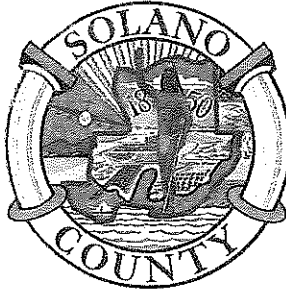


GRAND JURY



HALL OF JUSTICE
600 UNION AVENUE
FAIRFIELD, CALIFORNIA 94533
PHONE (707) 421-7837
FAX (707) 421-7817

SOLANO COUNTY GRAND JURY - CITIZEN COMPLAINT FORM

Your Name DONNIE MASON Driver's License No. MO 657909
Home Address 35 EL BONITO WAY - BENICIA - CA - 94510
Work Address _____
Home Phone 707-745-4020 Work Phone _____

PERSON OR AGENCY ABOUT WHICH YOUR COMPLAINT IS MADE

Name PLEASE SEE ATTACHMENT
Address _____
Person In Charge (if Agency) _____

Hall of Justice
600 Union Avenue
Fairfield, CA 94533
(707) 421-7837

COUNTY OF SOLANO
JURY SERVICE OFFICE

Solano Justice Bldg.
321 Tuolumne Street
Vallejo, CA 94590
(707) 553-5271

****JURY VERIFICATION****

TO WHOM IT MAY CONCERN:

This is to certify that Complaint from Donnie Mason was called and appeared
for jury duty in Fairfield/Vallejo, California on JUL 09 1996
was received in Jury Assembly Room

☐ Selected as a juror.

☐ Was not selected as a juror.

☐ Released upon arrival: (1) Exempt/Disqualified. (2) Group excused/postponed by telephone.

☐ To report back _____

☐ To call recorded message (707) 421-7840 / (707) 553-5271 after _____ for
further instructions.

J. L. COFFMAN
Jury Services Office

By: _____

Date/Time: JUL 09 1996 3:25 PM

COMPENSATION RATE: \$5.00 A DAY AND \$.15 PER MILE (ONE-WAY) ONLY FOR THOSE
JURORS SELECTED. (3/96)

TIME AND DATE YOU FIRST LEARNED OF THE PROBLEM 03-29-96

Other Witnesses (if Known):

<u>Name</u>	<u>Address</u>	<u>Date of Contact</u>

WHOM DO YOU THINK SHOULD BE CONTACTED?

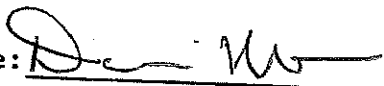
<u>Name</u>	<u>Address</u>	<u>Phone Number</u>
<u>PLEASE SEE ATTACHMENT</u>		

WHAT ACTION DO YOU WANT THE GRAND JURY TO TAKE? BE SPECIFIC.

PLEASE SEE ATTACHMENT

PLEASE READ CAREFULLY

If the above complaint or problem relates to allegations of misconduct which are violations of law, the Grand Jury cannot promise complete confidentiality. In conducting an investigation and pursuing prosecution of the offender, it may be necessary for you to testify under oath as a "material witness". Nonetheless, the Grand Jury, mindful of each citizen's responsibility to the community as a whole, encourages you to submit your comments and concerns.

Date: 07-03-96 Signature: 

Receipt of your complaint will be acknowledged in writing by the Grand Jury.

