayor Anderson opened the meeting for public comments.

Jerry Grunor, Dana Point, spoke in reference to the recusal of a Council Member at the October 25, 2006 Council meeting concerning the Town Center Plan item.

Bob Moore, Dana Point, resident of 30 years, applauded the Council's efforts and noted Veterans of Foreign Wars Post 9934 are selling their poppies at the grocery stores and other locations.

Joe Ross, Dana Point, representing the League of Woman Voters, invited the Council to attend "Know Your County", a strategic vision plan for the County's Harbor's, Beaches and Parks on Saturday, December 2 from 9:30 – 12:00 noon at the Irvine Water District.

**PUBLIC HEARINGS**

**15. GENERAL PLAN AMENDMENT (GPA06-02), ZONE CHANGE (ZC06-01), ZONE TEXT AMENDMENT (ZTA06-04) AND LOCAL COASTAL PROGRAM AMENDMENT (LCPA06-05) FOR ADOPTION OF THE TOWN CENTER PLAN (CONTINUED FROM MEETING OF OCTOBER 25, 2006)**

Mayor Pro Tem Chilton recused himself due to an economic conflict of interest and left the Chambers. Council Member Harkey recused herself due to a potential for an economic conflict of interest and left the Council Chambers.

City Manager Chotkevys provided a brief staff report. Community Development Director Kyle Butterwick provided an overview of the building heights within the Town Center Plan. He provided an view analysis of the maximum height limit of 40 feet (the current height limit is 35 feet) using story poles placed at various locations outside of the Town Center Plan.

Community Development Director Butterwick and City Architect/Planning Manager John Tilton summarized the regulations which would limit and/or control building height are as follows:

1. Buildings are strictly limited to 40 feet in height above a sidewalk.
2. Mechanical equipment, mechanical screening and chimneys, are limited to no more than 5 percent of the horizontal roof area, shall be set back minimum of 5 feet from a building's edge, and are allowed to be no more than 42-inches above the maximum allowed height limit.
3. Roof decks are limited to the interior portion of the couplet only and are subject to a noticed public hearing for a Conditional Use Permit (CUP). Stairwells and elevators providing access to roof decks and required guard rails are to be setback 5-feet from building edge and guard rails are limited to 42 inches in height.

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4. Story pole staking is required for review of all new development and additions which result in additional building height.

As noted above, Staff recommended modification of roof decks with Conditional Use Permits be only permitted in the Town Center inner couplet area.

City Architect/Planning Manager Tilton provided a PowerPoint presentation on building setbacks.

Director of Public Works Brad Fowler provided a PowerPoint presentation on parking and traffic circulation. Although current public parking studies show underutilization (considering private parking maximum usage and public parking on Pacific Coast Highway), the Town Center Plan requires the City provide additional public parking facilities prior to construction. Also using cutouts on Pacific Coast Highway and using timed parking will further mitigate any on street loss of parking on PCH. Del Prado will get additional parking on the street with the Plan.

Director of Public Works Fowler introduced Jim Daisa, Traffic Engineer with Kimley-Horne, a very reputable nationwide Traffic Engineering firm, as a consultant to Roma. Director of Public Works Fowler stated the benefits of change provides safe and friendly pedestrian/bicycle travel ways while maintaining safe and efficient vehicle travel ways. The goal is to improve the balance between pedestrian and bicycle orientation with vehicular orientation. The benefits include: improves exposure/access to businesses; reduces excessive high speed travel; flexible travel routes; pedestrian-friendliness; improved bicycle and transit travel; and opportunities to improve street appearance.

Director of Public Works Fowler indicated that a conversion analysis had been completed using current summer peak commute traffic counts and adding planned projects such as the Headlands and Harbor revitalization, ambient annual (inflation) growth and the additional traffic generated by business and residential growth for a build out traffic analysis in the year 2020. Various bus transit and bicycle improvements were discussed. With regard to neighborhood impacts, maintaining balanced travel speeds on PCH will not cause drivers to cut-through neighborhoods to bypass congestion.

Director of Public Works provided a PowerPoint presentation on the level of service at various intersections in the year 2020. Using a letter grade system, a level of service of "A" would be least congested and a level of service of "F" would be most congested. Staff noted that the level of service would be better with two-way traffic verses one-way traffic at various locations, all locations showing a letter "C" or better at build out.

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Jim Daisa provided a sophisticated simulation presentation of traffic at various intersections in the year 2020 (build out), showing how the traffic would move throughout the Town Center under the two-way proposal.

The Town Center Subcommittee recommended two-way circulation (verses one-way) for the following reasons:

- More pedestrian friendly (Del Prado)
- Traffic speed reduction (Del Prado)
- City event (Del Prado)
- Access (easier to locate businesses/less circling)
- Greater vehicle capacity – 6 lanes verses 4
- Consultant's top recommendation

Director of Public Works Fowler noted that continued outreach and phased improvements over the years with business participation in the design process are very important to mitigate construction impacts with the plan.

City Manager Chotkevys summarized the presentations and noted the various public outreach efforts.

Council Member Lacy asked the City Attorney to prepare a modification for the roof deck issue as it relates to the approval of a conditional use permit to limit the impact on the quiet enjoyment or views.

Mayor Anderson opened the Public Hearing for Public Comments.

Jack Lounsolo, San Juan Capistrano, owner of Jack's Restaurant since 1997, is in favor of the Town Center Plan including two-way circulation.

Bill Jonas, Laguna Niguel, owner of Purple Feet, applauded the Town Center Subcommittee and is favor of the Town Center Plan.

Pascal Le Vettet, Laguna Niguel, owner of Bonjour Café, spoke in favor of two-way circulation in the Town Center Plan.

Fred Newman, Dana Point, supports the Town Center Plan and supports the proposed two-way traffic circulation for three reasons: safety, convenience and lifestyle.

Bob Moore, Dana Point, thanked the Town Center Subcommittee members and recommended approval of the Town Center Plan.

Cathy McCool, San Juan Capistrano, owner of three businesses in Dana Point, approves of the Town Center Plan and believes that traffic circulation needs to be changed to help the businesses.



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Tom Blake, Dana Point, owner of Tutor & Spunkies Deli, spoke in favor of the Town Center Plan and appreciated staff's efforts when he moved into the Blue Lantern Plaza.

Mike Behrazfar, Dana Point, owner of the Shell Station on Pacific Coast Highway, is concerned about the high traffic speeds on Del Prado and Pacific Coast Highway.

Mayor Anderson recessed the meeting at 7:50 p.m. and reconvened the meeting at 8:08 p.m. Mayor Anderson, Council Members Lacy and Rayfield were present.

Steven Weinberg, Dana Point, a member of the Town Center Subcommittee and is Vice Chair of the Planning Commission, spoke in favor of the Town Center Plan.

Ross Teasley, Dana Point, indicated that the core of the Town Center Plan is a pedestrian friendly environment can only be created with two-way circulation and convenient parking.

Jane Percival, Dana Point, was not available to speak and checked that she was in favor of the Town Center Plan.

Stas Bobin, Dana Point, was not available to speak and checked that he was in favor of the Town Center Plan.

Ronna Kincaid, Dana Point, member of the Town Center Subcommittee, read a letter from Gary Whitfield, Capistrano Beach, owner of the new two story building adjacent to the Renaissance Café, who is in favor of the Town Center Plan with two-way circulation and housing above street level retail businesses.

Darrin Duhamel, Dana Point, owner of Revo Cycles, applauded the efforts by the Town Center Subcommittee, Planning Commission and staff and is in favor of the Town Center Plan. He would like an ordinance to restrict formula businesses in Dana Point.

Dr. Jeffrey Briney, Laguna Beach, previous resident of Dana Point and owner of various businesses in Dana Point, sees the Town Center Plan as a benefit to the City.

Shaun Mehr, Mission Viejo, owner of Bela Bazaar, spoke in favor of the Town Center Plan.

Mayor Anderson closed the Public Hearing.

Council Member Rayfield referred to the last Town Center Newsletter, and asked staff about a building on page two of the Meridian, which is over 40 feet high. City Architect/Planning Manager Tilton responded that with the new building design

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guidelines in the Town Center Plan, this building would be considerably different in height and proximity to the alley.

Council Member Lacy read for the record several modifications to the Town Center Plan with regards to Conditional Use Permits for roof top decking:

*“In addition to other required findings as set forth in the Municipal Code, any Conditional Use Permit for roof top decking in the Town Center shall require the following two findings:*

- 1) The approval will not result in an undue impact on the quiet use, enjoyment or privacy of surrounding properties.*
- 2) The approval will not result in the undue adverse impact on ocean views from surrounding properties.*

With respect to the parking in the Town Center Plan, Council Member Lacy asked for a specific statement that City is directed, as part of an overall parking plan, to immediately begin the process of surveying land for land lease for parking and identify two or three properties in different areas of the Town Center for immediate action.

With respect to two-way circulation, Council Member Lacy was not convinced of two-way circulation and cannot accept two-way circulation in the Town Center Plan (and only would support one-way circulation).

Mayor Anderson briefly summarized the previous two years and is a firm believer that if you want different results, you have to do different things. Mayor Anderson is very concerned about traffic overflowing in the adjacent neighborhoods and feels two-way traffic circulation would help to prevent this problem.

Mayor Anderson asked staff if this Plan can be submitted to the Coastal Commission without the traffic circulation plan. Community Development Director Butterwick responded that yes, the Town Center Plan could be submitted without the circulation element. City Manager indicated that the Plan could be submitted to the Coastal Commission as a Land Use document without a circulation element and could process the circulation element as a Capital Improvement Program.

Mayor Anderson asked staff to clarify that the Coastal Commission comments could take at least a year to send us a response on the plan. Community Development Director Butterwick agreed with that statement.

Council Member Lacy would like to approve the Town Center Plan with the current one-way circulation as it is configured now.

Council Member Rayfield asked staff if the Town Center Plan discourages formula businesses and if an ordinance is needed. Community Development Director Butterwick responded that Plan does discourage formula businesses through the

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design component/process and does not suggest the development of an ordinance.

City Attorney Muñoz suggested a motion approval of staff recommendations with various modifications as suggested by Council Member Lacy removing any references to two-way reconfiguration be modified to one-way reconfiguration.

Director of Public Works Fowler suggested that the Council can approve the Town Center Plan by removing the comments for two-way verses one-way circulation and most of the elements with regards to the circulation would remain in the Plan.

Mayor Anderson supports Council Member Lacy's modifications except for one-way circulation and is concerned about the amount of time it will take with the Coastal Commission. Mayor Anderson asked that the Council take a baby step with the Town Center Plan, approve it with the suggested modifications and remove the traffic circulation element out of the Town Center Plan and the new Council can decide what to do on this subject.

City Attorney Muñoz suggested a motion to adopt staff recommendations with the modifications to the Town Center Plan that Council Member Lacy read into the record relating to the roof top decking; with the elimination of the circulation elements, and to direct staff to immediately begin the process of identifying land to lease for parking lot purposes.

IT WAS MOVED BY MAYOR ANDERSON, SECONDED BY COUNCIL MEMBER RAYFIELD, TO WAIVE THE READING OF THE ORDINANCE AND APPROVE READING BY TITLE ONLY.

The motion carried by the following vote:

AYES:	Council Members Lacy, Rayfield, and Mayor Anderson
NOES:	None
ABSENT:	None
ABSTAIN:	Mayor Pro Tem Chilton and Council Member Harkey

IT WAS MOVED BY COUNCIL MEMBER LACY, SECONDED BY COUNCIL MEMBER RAYFIELD, TO ADOPT STAFF RECOMMENDATIONS WITH THE MODIFICATIONS TO THE TOWN CENTER PLAN THAT COUNCIL MEMBER LACY READ INTO THE RECORD RELATING TO THE ROOF TOP DECKING, WITH THE ELIMINATION OF THE CIRCULATION ELEMENTS, AND TO DIRECT STAFF TO IMMEDIATELY BEGIN THE PROCESS OF IDENTIFYING LAND TO LEASE FOR PARKING LOT PURPOSES.

1. ADOPTED **RESOLUTION NO. 06-11-08-04**, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA,

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*ADOPTING A MITIGATED NEGATIVE DECLARATION FOR THE TOWN CENTER PLAN;*

2. *ADOPTED **RESOLUTION NO. 06-11-08-05**, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING GENERAL PLAN AMENDMENT GPA 06-02, WHICH AMENDS THE GENERAL PLAN LAND USE ELEMENT, URBAN DESIGN ELEMENT, CIRCULATION ELEMENT, AND ECONOMIC DEVELOPMENT ELEMENT, TABLES AND DIAGRAMMS, AND SUBMISSION OF GPA 06-02 AS LOCAL COASTAL PROGRAM AMENDMENT LCPA06-05 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION;*
  
3. *INTRODUCED AN ORDINANCE ENTITLED:*  
  
*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA06-04 AND ZONE CHANGE ZC06-01 TO ESTABLISH THE TOWN CENTER DISTRICT AND INCORPORATE THE TOWN CENTER PLAN AS APPENDIX E OF THE ZONING CODE, AND SUBMISSION AS PART OF LOCAL COASTAL PROGRAM AMENDMENT LCPA06-05 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION;*
  
4. *ADOPTED **RESOLUTION NO. 06-11-08-06**, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, REGARDING LOCAL COASTAL PROGRAM AMENDMENT LCPA06-05 AND REQUESTING CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.*

The motion carried by the following vote:

AYES:	Council Members Lacy, Rayfield, and Mayor Anderson
NOES:	None
ABSENT:	None
ABSTAIN:	Mayor Pro Tem Chilton and Council Member Harkey

Council Member Lacy recused himself for Items 16 and 17. He made a brief statement congratulating the newly elected City Council Members Lisa Bartlett, Joel Bishop and Steven Weinberg, thanked the public for their support, and appreciated the ability to serve on the Council for the last four years, and four years on the Planning Commission. He may not be able to attend future City Council meetings due to possible holiday conflicts. Council Member Lacy left the meeting.

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Mayor Anderson recessed the meeting at 8:55 p.m. and reconvened the meeting at 9:09 p.m. Mayor Anderson, Mayor Pro Tem Chilton, Council Members Harkey and Rayfield were present.

- 16. GENERAL PLAN AMENDMENT GPA 04-01, ZONE CHANGE ZC 04-01, TENTATIVE TRACT MAP TTM 16730 AND SITE DEVELOPMENT PERMIT SDP 06-25 TO CHANGE THE GENERAL PLAN AND ZONING DESIGNATIONS FOR 35200 DEL REY FROM COMMUNITY FACILITIES (CF) TO SINGLE FAMILY RESIDENTIAL (RSF 7) ALONG WITH A REQUEST TO SUBDIVIDE THE EXISTING 1.77 ACRE SITE INTO TEN (10) SINGLE-FAMILY RESIDENTIAL LOTS. THE SITE IS CURRENTLY ZONED BOTH COMMUNITY FACILITIES (CF) AND SINGLE FAMILY RESIDENTIAL (RSF 7) AND IS LOCATED AT THE TERMINUS OF DEL REY, A PRIVATE STREET, WITHIN CAPISTRANO BEACH AND ADDRESSED AS 35200 & 35322 DEL REY**

Council Member Harkey recused herself due to the appearance of an economic conflict of interest and left the Council Chambers.

Director of Community Development Butterwick provide a brief staff report on the project. During the last 18 months, staff has worked extensively with the developer on this development which has 146 conditions for approval.

Senior Planner Erica Williams provided a PowerPoint presentation for this project. The total project of 1.77 acres is proposed for the development of ten single family homes. She explained the no parking – fire lane restrictions along Del Rey.

Council Member Rayfield confirmed with Senior Planner Williams that no variances are being requested at this time. Community Development Director Butterwick added that the track map establishes the building footprint that meets our current development standards. Any deviation by the applicant would require an amendment to the track map.

Mayor Anderson opened the Public Hearing for public comments.

John Haushalter, Santa Ana, representing RDH Group Development, provided a PowerPoint presentation on the proposed development. Mr. Haushalter indicated that RDH Group Development will be responsible for resurfacing Del Rey and share in the cost of maintaining the road.

Bill Heard, Dana Point, resident on Del Rey, and has worked with the developer and supports this project

MAYOR PRO TEM CHILTON MADE A MOTION TO APPROVE STAFF'S RECOMMENDATIONS, COUNCIL MEMBER RAYFIELD SECONDED THE MOTION.

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Mayor Anderson commented on the consensus made between the developer and residents of the neighborhood.

Hugh Bassett, San Clemente, representing the Board of Directors at Seascape Village, which is adjacent to the project and is not objecting to the project, but is concerned about the privacy issues in the greenbelt area around the cul-de-sac area.

William Genevero, Capistrano Beach, lives adjacent to the development, is concerned about a possible discrepancy on the greenbelt and retaining wall.

Senior Planner Williams clarified retaining wall verses the stepped wall as noted in staff's report.

Mayor Anderson closed the Public Hearing.

Council Member Rayfield clarified that the item presented is the same item approved by the Planning Commission

IT WAS MOVED BY MAYOR ANDERSON, SECONDED BY COUNCIL MEMBER RAYFIELD, TO WAIVE THE READING OF THE ORDINANCE AND APPROVE READING BY TITLE ONLY.

The motion carried by the following vote:

AYES:	Council Member Rayfield, Mayor Anderson, Mayor Pro Tem Chilton
NOES:	None
ABSENT:	Council Member Lacy
ABSTAIN:	Council Member Harkey

Mayor Anderson reopened the Public Hearing to clarify any discrepancy issues.

Senior Planner Williams indicated there is no discrepancy. A resident asked for clarification of staff on whether the project was approved with the greenbelt on all sides or approved with the greenbelt only behind two houses. Senior Planner Williams responded that the greenbelt was approved on all sides.

Mayor Anderson closed the Public Hearing.

IT WAS MOVED BY MAYOR PRO TEM CHILTON, SECONDED BY COUNCIL MEMBER RAYFIELD, TO:

1. APPROVE **RESOLUTION NO. 06-11-08-07** FOR THE MITIGATED NEGATIVE DECLARATION ENTITLED:

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*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ADOPTING A MITIGATED NEGATIVE DECLARATION FOR GENERAL PLAN AMENDMENT GPA04-01, ZONE CHANGE ZC04-01, TENTATIVE TRACT MAP TTM 16730 AND SITE DEVELOPMENT PERMIT SDP06-25.*

2. APPROVE **RESOLUTION NO. 06-11-08-08** FOR GENERAL PLAN AMENDMENT GPA04-01 ENTITLED:

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING GENERAL PLAN AMENDMENT GPA04-01 TO CHANGE THE GENERAL PLAN DESIGNATION FOR 35200 DEL REY FROM COMMUNITY FACILITIES (CF) TO SINGLE FAMILY RESIDENTIAL (RSF 7). THE SITE IS CURRENTLY ZONED BOTH COMMUNITY FACILITIES (CF) AND SINGLE FAMILY RESIDENTIAL (RSF 7) AND IS LOCATED AT THE TERMINUS OF DEL REY, A PRIVATE STREET, WITHIN CAPISTRANO BEACH AND ADDRESSED AS 35200 & 35322 DEL REY.*

3. INTRODUCE AND HOLD FIRST READING OF AN ORDINANCE APPROVING ZONE CHANGE ZC04-01 ENTITLED:

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE CHANGE ZC04-01 TO CHANGE THE ZONING DESIGNATION FOR 35200 DEL REY FROM COMMUNITY FACILITIES (CF) TO SINGLE FAMILY RESIDENTIAL (RSF 7). THE SITE IS CURRENTLY ZONED BOTH COMMUNITY FACILITIES (CF) AND SINGLE FAMILY RESIDENTIAL (RSF 7) AND IS LOCATED AT THE TERMINUS OF DEL REY, A PRIVATE STREET, WITHIN CAPISTRANO BEACH AND ADDRESSED AS 35200 & 35322 DEL REY.*

4. APPROVE **RESOLUTION NO. 06-11-08-09** FOR TENTATIVE TRACT MAP TTM 16730 AND SITE DEVELOPMENT PERMIT SDP06-25 ENTITLED:

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING TENTATIVE TRACT MAP TTM 16730, AND SITE DEVELOPMENT PERMIT SDP06-25 TO SUBDIVIDE THE EXISTING 1.76 ACRE SITE INTO TEN (10) SINGLE-FAMILY RESIDENTIAL LOTS. THE SITE IS CURRENTLY LOCATED AT THE TERMINUS OF DEL REY, A PRIVATE STREET, WITHIN CAPISTRANO BEACH AND ADDRESSED AS 35200 & 35322 DEL REY.*

5. INTRODUCE AND HOLD FIRST READING OF AN ORDINANCE AUTHORIZING THE ORANGE COUNTY SHERIFF'S DEPARTMENT TO

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**CITY OF DANA POINT, CALIFORNIA  
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ENFORCE THE "NO PARKING – FIRE LANE" RESTRICTIONS ALONG DEL REY ENTITLED:

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ADDING CHAPTER 12.18 ENTITLED "PARKING RESTRICTIONS ON DEL REY" TO TITLE 12 (VEHICLES AND TRAFFIC) OF THE DANA POINT MUNICIPAL CODE.*

The motion carried by the following vote:

AYES: Council Member Rayfield, Mayor Anderson, Mayor Pro Tem Chilton  
NOES: None  
ABSENT: Council Member Lacy  
ABSTAIN: Council Member Harkey

**17. APPEAL OF THE PLANNING COMMISSION'S APPROVAL OF COASTAL DEVELOPMENT PERMIT CDP05-20 AND SITE DEVELOPMENT PERMIT SDP05-58(M) FOR A NEW SINGLE-FAMILY DWELLING AT 24332 SANTA CLARA AVENUE**

*DUE TO A SCHEDULING CONFLICT WITH THE APPELANT, THIS PUBLIC HEARING HAS BEEN RESCHEDULED TO THE MEETING OF NOVEMBER 20, 2006.*

**UNFINISHED BUSINESS**

**18. HEADLANDS COMMUNITY FACILITIES DISTRICT (CFD)**

Council Member Harkey returned to the dias.