INDEX

	page
I. Person or Agency About Which Complaint Is Made	1
II Brief Summary of Problem	2-28
A. Introduction	2
B. Benicia City Council - Violations of Brown Act	3-7
(Brown Act; Signing of Stipulated Settlement Agreement (SSA); SSA Time Frame; Analysis of available parcels; Notice of Public Hearing; Planning Commission - Public Hearing, April 11, 1996; last minute changes; City Council - Public Hearing, April 16, 1996; HCD letter - 4/12/96; last minute text changes.)	
C. Fraud - Extortion re: Consultants; HCD; ABAG; AHA; Legal Services; City of Benicia	7-24
1. Fraud / Extortion definition	7
2. City Staff	8-9
3. HCD; ABAG	9-10
4. Legal Services	10-12
5. AHA	12-16
6. Consultants; HCD; ABAG	16-22
7. City Council (also pgs. 5 - 6)	18-19
8. Plaintiffs	22-24
D. HCD; ABAG; City of Benicia: Violation - Article 34	24-26
1. California Constitution, Article 34	24-25
2. SSA: Land Donation	25
3. State Public Bodies - Low rent Housing Projects	25-26
4. Article 34 violations	26
E. Regional Government	26-29
(Loss of Constitutionally Guaranteed Representative Form of Government AND All Rights Enjoyed Thereunder.)	
1. Usurpation of municipal Government	26-27
2. Governmental comparison (Regional vs. Constitutional)	27
3. Public Housing Analysis	27-28
4. Constitutional Violations	28-29
F. Continuing Research and Testimony upon request	29
III Time and date you first learned of the problem	30
IV Whom do you think should be contacted?	30
V What action do you want the Grand Jury to take?	30
VI List of supporting exhibits	31

PERSON OR AGENCY ABOUT WHICH COMPLAINT IS MADE.

Every "*person or agency about which complaint is made*" has committed one or more of the crimes alleged and demonstrated herein, thereby clearing the way for the criminal activity of the others listed. Their individual and combined actions fully violate lawfully guaranteed, inalienable rights and the lawfully guaranteed authority that the citizens of Benicia have over Benicia:

***1. California Housing & Community Development (HCD); HCD ex - Deputy Director, Thomas B. Cook; HCD Deputy Director, Kimberley L. Dellinger; DOES 1 through 20; *Herein referred to as "HCD."**

**Address: 1800 Third Street, Room 430
Sacramento, California 94252-2053**

2. Council of Government, Association of Bay Area Governments (ABAG); DOES 1 through 20;

Address unknown at this time.

3. Laurence Mintier & Associates, Planning Consultants;

Address unknown at this time.

4. Naphtali Knox & Associates, Inc. Planning Consultants;

5. Benicia City Council (Mayor Ernie Ciarrocchi; Council member Corbaley; Council member Arteaga; Council member Silva; Council member Hayes);

6. Benicia Planning Commissioners Gizzi, Steele, Hannifan, Gonsalves, Burek, Hannigan.

7. Benicia City Manager, Otto Wm. Giuliani;

8. Benicia Planning Director, John Bunch;

9. Benicia Assistant Planning Director, Katherine Hammer;

**Address: c/o City of Benicia
250 East L Street
Benicia, Ca. 94510**

***10. Legal Services of Northern California; Solano Legal Services; Western Center On Law and Poverty; Housing Element Enforcement Project of the Legal Aid Society Of Alameda County; S. Lynn Martinez, Bar #164406; Dara L. Schur, Bar #98638; David Jones, Bar #137725; Michael R. Bush, Bar #58854; Michael Rawson, Bar #95868; Susan Saylor, Bar #154592;**

***Herein referred to as "Legal Services."**

**Address: 1810 Capitol Street
Vallejo, Ca. 94590**

11. Affordable Housing Affiliation (AHA)

**c/o Heritage Presbyterian Church
1400 East 2nd Street
Benicia, Ca. 94510**

BRIEF SUMMARY OF THE PROBLEM

It's an old adage, but it still rings true, "Who ever controls the Land, controls the People." Since housing requires land, whoever controls housing controls the land and thus the people. The current taxpayers, property owners and electors of Benicia have lost control of housing and thus have lost control of the Land known as Benicia. We must give up millions of our tax dollars, our land and control of our land in order to build housing for other people. We have been told "It's the Law." And to prove it, more of our tax dollars were used to sue us into compliance.