City Manager Chotkevys provided a staff report. At the request of Mayor Pro Tem Chilton and Council Member Rayfield, this item was brought forward for discussion.

Sanford Edward, San Juan Capistrano, stated that Stone & Youngberg was originally selected as the bond underwriter and the recommended change from UBS to Stone & Youngberg is strictly a business issue. With Stone & Youngberg, he agreed to reduce the maximum value of the bond from \$45 million to \$40 million.

Kevin Darnall, Del Mar, asked the Council to change the bond underwriter to Stone & Youngberg and the Headlands would reduce the maximum value of the bond from \$45 million to \$40 million. He stated that this change would be of great benefit to Dana Point. Sales of the lots will begin shortly.



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Bill Huck, Coronado, Managing Partner of Stone & Youngberg, stated that his firm is prepared to underwrite a bond issue of up to \$40 million based on three conditions: 1) confirmation by the City or independent engineer that all 118 proposed lots are or can be finished to a point upon which a home can be built; 2) sale of at least 18 lots to at least 10 different owners not affiliated with the Developer; and 3) an appraised value at least 5 times the amount of CFD bond debt.

Council Member Harkey read a letter for the record from UBS dated November 8, 2006. This letter is provided and attached as **Exhibit A** of these minutes.

Council Member Harkey explained the process of selection of the bond underwriter when the City chose UBS. Council Member Harkey's comments for the record are provided and attached as **Exhibit B** of these minutes. Council Member Harkey asked staff to clarify when the City or independent engineer that all 118 are or can be finished to a point upon which a home can be built. Director of Community Development Fowler indicated it depends on "are" or "can be" finished.

Council Member Harkey stated that she has met with the developer and offered a backup system in case UBS didn't go through the process which was rejected. She indicated that the City should be very cautious in deciding to change the bond underwriter.

Council Member Harkey made a motion to recommend to take no action on this request to change the bond underwriter. The motion died for a lack of a second.

City Manager Chotkevys clarified the process of the City choosing UBS as the bond underwriter.

Council Member Rayfield, as a member of the Investment Review Committee, recalled that both UBS and Stone & Youngberg were very fine firms and either one could do the job.

Council Member Rayfield asked Mr. Huck of Stone & Youngberg if he wanted to respond to the statement made on the 118 lots. Mr. Huck stated that he has never worked with the Headlands LLC over the years.

Mayor Anderson asked Mr. Huck of Stone & Youngberg if they would have done anything differently than UBS. Mr. Huck responded that they have responded as clearly as possible.

Mayor Anderson asked Mr. Edward of Headlands LLC on why a change is necessary and why he has not cooperated with UBS. Sanford Edward explained UBS's underwriting criteria is based upon when the lot is being framed (i.e. sticks in the air) which would be fine if he wasn't selling custom lots/homes which will take a lot longer to design and build, and he also checked with other firms that

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UBS has a similar situation with and underwriting costs and criteria were very high. He indicated that they are happy to have UBS and Stone & Youngberg as co-underwriters. He feels he can deliver the facilities as quick as possible and as cheap as possible with the firm of Stone & Youngberg.

Council Member Harkey asked John Gibson, Managing Director of UBS, to explain this situation. John stated that they have not received a response on their due diligence letter. As far as costs are concerned, they compete with Stone & Youngberg frequently and each firm is very competitive.

Council Member Rayfield asked Mr. Huck of Stone & Youngberg, about limiting bond sales to institutions. Mr. Huck stated that non-rated bonds issues are sold to institutions as the preponderant investor whether it be through Stone & Youngberg or UBS. Most of the bonds are sold with this kind of offering.

Council Member Rayfield asked Mr. Edward of Headlands LLC if there is a benefit in terms of costs to the developer and City in making the change to Stone & Youngberg. Sanford Edward stated that statement was correct.

Council Member Harkey feels there is no legitimate reason to change underwriters.

Council Member Rayfield asked Mr. Huck of Stone & Youngberg about focusing on institutional investors. Mr. Huck agreed that is what is stated in his letter.

Council Member Harkey asked Mr. Huck if they will require a letter of credit as credit enhancement. Mr. Huck stated if the three conditions that they have listed in the letter are met, a letter of credit will not be required.

Mayor Anderson asked the City Attorney what happens if the developer continues not to provide information to UBS. City Attorney Munoz stated that there won't be bonds without providing information to the underwriter.

Mayor Anderson recessed the meeting at 10:40 p.m. and reconvened the meeting at 10:45 p.m.

Mayor Pro Tem Chilton stated that risk is risk, no matter what underwriter the City chooses and both are very reputable firms. The developer is more comfortable with Stone & Youngberg and wants to give Stone & Youngberg the opportunity to be the underwriter.

Sanford Edward stated that they do their due diligence when they make large investments, and they were very comfortable with Stone & Youngberg early on in the process.

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Council Member Harkey provided comments for the record, minutes and other information from the August 21, 2006 Investment Review Committee meeting is referred and attached as **Exhibit C** as part of these minutes. The September 8, 2006 letter from Stone & Youngberg is attached as **Exhibit D**; analysis of UBS and Stone & Youngberg bank letters is attached as **Exhibit E**; and pages 1 through 5 of the June 14, 2006 transcribed City Council minutes are attached as **Exhibit F** as part of these minutes.

Council Member Rayfield stated that he does not feel there is risk to changing underwriters, and there would be a benefit of lowering the bond maximum from \$45 million to \$40 million.

Council Member Harkey made a motion to continue with UBS and go to the first stage of due diligence.

The motion died for lack of a second.

COUNCIL MEMBER RAYFIELD MADE A MOTION, MAYOR PRO TEM SECONDED, TO ADD STONE & YOUNGBERG AS CO-UNDERWRITERS AND TO APPROVE AND AUTHORIZE THE MAYOR TO EXECUTE AN AMENDMENT TO THE HEADLANDS ACQUISITION AGREEMENT.

City Attorney Munoz suggested adding a change to the developer's proposed language to insert the phrase "among other things" to the developer's proposed language.

Council Member Harkey suggested other changes to the Acquisition Agreement concerning proceeds for escrow (sale of certain amount of lots or completion of certain amount of the amenities), and those amenities must be complete before the first building permit is issued.

Sanford Edward indicated that these conditions are in the development agreement, not the acquisition agreement. They won't be able to complete the public amenities within six months. If there are limitations with building permits, that may not be a benefit to the City.

Council Member Harkey asked that these changes with the acquisition agreement be sent to the Investment Review Committee for resolution.

Council Member Harkey proposed escrowing of funds to include the sale of a certain number of lots (i.e. 25 lots closing escrow, releasing a certain amount of the bond funds, etc. up to 100 lots all funds would be released).

Mayor Pro Tem Chilton indicated that this is a "yes" or "no" question, and called the question.

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Council Member Rayfield was asked to clarify the motion, and asked City Attorney Munoz to read the proposed language changes to the Acquisition Agreement, including the language suggested by the City Attorney.

City Attorney Munoz read the language changes to the Acquisition Agreement that would occur as a result of the motion as follows:

SECTION 2.5 The Bonds (Insert to first paragraph, new final sentence.)  
*Developer agrees to lower the maximum Bond authorization from \$45 million to \$40 million, and to condition the sale of the Bond, among other things, to the sales of at least 18 lots (consisting of at least 10 different owners), and an aggregate project appraised value of at least five times the amount of the CFD bond debt.*

SECTION 3.1 City Proceedings (Insert in first paragraph, new third sentence.)  
*Because the parties have consulted extensively in the selection of the underwriting team and recognize that the underwriting team is critical to the success of the offering, the City therefore agrees that Stone & Youngberg will be the Senior Manager of the underwriting team, and the City will not change any members of the underwriting team, without reasonable consultation and the written consent of the developer.*

The motion carried by the following vote:

AYES:	Council Member Rayfield and Mayor Pro Tem Chilton
NOES:	Council Member Harkey
ABSENT:	Council Member Lacy
ABSTAIN:	Mayor Anderson

### **NEW BUSINESS**

There was no New Business.

### **PUBLIC COMMENTS (Continued)**

There were no additional Public Comments.

### **STAFF REPORTS**

There were no Staff reports.

### **COUNCIL REPORTS**

There were no Council reports.

**CITY OF DANA POINT, CALIFORNIA  
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**ADJOURNMENT**

There being no further business before the City Council at this session, Mayor Anderson adjourned the meeting in memory of Raymond "Pete" Feddersen at 11:25 p.m.

An Adjourned Regular Meeting of the City Council will be held on November 20, 2006 (in-lieu of Regular Council meeting November 22<sup>nd</sup>) at 5:00 p.m. in the Dana Point Community Center located at 34052 Del Obispo, Dana Point, California.

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KATHY M. WARD  
ACTING CITY CLERK

APPROVED AT THE MEETING OF DECEMBER 13, 2006

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**CITY OF DANA POINT, CALIFORNIA  
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**Exhibit A**

**UBS Securities LLC**  
777 S. Figueroa Street, 51<sup>st</sup> Floor  
Los Angeles, CA 90017

**Municipal Securities Group**  
Mark J. Adler, Managing Director  
Tel. (213) 253-5403  
Fax. (213) 253-5401  
Mark.adler@ubs.com

www.ubs.com

November 8, 2006

Mr. Douglas C. Chotkevys  
City Manager  
City of Dana Point  
33282 Golden Lantern  
Dana Point, CA 92629

Dear Mr. Chotkevys:

Thank you for the opportunity to be represented at the Council meeting.

As I understand from parties involved in the Headlands CFD financing, the landowner has expressed dissatisfaction with UBS Securities LLC regarding our firm's lack of formulation of conditions to underwriting the CFD Bonds. As the leading Wall Street firm in underwriting land secured bonds, UBS believes, first and foremost, that we represent the City in the financing of these Bonds and it is not in the City's interest to agree to conditions in which these Bonds are sold until all due diligence material is provided by the landowner (including financials, financing plan, development schedule, environmental reports, etc.) and the project's market study and appraisal are completed. For the last six months, we (through our attorneys) have requested various information from the landowner and have not received any of the due diligence documents. Just as a local bank would not provide a mortgage without financials, appraisals, building plan, UBS does not feel that the City (through its underwriter) should commit to conditions to sell the Bonds until all the due diligence material is complete.

If the City does not want to follow this approach and feels they are better served with another underwriter, we will step aside. In addition, if the City would like to make this decision after UBS has received all the due diligence material and has provided its recommendations to the City on conditions in underwriting the Bonds; and, at that time, the City feels they would be better served with another underwriter, UBS will step aside.

Again thank you for this opportunity; at all times, it is our desire to represent and protect the City of Dana Point.