We, the current taxpayers, property owners and electors of Benicia are thus the victims of great economic and political harm. As evidence I present the Winterhawk Suit (Complaint), the resulting Stipulated Settlement Agreement (SSA); Housing and Community Development (HCD) letters; our current Housing Element and the proposed text Amendments ("mandates") and other evidence. If allowed to stand, millions of our local tax dollars, our land, and control of our land will be lost. We, the current taxpayers, property owners and electors of Benicia will continue to be disenfranchised.

This is not just my opinion. Many other Benicians also believe these so-called laws, mandates and their implementation are not lawfully founded in that they conflict greatly with Inalienable Rights and Guarantees recognized in our United States Constitution, the California Constitution and subsequent conforming Statutes. We also believe these violations are accompanied and perpetuated by using fraud, extortion and other criminal activities. Background includes:

"The current housing Element of the General Plan was adopted by the City Council on July 2, 1991, amended on October 6, 1992 to incorporate revisions recommended by the Department of Housing and Community Development (HCD) and amended on April 5, 1994 to incorporate the results of a housing condition survey of the City. On March 18, 1993 HCD certified the Housing Element, as amended on October 6, 1992, as consistent with the Housing Element Guidelines contained in California Government Code Section 65580 et seq. On April 20, 1993 the City Council adopted Resolution No. 93-57 suspending planning for the Sky Valley development until certain conditions pertaining to the IT hazardous waste facility were satisfied, and on October 25, 1993 HCD de certified the City's Housing Element stating that the City could no longer demonstrate that it had adequate sites to accommodate its "fair share" of housing as determined by ABAG."

"ABAG's fair share calculations were based in part on population projections which included new residents on Sky Valley and the City pointed out that the suspension of planning for Sky Valley should result in a reduction in its fair share of affordable housing. HCD indicated that only ABAG could revise the fair share calculations, and only for the next required housing Element update in 1995. Due to state budget cuts, ABAG has not yet revised the fair share calculations, and the due date for the next Housing Element update has been extended to July 1, 1997. In May 1995, Legal Services of Northern California filed suit against the City alleging that the City had failed to adopt an adequate Housing Element, thereby preventing low income persons from finding affordable housing in Benicia." Staff Report, Housing Element Amendment, pg. 1.

City Council:

Violations of the Brown Act:

"In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly."

"The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created." Brown Act, Section 54940 (a).

2/07/95: City Attorney Mason signs SSA (Approved as to form).

12/09/95: Council votes behind closed doors (4-1) and Mayor Ernest F. Ciarrocchi, "on behalf of the City of Benicia and members of the the City Council," signed a Stipulated (the parties settled out of court) Settlement Agreement (SSA) with Legal Services, and thereby drastically and illegally amended in effect, Benicia's housing element, land use element and zoning ordinances. This unprecedented action were taken behind closed doors without the knowledge, input or consent of the public. Exhibit A and B.

We have been told that the City may be allowed to negotiate lawsuits and settlements behind closed doors. However, amending the housing element, land use element and zoning ordinances must be done openly and accordingly require a prior public hearing. Four months AFTER the SSA drastically amended Benicia's housing element, land use element and zoning ordinances, the City brought them forward as "Public Hearing" matters conveniently timed to be the final actions of a "lame duck" Planning Commission and City Council.

Before, during and after the so-called "Public Hearings" the public was repeatedly told that the City had no options. Although the proposed Amendments and Resolutions and discussions during the public hearings expanded far beyond the terms of the SSA, the public was given the perception that the proposed amendments were ALL the result of the SSA. This speaks to fraud but also helps to reveal the absurdity of the City Council holding the "required" public hearings on unprecedented changes AFTER making the changes by voting and signing on the dotted line, behind closed doors.

Before Plaintiffs / Petitioners signed the SSA on December 5, 1995, they picked 23 sites using an updated Infill Site Inventory map (Attachment A of SSA). Although Staff completed the update in November of 1995, as of this date (July 8, 1996) this map has yet to be adopted by the City, by Resolution as part of Benicia's General Plan Housing Element (pgs. H-45 - H-47). However, it is the map used by the Plaintiffs to pick their 23 sites back in December of 1995.