Sincerely,

UBS Securities LLC

Mark J. Adler  
Managing Director

cc: Lara Anderson, Mayor  
Russell Chilton, Mayor Pro Tem  
Diane L. Harkey, Council Member  
James V. Lacy, Council Member  
Wayne Rayfield, Council Member  
Larry Rolapp, Fieldman, Rolapp & Associates  
Bob Whalen, Stradling Yocca Carlson & Rauth

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Exhibit B

**City Council: November 8, 2006**

**Comments for the record prepared by: Councilwoman Diane Harkey**

**Headlands Request: October 6, 2006**

Change City selected Underwriter or Investment Bank from UBS to Stone and Youngberg

**Stated Reason:** Stone & Youngberg propose to reduce the amount of the bond from \$45 to \$40 Million.

**Stated Benefit to City:** Headlands Reserve will voluntarily agree to reduce the bond amount by \$5 million.

*Fact: per our transcribed minutes of the June 14, 2006 City Council Meeting* where the Community Facilities District was established, the city has not yet determined the amount of the bond, merely set the level of special tax. Our advisors stated for the record that we did not have enough due diligence to establish the bond amount and that the \$45 Million maximum bond amount could be reduced by the council at a later date closer to issuance.

**Result:** There is no benefit to the city, in fact there could be potential liability if the city allows the developer to influence the selection of its financial advisors.

**Examination and Review of Stone & Youngberg Letter:**

1. *As you know, the city of Dana Point originally retained our firm as the underwriter for the above referenced CFD.*

Facts: The city did not retain S&Y as underwriter. The Council authorized UBS to act as our underwriter for the CFD Bond for the Headlands Community Facilities District. The IRC had reviewed many Investment Banks through an RFP process, and recommended UBS to the Council. Stone and Youngberg were said to have previous transactions with the developer in former projects and for potential conflict and other reasons, the IRC decided upon UBS.

2. *We have continued our own independent research of the Headlands project and now like to make clear our conviction that a bond issue of \$35-\$40 million may be prudently structured, underwritten and sold in the near term without a*

November 8, 2006

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Comments: Councilwoman Harkey

RE: Headlands CFD Underwriter/ Investment Bank UBS

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*letter of credit in the amount of the bonds, and prior to the construction of the custom homes that will be built.*

Facts: This letter from S& Y is not a commitment. It is a "conviction". Therefore S&Y has made no offer of reducing the amount of the bond. They have merely stated that they would underwrite and sell a bond in a range of \$35-\$40 million without requiring that the bond be backed by a LOC for 100% of the bond. S&Y also do not state that a letter of credit as additional credit enhancement will not be necessary.

UBS did not request a LOC for 100% of the bond amount. In fact, no one excepting the developer, involved in the transaction has. The offer of the letter of credit in the full amount of the bonds was made to the City and UBS by the developer. It was never requested. In an August 21, 2006 memo to the IRC it was stated that "the absorption study was put on hold pending the response from the developer". UBS would also make a bond in an undetermined amount without a letter of credit for the full amount of the bonds. In fact a LOC for the full amount of the bonds is unheard of in the industry and has the potential of altering the transaction from a land secured to LOC secured bond, and may be subject to different treatment by the IRS.

*3. Subject to the City's approval of all relevant financing documents and our own continuing due diligence investigation of the proposed bonds, S&Y would be willing to underwrite and market to suitable institutional investors a bond issue of up to \$40 million based on satisfaction of the following project specific conditions:*

- *Confirmation by the city or an independent engineer that all 118 of the proposed lots are or can be finished to a point upon which a home can be built.*
  - When will the city be able to confirm that all of the 118 lots can be finished such that a home can be built?
    - 35 Strand lots are "blue top"
    - 35 Strand lots have limited grading and attempting to get retaining wall in place to hold back the tides that washed out a portion of the temporary wall.
    - The remaining 48 lots in the "bowl" are in various stages of grading.





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**Exhibit C**

NOTE: ON AUGUST 21, 2006 THE INVESTMENT REVIEW COMMITTEE VOTED UNANIMOUSLY TO RETAIN UBS AS THE CITY'S INVESTMENT BANK, AS THERE WAS NO REASON TO RECOMMEND REPLACING UBS.

Statement by Vice-Chair Harkey which was included as part of the record and minutes:

**Investment Review Committee**

August 21, 2006

Agenda Item: Unfinished Business – Headlands CFD 2006-1

**Comments prepared by:** Diane L. Harkey, Councilwoman and IRC Vice Chair to be submitted for the record, in the minutes of the Investment Review Committee (“IRC”), of this date, August 21, 2006.

**Letters for discussion** as part of the IRC Agenda package of this date:

1. Headlands Reserve, LLC (dated 8-3-06) hereafter referred to as “HR, LLC letter”
2. UBS (dated 7-27-06), hereafter referred to as “UBS letter”, and
3. Stone & Youngberg (dated 7-14-06) hereafter referred to as “S&Y letter”

**Background:** It was explained to the committee at the IRC meeting of 5-31-06, that the developer, Headlands Reserve, LLC (“HR, LLC”) had offered to provide a Letter of Credit (“LOC”) for the entire bond amount, of an estimated \$40-45 Million. If the 100% LOC were to be provided, the City and/or Investment Bank, UBS, would not need nor be requiring an absorption study as part of their analysis, at this time. Therefore, the absorption study was halted and the City council was not given benefit of that analysis at the June 14, 2006 Council meeting when the CFD was formed.

Also, at the IRC meeting of 5-31-06, UBS provided the City Attorney, City Manager, Councilman Wayne Rayfield and me with a copy of the term sheet (stipulating terms and conditions) for the LOC and noting release schedules for potentially beginning the bonding process under these new conditions. We were advised that said term sheet was part of a negotiation process between UBS and HR, LLC, and therefore was not provided as a public document. According to the UBS letter, no response has been forthcoming

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from HR, LLC to the term sheet conditions, until the HR, LLC letter, subject of this meeting.

We are meeting today because HR, LLC is now stating in a letter of 8-3-06, that HR, LLC cannot agree to the Letter of Credit criteria proposed by UBS and states that, "UBS is attempting to remake the CFD bond into something it is not intended to be, i.e., a 100% financially secured bond offering..."

However, we were told in the IRC meeting of 5-31-06 as well as at the City Council Meeting of 6-14-06 that it was HR, LLC that offered the 100% LOC, UBS did not request the 100% LOC. In fact, it was stated at our IRC meeting of 5-21-06 that HR, LLC did not wish to proceed with a valuation and absorption analysis and so, offered the 100% LOC in lieu of said valuation and absorption analysis to begin the bond underwriting process.

Now, we are being asked to replace UBS as our City's investment bank based on an unsubstantiated value of the HR, LLC property, which will be UBS's and our collateral for the bond.

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**MINUTES**

**CITY OF DANA POINT**

**INVESTMENT REVIEW COMMITTEE**

**MONDAY, AUGUST 21, 2006**

**APPROVED:** October 27, 2006

**LOCATION:** City Hall, Old EOC Conference Room, 33282 Golden Lantern, Suite 203, Dana Point, CA 92629

**CALL TO ORDER:** Vice Chair Harkey called the meeting to order at 3:05 p.m.

**ROLL CALL:**

Committee Members

Councilmember Wayne Rayfield, Chair (absent)  
Councilmember Diane Harkey, Vice Chair  
Larry Rolapp, Public Member  
James Kettler, Public Member  
Doug Chotkevys, City Manager  
Sharie Apodaca, Director of Administrative Services

Staff Liaison

Andy Glass, Accounting Manager

Others Present:

Patrick Munoz, City Attorney  
Stan Wolcott, Bond Counsel  
John Gibson, UBS  
Brian Forbath, Stradling Yocca Carlson & Rauth  
Kevin Darnell, Headlands Reserve LLC  
Peter Pillar, Headland's Planning Consultant  
John Yeager, Legal Counsel to Headlands  
Anna Racheva, Feldman, Rolapp & Assoc.  
William Huck, Stone & Youngberg

**PUBLIC COMMENTS:** None

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**APPROVAL OF MINUTES:**

1. Approve minutes of July 18, 2006.

Member Rolapp requested an amendment to page 2 of the minutes.

Moved by Member Rolapp, seconded by Member Chotkevys and carried (Rayfield absent) to approve the minutes as amended.

**UNFINISHED BUSINESS:**

2. Headlands Community Facilities District 2006-1

Member Rolapp recused himself as a member of the Investment Review Committee and acted in the capacity of financial advisor to the City for the CFD.

Vice Chair Harkey read aloud the following statement and requested that it be entered into the record and incorporated into the minutes:

**"Letters for discussion** as part of the IRC Agenda package of this date:

1. Headlands Reserve, LLC (dated 8-3-06) hereafter referred to as "HR, LLC letter"
2. UBS (dated 7-27-06), hereafter referred to as "UBS letter", and
3. Stone & Youngberg (dated 7-14-06) hereafter referred to as "S&Y letter"

**Background:** It was explained to the committee at the IRC meeting of 5-31-06, that the developer, Headlands Reserve, LLC ("HR, LLC") had offered to provide a Letter of Credit ("LOC") for the entire bond amount, of an estimated \$40-45 Million. If the 100% LOC were to be provided, the City and/or Investment Bank, UBS, would not need nor be requiring an absorption study as part of their analysis, at this time. Therefore, the absorption study was halted and the City council was not given benefit of that analysis at the June 14, 2006 Council meeting when the CFD was formed.

Also, at the IRC meeting of 5-31-06, UBS provided the City Attorney, City Manager, Councilman Wayne Rayfield and me with a copy of the term sheet (stipulating terms and conditions) for the LOC and noting release schedules for potentially beginning the bonding process under these new conditions. We were advised that said term sheet was part of a negotiation process between UBS and HR, LLC, and therefore was not provided as a public document. According to the UBS letter, no response has been forthcoming from HR, LLC to the term sheet conditions, until the HR, LLC letter, subject of this meeting.

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*We are meeting today because HR, LLC is now stating in a letter of 8-3-06, that HR, LLC cannot agree to the Letter of Credit criteria proposed by UBS and states that, "UBS is attempting to remake the CFD bond into something it is not intended to be, i.e., a 100% financially secured bond offering..."*

*However, we were told in the IRC meeting of 5-31-06 as well as at the City Council Meeting of 6-14-06 that it was HR, LLC that offered the 100% LOC, UBS did not request the 100% LOC. In fact, it was stated at our IRC meeting of 5-21-06 that HR, LLC did not wish to proceed with a valuation and absorption analysis and so, offered the 100% LOC in lieu of said valuation and absorption analysis to begin the bond underwriting process.*

*Now, we are being asked to replace UBS as our City's investment bank based on an unsubstantiated value of the HR, LLC property, which will be UBS's and our collateral for the bond.*

**Analysis of Subject Investment Bank Letters**

**UBS Letter**

- 1) *Per the date of the UBS letter the investment bank had not received the due diligence materials requested 4-24-06.*
- 2) *UBS admits to having limited information on the project.*
- 3) *UBS reiterates our City's Statement of Goals and Policies regarding CFDs and sets forth 14 of the many factors the bank will use to underwrite or qualify a bond of this nature. they include: Location, developer's experience, project debt and equity, product mix, infrastructure requirements, grading issues, absorption projections, competitive projects, valuations, tax burden, marketing plan, stage of development, lot sales, if any.*
- 4) *UBS provides several options to underwrite the bond.*
- 5) *UBS has focused on the "development risk" and provided a releases schedule assuming all the bonds are sold and proceeds are placed in an escrow account, per instructions from the IRC and City Council. Release schedule as follows:*
  - a) *Funds release stages 25, 50, 75, 107 units having reached the required development stage of*
    - i) *sufficient completion of public infrastructure such that CofO can be issued;*
    - ii) *issuance of building permit and commencement of vertical construction;*
    - iii) *property taxes current*

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- b) 107 lots sold with vertical construction beginning is the benchmark needed to assure the tax payments would carry the bond payment, as at that time all escrow funds would be released.
- 6) UBS has also suggested a Credit enhancement – or additional collateral – in the form of a Letter of Credit for a yet to be determined dollar amount may be considered to mitigate some of the “development risk” which I assume could expedite the release schedule noted in #4 above.
- 7) Without using an escrow approach as proposed in #4 above, UBS would issue and release bond funds at the point the subject HR, LLC land/collateral after 107 lots reach the required development stage.

**Stone & Youngberg Letter**

- 1) S&Y admit to being uninvolved with the process since fall 2005, and as UBS, admits to having little to no specific information on the project.
- 2) S&Y states they are confident that a \$35-40M bond could be issued without any form of credit enhancement or additional collateral but do not stipulate under what conditions, with or without escrow or provide a cursory release schedule.
- 3) S&Y does not have an appraisal of the property from which to assess value and couches its valuation depending on the progress of the physical construction underway and lot sales (of which neither has occurred).
- 4) S&Y offers some unspecific underwriting criteria such as:
- a) strength of project ownership (Single-asset LLC),
  - b) capitalization to weather downturn (cash flow or credit enhancement to carry the project w/o lot sales),
  - c) status of physical construction and sale of lots,
  - d) verification of what specific financial commitments have been made and by whom.
- 5) S&Y will need to assess the grading risk, completion of infrastructure requirements and finished lots, similar to UBS.
- 6) S&Y would structure with credit enhancement or LOC to mitigate construction period and early absorption risks, similar to UBS.

**Discussion Point:** Since neither the city, UBS or S&Y have received any information from HR, LLC to begin the underwriting process and:

- the 100% LOC offer has been withdrawn by HR, LLC,
- neither entity can provide a clear term sheet, delineating underwriting specifics and safeguards for the City in the bond process,
- UBS has provided more specifics as they are clearly more informed on the present stage of development and negotiations,
- Upon reacquainting themselves with the project, S&Y would most likely request similar underwriting criteria to UBS

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**CITY OF DANA POINT, CALIFORNIA  
CITY COUNCIL REGULAR MEETING MINUTES  
NOVEMBER 8, 2006**

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*The questions are:*

- 1) *Has UBS erred in some fashion that would necessitate or even validate the IRC recommending that the City Council consider changing Investment Banks?*
- 2) *If not, why would IRC recommend changing investment banks?"*

City Manager/Member Chotkevys stated now that the Headlands has withdrawn its offer of the LOC, the City needs to proceed in good faith with the due diligence process and complete the Market Absorption Study and appraisal of the CFD.

Mr. Chotkevys acknowledged the professionalism and reputation of UBS and Stone & Youngberg as two of the best underwriting firms in the business and thanked them for their interest in serving Dana Point.

Mr. Chotkevys queried UBS and Stone & Youngberg representatives if they felt, in their professional opinions, that Joe Janczyk of Empire Economics is capable of producing a fair and accurate Market Absorption Study for the Headlands CFD.

John Gibson of UBS and Bill Huck of Stone & Youngberg both responded in the affirmative and noted they have great respect for Dr. Janczyk.

Kevin Darnell, Headlands Reserve LLC, stated that Dr. Janczyk has a conservative bias and feels he would not provide a true market evaluation, and that an appraiser could be used for that purpose. Mr. Darnell stated that the sales of lots will commence in little over a month. He also stated that the Headlands did not offer a full LOC, but rather he understood the suggestion was offered by the underwriter, UBS.

Again, Mr. Chotkevys asked Mr. Gibson and Mr. Huck, having heard Mr. Darnell's comments, if they still felt Dr. Janczyk would produce a fair and accurate Market Absorption Study.

Mr. Gibson and Mr. Huck responded in the affirmative.

Mr. Darnell stated that the grading for the first 25 lots will be completed and "blue topped" in September.

Vice Chair Harkey indicated that completion of the grading and blue topping of the 25 lots by September would be very difficult and debated the issue with Mr. Darnell.

Vice Chair Harkey stated the purpose of the IRC meeting, at the request of the developer, is to consider whether or not to recommend to the City Council that it change investment banks. She stated she sees no reason to switch underwriters at this time. She stated she feels that Stone & Youngberg would request information from the developer very similar to that requested by UBS. Ms. Harkey noted that the City Council took action to retain UBS based on the recommendation



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**CITY OF DANA POINT, CALIFORNIA  
CITY COUNCIL REGULAR MEETING MINUTES  
NOVEMBER 8, 2006**

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of the IRC, and that she is confident with UBS to see the underwriting process through completion.

Vice Chair Harkey moved, and City Manager/Member Chotkevys seconded to continue with UBS for underwriting services for the Headlands Reserve LLC CFD 2006-1.

William Huck, Stone & Youngberg, stated he could have provided more specificity in his letter of interest and term sheet, but requires more information about the project. He stated absent additional information, the CFD could most likely be bonded without a LOC. He added at times, lot sales can provide as much information as an absorption study.

John Yeager, representing the Headlands, stated that UBS's LOC criteria is inconsistent with the project and opposes the purpose of the Development Agreement. He stated the UBS proposal to begin releasing funds once vertical construction has begun on 25% of the homes is too long of a time period before receiving reimbursements.

Mr. Gibson stated that UBS's current approach to the financing is based on the limited information available on the project. He stated he cannot draw conclusions without the information that is needed for underwriting. He stated he sent a questionnaire to the developer in April but still has not received a response.

Mr. Chotkevys reiterated that the City must continue in good faith with the due diligence process by completing the Market Absorption Study and appraisal of the CFD in order to progress towards completing the project.

Following discussion, the motion was carried, with Mr. Rolapp abstaining, and Chair Rayfield absent.

**NEW BUSINESS:** None

**ADJOURNMENT:** Vice Chair Harkey adjourned the meeting at 3:38 p.m.

Prepared by,



Sharie L. Apodaca  
Director of Administrative Services

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**CITY OF DANA POINT, CALIFORNIA  
CITY COUNCIL REGULAR MEETING MINUTES  
NOVEMBER 8, 2006**

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**DATE:** AUGUST 21, 2006  
**TO:** INVESTMENT REVIEW COMMITTEE  
**FROM:** SHARIE APODACA, ADMINISTRATIVE SERVICES DIR.  
**RE:** HEADLANDS CFD 2006-1

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**RECOMMENDATION:**

Consider Letter of Credit Criteria issued by UBS Securities to Headlands Reserve LLC, as well as subsequent responses issued by the Headlands regarding the proposed underwriting criteria CFD 2006-1; develop a recommendation for City Council consideration.

**DISCUSSION:**

As the IRC will recall, UBS issued a Letter of Credit Criteria term sheet on May 24, 2006 to the Headlands in response to the developer's offer to provide full credit enhancement financing for CFD 2006-1. The absorption study was put on hold pending a response from the Headlands.

Attached for your review is a letter from UBS explaining its approach to financing the bond issue with and without full credit enhancement.

Also attached are response letters from the Headlands in which the developer indicates he cannot agree to the Letter of Credit criteria, and further requests that the City consider an alternate underwriting firm.

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2

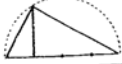
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**CITY OF DANA POINT, CALIFORNIA  
CITY COUNCIL REGULAR MEETING MINUTES  
NOVEMBER 8, 2006**

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HEADLANDS RESERVE LLC

RECEIVED

August 3, 2006

2006 AUG -4 P 1:10

CITY OF DANA POINT

Mr. Doug Chotkevys  
City Manager  
City of Dana Point  
33282 Golden Lantern  
Dana Point, CA 92629

**Re: Headlands CFD 2006-1**

Dear Doug,

We are writing in response to the "Letter of Credit Criteria" that was prepared by UBS Securities LLC ("UBS") regarding the proposed underwriting criteria for the above referenced Community Facilities District ("CFD"). The basic criteria that UBS proposed are inconsistent with the industry standards of the public bond financing markets.

As you know, in the past, the members of Headlands Reserve LLC ("HRLLC") have been successfully involved in projects that included over \$480 million of public bond financing. Many of these projects were undertaken in the early to mid-1990s, when the California real estate market and, hence, the public bond markets were at all-time lows. During that time, we never encountered surety-underwriting criteria that approached those currently requested by UBS.

Most importantly, the proposed underwriting criteria are completely at odds with the Headlands CFD project economics, which dramatically exceed all commonly accepted market standards. For example, the City recently adopted at a 3:1 bond debt to value ratio, which is consistent with common industry standards. However, our project will appraise at an estimated 8 to 12:1 ratio, because of the underlying value of our real estate. In other words, if our project appraises at \$400 M., under the City's standard we would be able to fund a \$133 M. CFD (assuming we had this many public facilities). Also, our approved \$45 M. funding capacity would be approximately 9:1, or 300% more conservative than the City's standard.

In twenty-four years since the Mello Roos Act was passed, we have never seen a CFD that was sold at or even approached a 9:1 bond debt to value ratio. Furthermore, the typical percent of total debt per household allocated to special assessments is 1% of assessed value. The Headlands CFD will result in debt levels of 0.3 to 0.5%, or nearly one-third to one-half of the assessed value debt standards for land secured financing. Hence, we see no need to provide a letter of credit for the full amount of the bond.

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**CITY OF DANA POINT, CALIFORNIA  
CITY COUNCIL REGULAR MEETING MINUTES  
NOVEMBER 8, 2006**

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Mr. Doug Chotkevys  
August 3, 2004  
Page 2

Thus, we cannot agree to the Letter of Credit criteria proposed by UBS. In effect, UBS is attempting to remake the CFD bond into something it is not intended to be, i.e., a 100% financially secured bond offering that will be marketed effortlessly. As a result, we do not think that UBS is the proper underwriter for the Headlands CFD, and we hereby request that the City consider an alternative firm.

Sincerely,

Headlands Reserve LLC



Sanford Edward, Principal

CC: Allen Haynie, Esq., Latham & Watkins

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**CITY OF DANA POINT, CALIFORNIA  
CITY COUNCIL REGULAR MEETING MINUTES  
NOVEMBER 8, 2006**

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**UBS Securities LLC**  
26522 La Alameda, Suite 300  
Mission Viejo, CA 92691-9973

**Municipal Securities Group**  
John H. Gibson, Managing Director  
Tel. (949) 364-7841  
Fax. (949) 364-7829  
John.Gibson@ubs.com

www.ubs.com

July 27, 2006

Mr. Douglas C. Chotkevys  
City Manager  
City of Dana Point  
33282 Golden Lantern  
Dana Point, CA 92629

Dear Mr. Chotkevys:

Pursuant to your request, the following outlines UBS's current approach to the City of Dana Point CFD No. 2006-1 Headlands Project. Please keep in mind that the developer has not submitted any of the due diligence materials which were requested by our counsel, Stradling Yocca Carlson & Rauth on April 24, 2006. In addition, UBS has not received information regarding valuations and absorption. As one would expect, any final term sheet is subject to UBS' due diligence.

**Approach to Financing with Full Credit Enhancement**

To date, UBS has not received any feedback on the letter of credit term sheet which was prepared in response to the developer's offer to provide full credit enhancement to this financing. That term sheet was distributed via e-mail on May 22, 2006 and presented on a conference call on May 24, 2006. Since we have not received any feedback or any additional information from the developer, our initial letter of credit term sheet has not changed (and is attached).

**Approach to Financing without Full Credit Enhancement**

UBS looks at many factors in underwriting unenhanced land secured financings. First and foremost, the project must meet the issuer's statement of goals and policies regarding community facilities districts. UBS takes a look at the characteristics of the project, including: 1) location; 2) developer's experience and resources; 3) developer's financing plan, including debt and equity related to the project; 4) product mix; 5) infrastructure requirements; 6) environmental and regulatory issues; 7) grading issues; 8) absorption projections; 9) competitive projects; 10) valuations; 11) tax burden; 12) marketing plan; 13) stage of development; and 14) lot sales, if any. With that information, UBS makes recommendations on the structure and timing of the financing as well as the marketing approach (institutional sale or a combined retail/institutional sale).

Based on the limited information we have on the project, our initial structural recommendations (assuming a bond sale to both institutions and individual investors) would encompass an approach to protect the City and bondholders against a delay in the public infrastructure being completed, a delay in the absorption in the project and/or financial difficulties of the developer. Of course, some or all of these provisions may not be necessary, based on receipt of all the due diligence materials.

The issue would be structured so all the bonds would be sold initially with the proceeds deposited in an escrow account held by the bond trustee. The timing of the initial sale would be subject to compliance with applicable federal tax law restrictions which require that the City have certain expectations on the issuance date as to when the proceeds of the bonds will be expended. Monies would be released to the developer based on certain milestones being met. These milestones include: sufficient completion of public infrastructure so certificates of occupancy can be issued, certification that taxes are current and sufficient commencement of vertical

CITY OF DANA POINT, CALIFORNIA  
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NOVEMBER 8, 2006



Mr. Douglas C. Chotkevys  
July 27, 2006  
Page 2 of 2

construction. For example, an approach similar to what was proposed for releasing the letter of credit (see previous) would enable the developer to access the escrow fund. They are as follows:

Funds may be partially released in four stages when 25, 50, 75 and 107 units have reached the required development stage. A lot will be deemed to have reached the required development stage once a building permit has been issued for the lot and vertical construction of a unit has commenced. Once 25 units have reached the required development stage, the escrow will be reduced to 80% of its initial amount, at 50 units to 60% of its initial amount and at 75 units to 40% of its initial amount. At 107 units the escrow would be released in its entirety if the City has certified to the Trustee that the remaining 11 lots are buildable lots. If the City determines that one of the remaining lots is not buildable, the escrow shall be drawn upon in an amount sufficient to prepay the facilities' Maximum Annual Special Tax for such parcel, and the proceeds will be applied to redeem Bonds.

**Other Approaches**

If the City elected not to pursue an escrow financing approach, bonds could be issued in two or more series using some of the criteria noted above.

If the City decided not to pursue either of the above approaches and desired to issue all the bonds without full credit enhancement or an escrow approach, bonds could be issued upon development reaching the stage of 107 units having building permits pulled and vertical construction.

**Other Issues**

**Capitalized Interest:** Interest would be capitalized from the date of the bonds until the next September 1st. Any additional interest (subject to Federal and State laws) would be at the discretion of the City.

**Partial Credit Enhancement:** Many issuers include a short term letter of credit equal to 12 to 24 months of debt service until the "development risk" is reduced or eliminated. Investors find this feature attractive when purchasing land secured bonds. We will look to the City to advise us on its desire to include such a feature on any bonds for the Headlands Project.

Again, any final recommendations regarding a term sheet will require fulfillment of UBS' due diligence. This letter is not a commitment to underwrite the bonds on any particular terms. Please contact me with any questions at (949) 364-7841.

Sincerely,

UBS Securities LLC

A handwritten signature in cursive script that reads "John H. Gibson".

John H. Gibson  
Managing Director

Enclosure

cc: Mark Adler, UBS Securities LLC  
Larry Rolapp, Fieldman, Rolapp & Associates  
Bob Whalen, Stradling Yocca Carlson & Rauth

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**CITY OF DANA POINT, CALIFORNIA  
CITY COUNCIL REGULAR MEETING MINUTES  
NOVEMBER 8, 2006**

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RECEIVED

2006 JUL 17 AM 11:30

CITY OF DANA POINT

July 14, 2006

Mr. Douglas C. Chotkevys  
City Manager  
City of Dana Point  
33282 Golden Lantern  
Dana Point, CA 92629

**Re: Community Facilities District 2006-1 (Headlands Reserve)**

Dear Mr. Chotkevys:

Thank you for the opportunity to submit this letter of interest and term sheet with regard to the City's proposed CFD bonds for the Headlands Reserve project. Although we had an opportunity to work with the project finance team for several months last fall, we are generally unaware of events that have transpired during 2006. Since we believe that you and your finance staff are familiar with the depth of Stone & Youngberg's experience in California CFD financings, we trust that you'll regard our naiveté about recent events as a condition that can be quickly remedied through a couple direct meetings with your finance team.

Dana Point's Headlands Reserve is probably the premier coastal real estate project in California. Its incomparable location in a city with a well-earned reputation for quality makes the Dana Point Headlands an extremely desirable address. Based on our early work with the City and developer, we understand that the real estate development project has been well capitalized by the developer and a very large public employee pension fund. However, more due diligence of this and many other facts will be required in order for us to confirm the conclusions and recommendations below.

Based on our present understanding, Stone & Youngberg is confident that a bond issue of \$35 to \$40 million may be prudently structured, underwritten and sold without a letter of credit or any other form of credit enhancement. We're aware that the special tax rates and debt burden on the 118 proposed homes will be very high compared with other Mello-Roos bond issues. But, we are confident that the sophisticated institutional investors to whom we would propose selling the bonds will recognize that the Dana Point Headlands project will be incomparable in many respects.

As shown on the enclosed spread sheets, we understand that the total annual tax burden of about \$85,000 to \$90,000 per year should approximate about 1.5% of the average expected home value of at least \$6 million each. While high compared with run-of-the-mill CFD's in California, we expect that this annual tax bill will not have a profound effect on the absorption of the distinctive lots and/or homes in the Headlands project. However, we have a great respect for Dr. Joe Janczyk, and look forward to his professional evaluation of this matter.

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**CITY OF DANA POINT, CALIFORNIA  
CITY COUNCIL REGULAR MEETING MINUTES  
NOVEMBER 8, 2006**

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Page 2  
Community Facilities District 2006-1 (Headlands Reserve)

Based on our present understanding, we expect that the value of the 118 Headlands lots may approximate \$2.7 million each without counting significant value attributable to lot premiums. We are not aware of the status of any City-commissioned appraisal of the land, but anticipate that the total land value might exceed \$300 million or more than 8 times the expected CFD bond debt. Depending upon the progress of the physical construction now underway and the sale of lots, this value should be sufficient to adequately secure the bonds without additional credit enhancement.

While value to debt ratios and tax rates are convenient and important indices of bond security, we don't believe they are the only --or even the most important--factors in assessing credit quality for a CFD of this type. Perhaps more important to us are the strength of the project ownership and its capitalization to weather a market downturn and, especially, the status of the physical construction and sale of lots (or the commitment to buy lots with a substantial, nonrefundable deposit). Stated differently: what substantial financial commitments have been made and by whom?

Of greatest importance to us will be the financial resources --both from the CFD bonds and otherwise -- that are firmly committed to complete the construction of finished lots to the specifications required by the City's Development Agreement and the needs of those who will be building homes at the Headlands. We will be interested in developing a very clear understanding of the risks to completing the grading, infrastructure and construction of fully finished lots. Once the lots are completed, we believe that the distinctive and enduring attributes of the Headlands project will assure its success.

Obviously, if the bonds can be prudently structured without any credit enhancement, it will also be possible to structure a bond issue that includes a letter of credit to mitigate construction period and early absorption risks. For example, several public agencies with which we've worked require a letter of credit in an amount of two years of anticipated special taxes. If the City prefers this approach, we have found it to be essential that the LOC provider be committed and involved at the earliest possible time.

Because of the distinctive nature of the project, we don't expect that the CFD 2006-1 bonds will be suitable for or of interest to every retail and institutional investor with experience in buying Mello-Roos bonds. Rather, we would advocate an approach that focuses, and perhaps even limits, the bond sale to qualified institutions with substantial experience in investing in other high end residential projects. Our approach would be to introduce several such investors to the project at the outset of Stone & Youngberg's involvement in order to gain the benefit of their input and to assure that a number of qualified institutions are interested in buying the bonds. Our goal will be to sell the bonds to a relatively small number of suitable institutional investors at the lowest practicable cost --and to do so on your schedule.

Please consider this letter a clear indication of Stone & Youngberg's strong interest and desire to become re-engaged in the Dana Point Headlands project and our commitment to work with the entire project team to ensure a successful bond financing.

Sincerely,



L. William Huck  
Managing Director



**CITY OF DANA POINT, CALIFORNIA  
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DRAFT 7/14/06

**CITY OF DANA POINT  
CFD No. 2006-1 (Headlands Project)  
2006 Special Tax Bonds  
(Approximate Par: \$35-40 Million)**

Draft Term Sheet

CFD 2006-1	
<i>General Description</i>	<ul style="list-style-type: none"> <li>• 118 Single Family Custom Lots &amp; 3.86 Acre Commercial</li> </ul>
<i>Lot/Home Sizes</i>	<ul style="list-style-type: none"> <li>• ~7,500sf – 11,750sf / ~5,000sf – 6,000sf</li> </ul>
<i>Special Tax Rates</i>	<ul style="list-style-type: none"> <li>• Total Residential Estimated Tax Rate for 2006-07: 1.48%</li> </ul>
<i>Term of Special Taxes</i>	<ul style="list-style-type: none"> <li>• 30 years</li> </ul>
<i>Term of Bonds</i>	<ul style="list-style-type: none"> <li>• 30 years</li> </ul>
<i>Bond Structure</i>	<ul style="list-style-type: none"> <li>• Mix of Serial &amp; Term Bonds with 10-Year Call Protection</li> </ul>
<i>Special Tax Pledge</i>	<ul style="list-style-type: none"> <li>• Stand-alone Bond Indenture</li> </ul>
<i>Bond Sizing Constraints</i>	<ul style="list-style-type: none"> <li>• Consistent with City of Dana Point Adopted Goals &amp; Policies:                             <ul style="list-style-type: none"> <li>◦ Total Tax Burden &lt; 2% of Base Sales Price</li> <li>◦ 110% Debt Service Coverage after Allocation for Annual City Administrative Expenses</li> <li>◦ Minimum 3:1 Assessed Value / Burden</li> </ul> </li> <li>• Level Debt Service</li> </ul>
<i>Capitalized Interest Fund</i>	<ul style="list-style-type: none"> <li>• Approximately 12 Months</li> </ul>
<i>Reserve Fund</i>	<ul style="list-style-type: none"> <li>• Fully Funded w/Cash for no less than the least of:                             <ul style="list-style-type: none"> <li>◦ 10% of Initial Principal Par Amount of Bonds</li> <li>◦ 125% of Annual Average Debt Service on Outstanding Bonds</li> <li>◦ Maximum Annual Debt Service on Outstanding Bonds</li> </ul> </li> </ul>
<i>Letter of Credit</i>	<ul style="list-style-type: none"> <li>• <u>Option 1</u> No Letter of Credit Necessary (Subject to Due Diligence by Finance Team)</li> <li>• <u>Option 2</u> 2-Years of Debt Service, including Interest &amp; Principal ~\$5.52M</li> <li>• <u>Option 3 (Not Recommended)</u> Total Principal &amp; Interest of Bonds</li> </ul>
<i>Marketing &amp; Trading</i>	<ul style="list-style-type: none"> <li>• "Market Normal" CFD Bonds</li> <li>• \$5,000 Denominations</li> <li>• Negotiated Underwriting Discount/Match Previous Negotiations</li> </ul>
<i>Non-payment Remedies</i>	<ul style="list-style-type: none"> <li>• Typical CFD bond covenants and remedies</li> </ul>
<i>Bond Ownership</i>	<ul style="list-style-type: none"> <li>• Limited to Qualified Institutional Investors and Qualified Large Retail Accounts</li> </ul>
<i>Sale Options</i>	Sell to Institutional or Large Retail Accounts: <ul style="list-style-type: none"> <li>• Multiple Bonds and Bondholders</li> <li>• DTC Book Entry</li> <li>• Minimum 3:1 Appraised or Expected Assessed Value / Lien</li> </ul>
<i>Disclosure</i>	<ul style="list-style-type: none"> <li>• Standard OS drafted by McFarlin &amp; Anderson</li> </ul>

**CITY OF DANA POINT, CALIFORNIA  
CITY COUNCIL REGULAR MEETING MINUTES  
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DRAFT 7/14/06

**CITY OF DANA POINT  
CFD No. 2006-1 (Headlands Project)  
2006 Special Tax Bonds**

Early Bond Summary\*

**Preliminary Bond Summary:**

**Dated/Delivery: 12/01/06**

**Sources:**

Par Amount	\$38,680,000
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**Uses:**

Deposit to Improvement Fund	\$33,210,401
Debt Service Reserve Fund	2,760,499
Capitalized Interest Fund (to 9/1/07)	1,685,499
Cost of Issuance	973,600
First Year CFD Administration	50,000
	<u>\$38,680,000</u>

**Debt Service Overview:**

Debt Service Description	Level
Approx. Ave. Annual Debt Service	\$2,750,000

**Debt Service Reserve Calc:**

10% of Initial Par Amount	\$3,868,000
125% of Ave. Annual Debt Service	\$3,437,773
Maximum Annual Debt Service (Capitol)	\$2,760,499

\*Sizing, Debt Service and all other numbers based on very early/preliminary numbers from various members of the Finance Team.

**CITY OF DANA POINT, CALIFORNIA  
CITY COUNCIL REGULAR MEETING MINUTES  
NOVEMBER 8, 2006**

City of Dana Point  
CFD 2006-1  
Special Tax Spread  
Preliminary Estimate as of July 14, 2006  
text = variable

	Example Total Residential Tax Rate		Conservative CFD Special Tax Revenues		Total CFD Rev
	Lot	Lot + Prem. + 4,200SF home	Home (South Strand)	Home (North Strand)	
% Total of AV			70	48	118
# Lots		4,200			
Home SF (Improvement Area)		\$350	5,000	6,000	3.86
# of Acres		\$350	\$350	\$350	
\$/SF of Improvement Area		\$25,700	\$25,700	\$25,700	
CFD 2006-1 Tax/Lot (Facilities)	\$25,700	\$25,700			\$15,000
CFD 2006-1 Tax/Acre (Facilities)	\$2,100	\$2,100			\$750
CFD 2006-1 Tax/Lot (Maint.)					
CFD 2006-1 Tax/Acre (Maint.)					
<b>Value</b>					
Base Lot	\$2,700,000	\$ 2,700,000	\$ 2,700,000	\$ 2,700,000	
Lot Location Premium		1,400,000	1,800,000	1,400,000	
Improvements		1,470,000	1,750,000	2,100,000	
Homeowner Exemption		(7,000)	(7,000)	(7,000)	
<b>Subtotal</b>	\$2,700,000	\$4,093,000	\$6,243,000	\$6,193,000	
<b>Ad Valorem</b>					
Existing	\$27,000	\$40,930	\$62,430	\$61,930	
Metro Water Dist.	140	213	325	322	
Cap USD ID1 99 BD 00	133	202	308	306	
Cap USD ID1 99 BD 01	84	128	195	193	
Cap USD ID1 99 BD 02	73	111	170	168	
<b>Subtotal</b>	\$27,431	\$41,584	\$63,428	\$62,920	
<b>Special Tax &amp; Assessments</b>					
Mosquito/Fire Ant. Assess.	\$5	\$5	\$5	\$5	
Water Capacity Charge	534	534	534	534	
Vector Control	12	12	12	12	
MWD Water Standby	344	344	344	344	
Sewer Maint.	25,700	25,700	25,700	25,700	
CFD 206-1 Spec. Tax - Fac.	2,100	2,100	2,100	2,100	
CFD 206-1 Spec. Tax - Maint.	28,696	28,696	28,696	28,696	
<b>Subtotal</b>	\$56,128	\$70,281	\$92,124	\$91,616	
<b>Annual Tax/Lot</b>	2,079%	1,717%	1,478%	1,479%	
<b>Residential Total Tax Rate</b>					
<b>Annual CFD Revenues</b>			1,946,000	1,334,400	60,795
<b>% of Total CFD Revenues</b>			58.2%	39.9%	1.8%
<b>Annual CFD Revenues for DS</b>			\$1,799,000	\$1,233,600	\$57,900
<b>Value of Base Lots Alone (Residential Only)</b>			\$ 189,000,000	\$ 129,600,000	\$38,680,000
<b>Bond Par</b>					8.24
<b>Value/Burden (With Only Base Lots of Residential)</b>					



CITY OF DANA POINT, CALIFORNIA  
CITY COUNCIL REGULAR MEETING MINUTES  
NOVEMBER 8, 2006

11/8/06

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Exhibit D

Item #18



September 8, 2006

Mayor Lara Anderson and Members of the City Council  
City of Dana Point  
33282 Golden Lantern  
Dana Point, CA 92629

Re: Community Facilities District 2006-1 (Headlands)

Dear Mayor Anderson and Members of the City Council:

As you know, the City of Dana Point originally retained our firm as the underwriter for the above referenced CFD bond. Over the last several months, we have continued our own independent research of the Headlands project and would now like to make clear our conviction that a bond issue of \$35 to \$40 million may be prudently structured, underwritten and sold in the near term without a letter of credit in the amount of the bonds and prior to the construction of the custom homes that will ultimately be built.

Subject to the City's approval of all relevant financing documents and our own continuing due diligence investigation of the proposed Bonds, Stone & Youngberg would be willing to underwrite and market to suitable institutional investors a bond issue of up to \$40 million based on satisfaction of the following project-specific conditions:

1. Confirmation by the City or an independent engineer that all 118 of the proposed lots are or can be finished to a point upon which a home can be built.
2. Sale of at least 18 lots to at least 10 different owners not affiliated with the Developer.
3. An appraised value at least 5 times the amount of CFD bond debt.

Given the nature of the program in which custom lots in The Straud neighborhoods will be offered at approximately \$3 to \$7 million each, we believe that the actual sale of a significant number of lots will provide the most accurate indicator of market demand, absorption and ultimate project success. While admittedly very different than for typical CFD's in which many hundreds of production homes will be constructed and marketed by several merchant builders, our underwriting judgment for this very distinctive project is based on the following observations:

- A. Our present understanding, which is subject to confirmation as required by condition 1 above, that the site is legally and physically suitable for construction of all 118 lots.
- B. The strength of the project ownership based on the equity invested to date by HHP Capital Partners Fund I and the development partners of Headlands Reserve LLC. We understand that approximately \$137,600,000 in equity has been invested to date and that the project has no debt. We further understand that the ownership has committed an additional \$107,200,000 in equity capital funds necessary to complete the 118 lots and all of the associated public and private facilities.
- C. Proven sales that will be closed to independent buyers as required by condition 2 above.

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Item #18

Mayor Lara Anderson and Members of the City Council  
City of Dana Point  
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Given the distinctive nature of the Headlands project, we anticipate a bond marketing approach that focuses on, and perhaps even limits, the bond sale to qualified institutions with substantial experience in investing in other high end residential projects. Our approach would be to introduce several such investors to the project at the outset of Stone & Youngberg's re-engagement in order to gain the benefit of their input and to assure that a number of qualified institutions are interested in buying the bonds. Our goal will be to sell the bonds to a relatively small number of suitable institutional investors at the lowest practicable cost--and to do so on your schedule.

Please consider this letter a clear indication of Stone & Youngberg's strong interest and desire to become re-engaged in the Headlands project and our commitment to work with the entire project team to ensure a successful bond financing.

Sincerely,



L. William Huck  
Managing Director

Copy: Douglas C. Chokeyvs, City Manager  
W. Kevin Dornall, Headlands Reserve LLC

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Exhibit E

**Analysis of Subject Investment Bank Letters**

**UBS Letter**

- 1) Per the date of the UBS letter the investment bank had not received the due diligence materials requested 4-24-06.
- 2) UBS admits to having limited information on the project.
- 3) UBS reiterates our City's Statement of Goals and Policies regarding CFDs and sets forth 14 of the many factors the bank will use to underwrite or qualify a bond of this nature. they include: Location, developer's experience, project debt and equity, product mix, infrastructure requirements, grading issues, absorption projections, competitive projects, valuations, tax burden, marketing plan, stage of development, lot sales, if any.
- 4) UBS provides several options to underwrite the bond.
- 5) UBS has focused on the "development risk" and provided a releases schedule assuming all the bonds are sold and proceeds are placed in an escrow account, per instructions from the IRC and City Council. Release schedule as follows:
  - a) Funds release stages 25, 50, 75, 107 units having reached the required development stage of
    - i) sufficient completion of public infrastructure such that CofO can be issued;
    - ii) issuance of building permit and commencement of vertical construction;
    - iii) property taxes current
  - b) 107 lots sold with vertical construction beginning is the benchmark needed to assure the tax payments would carry the bond payment, as at that time all escrow funds would be released.
- 6) UBS has also suggested a Credit enhancement – or additional collateral – in the form of a Letter of Credit for a yet to be determined dollar amount may be considered to mitigate some of the "development risk" which I assume could expedite the release schedule noted in #4 above.
- 7) Without using an escrow approach as proposed in #4 above, UBS would issue and release bond funds at the point the subject HR, LLC land/collateral after 107 lots reach the required development stage.

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**Stone & Youngberg Letter**

- 1) S&Y admit to being uninvolved with the process since fall 2005, and as UBS, admits to having little to no specific information on the project.
- 2) S&Y states they are confident that a \$35-40M bond could be issued without any form of credit enhancement or additional collateral but do not stipulate under what conditions, with or without escrow or provide a cursory release schedule.
- 3) S&Y does not have an appraisal of the property from which to assess value and couches its valuation depending on the progress of the physical construction underway and lot sales (of which neither has occurred).
- 4) S&Y offers some unspecific underwriting criteria such as:
  - a) strength of project ownership (Single-asset LLC),
  - b) capitalization to weather downturn (cash flow or credit enhancement to carry the project w/o lot sales),
  - c) status of physical construction and sale of lots,
  - d) verification of what specific financial commitments have been made and by whom.
- 5) S&Y will need to assess the grading risk, completion of infrastructure requirements and finished lots, similar to UBS.
- 6) S&Y would structure with credit enhancement or LOC to mitigate construction period and early absorption risks, similar to UBS.

**Discussion Point:** Since neither the city, UBS or S&Y have received any information from HR, LLC to begin the underwriting process and:

- the 100% LOC offer has been withdrawn by HR, LLC,
- neither entity can provide a clear term sheet, delineating underwriting specifics and safeguards for the City in the bond process,
- UBS has provided more specifics as they are clearly more informed on the present stage of development and negotiations,
- Upon reacquainting themselves with the project, S&Y would most likely request similar underwriting criteria to UBS

The questions are:

- 1) Has UBS erred in some fashion that would necessitate or even validate the IRC recommending that the City Council consider changing Investment Banks?
- 2) If not, why would IRC recommend changing investment banks?

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Exhibit F

**Dana Point City Council Meeting**

**June 14, 2006**

Transcribed Minutes to questions asked on  
Headlands CFD Formation. Transcription begins  
after the recess following the power-point  
presentation made by Councilwoman Harkey.



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**Dana Point City Council Meeting**

MAYOR ANDERSON: Well I have a question I guess that anybody can answer you know Wayne, [unintelligible] whoever. Were all these concerns brought up at the investment review committee meeting?

COUNCILMAN HARKEY: No. Or some of them were by me. The investment review committee meeting as I said was very interesting. Larry recuse himself and he is very experienced in all of this, but he recuses himself so he is on the sidelines. Wayne is of a different opinion than I am. there is me. Jim Kentler [phonetic] has been extremely valuable in many aspects of our investment review committee, but he has had no experience with the CSC bond. And so his comments have been very limited and Sherry and Doug operate a staff and they offer comments. But you know it is kind of a different - it is an interesting group so...

MAYOR ANDERSON: I have a question for you. you have done CFD bonds then you are saying? You have experience?

COUNCILMAN HARKEY: No I have not. I have not and that is why this has been such a learning experience. That is why I didn't know exactly what was going on with the tentative tract map condition.

MAYOR ANDERSON: Okay. I mean, I am just wondering if the investment review committee acts sort of like the town center subcommittee. Because I am not on that committee I am on the town center sub committee where we, you know really go into deep into issues and it is public comments and everything is thoroughly [unintelligible] at that level.

COUNCILMAN HARKEY: I would just like to say that we are supposed to have public comment and stuff, but people don't really show up. But what happens so frequently is I ask a lot of questions or I will make comments and nobody responds because it is all - it is a very - there is a lot of pressure surrounding this bond right now. So I think that that is why I want to have all these things out for us to review and have you have the benefit since your name is going to be signed on all the documents. Let you have the benefit of the knowledge that I have garnered, as well as my background experience and how I have tried to piece this together using what help I

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could get from the - from council city manager, as well as piecing it together.

MAYOR ANDERSON: Okay. Can we go to Page 3 of your presentation?

COUNCILMAN RAYFIELD: Before you do that could I just make a comment about the committee?

MAYOR ANDERSON: Okay.

COUNCILMAN RAYFIELD: First of all, even though Mr. Rolapp [phonetic] recuses himself from a voting member, he has provided a great deal of advice and council as others on the committee. And I just want to answer two - deal with two questions. First of all we keep getting this question about well what happens if the public amenities aren't completed. And there was an analogy made by Mary Jefferies [phonetic] with the sea terrorist part [phonetic] and St. Regis. But remember this is a condition of the coastal commission. So we cannot waffle on this one at all. We have to adhere to these conditions. And if the public amenities aren't complete we simply cannot issue a certificate of occupancy and it is not totally up to the city. Is that a fair statement Kyle?

[CROSSTALK]

COUNCILMAN HARKEY: Certificate of occupancy here is not made by the coastal commission that was made by the city council.

COUNCILMAN RAYFIELD: Does the coastal commission approve all the conditions and that our conditions - let's hear Kyle's response.

[CROSSTALK]

MAYOR ANDERSON: Let's hear Kyle - let's hear Kyle please.

KYLE: I would agree with your statement and that is one of the stipulations of the approval.

COUNCILMAN RAYFIELD: And secondly, in the interest of our agenda item tonight, which is the community facilities district and not the bond I think Councilwoman Harkey has on the bond itself done a very thoughtful, thorough review and has raised a lot of important questions many of which we can't answer unless the community facilities district is formed and...

So and I just want to repeat that our agenda item tonight is

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not the bonds, not the make up of the bonds or the amount of the bonds actually issued and whenever that happens. But it is focused as I understand the agenda item on the formation of the community facilities district so many of these details, many of these questions that need to be answered can be worked out and can be answered. So I think it is important that we focus on that. and that is not to take away from any of your thoughtful, thorough work. I think it is very good. And we need to address these things, but in my mind that is not what we are here to do tonight.

COUNCILWOMAN HARKEY: I have to respectfully disagree with you. We are studying the level of special tax tonight that is what we are being asked to do in one of the documents. Once we set the level of special tax one of my questions was going to be can the council lower it and no in fact we can't because I have asked that before. So once we set the level of special tax at 27.8, we are then in essence authorizing a \$45 million dollar bond with no background information. So please allow me to continue because I will have a lot of questions and maybe if my questions get answered we will have the information we need to assess that level of special tax.

MAYOR ANDERSON: Can I piggyback on what you just said though?

COUNCILWOMAN HARKEY: Sure.

MAYOR ANDERSON: 'Cause that was going to be one of my questions too. If we go forward tonight with approving the community facilities district and we set the maximum sealing at \$45 million can we come back at a later date when we are talking about the bonds and say, you know what we are really uncomfortable with that. We prefer 36 or whatever and this and that and we would like to see the purchase price up front be more rather than have - I mean can we come back and change that or are we setting things in stone this evening?

[CROSSTALK]

MALE VOICE: I think that is a question for Larry.

MAYOR ANDERSON: You are setting the special tax. I mean is there - when we get to that point, I mean are we - are we locked in I guess is my question?

LARRY: I am going to try and keep my answers brief. But obviously these questions because - I am going to try and

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keep my responses brief, but at the same time you are asking questions that I think that require a detailed answer. The maximum special tax that you set for the custom blocks is the 25 8 number. When the bonds are sold the amount of debt service and the administrative cost plus the maintenance cost will determine how much will have to be levied. There is a formula in how you levy the tax. You first go to developed property or the properties that are considered..

MAYOR ANDERSON: Well just yes or no. I mean are we locked into that number if we [interposing].

LARRY: The 25 8?

MAYOR ANDERSON: Yes.

LARRY: That is the maximum number you will be locked in.

MAYOR ANDERSON: But is that what we have to...?

LARRY: The answer is no.

[CROSSTALK]

LARRY: The - what ends up happening when you go to issue the bonds you can only issue the bonds for those public improvements and this is a very rough summary here.

MAYOR ANDERSON: I just want - yeah I just want [unintelligible].

LARRY: Certain public improvements can be included. If the amount of those public improvements and all the things that are being financed only comes to \$39 million that will be the amount of the bond.

MAYOR ANDERSON: Okay. So [interposing].

COUNCILMAN CHILTON: We are not going to issue bonds for \$45 million and then just give the developer an extra \$5 million to go play with.

[CROSSTALK]

MAYOR ANDERSON: No and we are not locking into that number tonight. We are just saying that is an absolute maximum that we can [unintelligible].

LARRY: That is a cursory summary.

MAYOR ANDERSON: Okay. Okay. Diane had a question about Page 3

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here where you say conditions in the development agreement with Headlands Reserve require the city to establish a community facilities district. So we have to do that. I mean this is what we have to do.

COUNCILWOMAN HARKEY: We do, but we don't have to do it with no information. If you will allow me to continue I have questions for all of these individuals that are very important to this fact and I have a memo from the city attorney that states that once we establish the 27 8 that the only person that can lower that subject to our not issuing the bonds for the \$45 million if that doesn't happen. but the only one that can lower that is the land owner.

Now what I am trying to get at here is that we don't have any information so we really don't know what we are going to issue our bond for. So if you will allow me to continue I can show you how we could easily get up to the \$45 million with what is going on with the investment review committee and the negotiations with all hands that I am not privy too.

So may I continue please?

MAYOR ANDERSON: Go ahead.

COUNCILWOMAN HARKEY: Thank you. Okay. Staff, since you did that first estimate of \$37 million what was the amount of the special tax at that? Do you have an estimate? What I did is I took the - maybe Larry has it. But what I did is I kind of just divided things and I got a level of special tax between 20 and 23 depending on what I used as the back up data. But that is just something that maybe you can get back to me on.

LARRY: All the numbers that you have are varying assumptions, but they are all assumed to use the maximum tax of the 25 7.

COUNCILWOMAN HARKEY: Even when we were proposing the \$37 million dollar bond proposal?

LARRY: The answer is

COUNCILWOMAN HARKEY: You can get back to me.

LARRY: Thank you.

[CROSSTALK]

FEMALE VOICE: Here is the paper Larry. I am sorry but I won't necessarily keep it into this [inaudible] get into this