Within the 23 sites chosen by the plaintiffs only six parcels (some sites have more than one parcel) are City-owned. But whether it's public or private property, the property owner is lawfully allowed a public hearing before the property is rezoned. The SSA picked 23 sites from a map not yet adopted by City Resolution, and rezoned those sites, public and private property alike:

SSA, page 3, ln. 13--, *"...the sites shall be selected exclusively from the site inventory identified in Attachment A and shall be rezoned to the densities specified under "Potential Unit/Acre" in said Attachment.... For purposes of calculating the 180 units, the unit total for each selected site shall be the figure attributed to the site in the last column of Attachment A."*

Benicia shall amend housing element Programs 3.01 and 3.02 to reflect these commitments to rezone, and delete the existing language from both programs: "If substantial resistance is met by an owner of a parcel, it is foreseeable that such a property would not be rezoned within this time frame."

As Benicia's Housing Element text stood, it seems to violate the property owners' rights in that no matter the owners argument the property will be rezoned, just *"...not be rezoned within this time frame."* The SSA, by removing this language leaves only the *"Time Frame"* within which *"The City will rezone...."* Accordingly, for internal consistency, Staff removed the language *"with owners interested in such rezonings...."* (Program 3.01). I take this to mean it no longer mattered whether the property owner was interested or not, *"The City will rezone..."* within the *"Time Frame,"* as dictated by the SSA. The Time Frame and Priority Statement of the SSA sets the time by which rezoning to high density will happen:

"The first group of parcels selected for rezoning shall be brought to public hearing before the City of Benicia Planning Department by July 1, 1996." And,

"The City shall rezone to high density by July 1, 1996 the sites to be dedicated to a non-profit housing developer...." And,

"The remaining rezonings shall be completed by July 1, 1997...." And in the Housing Element Amendment, page H-8, Program 3.01 states, by July 1, 1997, *"The City will rezone suitable low- and medium-density residential parcels for high-density use to accommodate 180 lower-income units."*

For those owners of City property (the citizenry of Benicia) and for those private owners of property that would automatically end up rezoned, their rights for public input into the zoning process would be stripped away.

Also, property owners have been repeatedly told "eminent domain" will not be used to take their newly rezoned high density property in order to build so-called "affordable housing." That's true, today, with the current (3rd) Planning Period. In this Planning Period we are only being "mandated" and sued to rezone. What about the next Planning Period?

Property owners are suppose to believe the City who has misrepresented fact after fact, usurped property owners and citizens Right to Public Hearings, admittedly withheld important information because of

political reasons, violated the Brown Act and committed numerous other crimes will not use eminent domain on private property in order to "Keep Building?" Out of the 23 sites picked by the Plaintiffs to hold 180 units only six parcels are City-owned parcels, and of the 42 sites which HCD and ABAG say must hold enough units to hold 893 households, only 14 parcels are City-owned. The City is being forced to rezone now (and give up some public land now, so some building will occur), and the City will be forced to build then (the next Planning Period). Unless "...517 very low- and 376 low-income... households..." can be persuaded to live on rezoned high-density vacant land.

To meet the conditions of the SSA private property will be rezoned, at least according to the Plaintiffs, who picked 17 privately owned parcels, along with 6 City owned parcels, from which the City will pick and rezone by a specific date to accommodate 180 so-called "affordable housing" units. And that's just this Planning Period

Our analysis of "available" parcels indicates the Infill Site Inventory Map of 42 sites and the sub-set of 23 sites picked by the plaintiffs includes unsuitable building sites, sites already slated for specific types of development (Rockridge on Site 16 and 125 condos on site 28) AND private property that will never be available for so-called "affordable housing" development unless taken by eminent domain.

The City is required to submit proposed housing element amendments to HCD for review at least 45 days before adoption. "*Benicia's revised draft housing element*" (including the updated Infill Site Inventory map) was submitted to HCD "*by facsimile transmission on March 22, 1996,*" three months after the SSA amended Benicia's housing element, and only 26 days before the so-called "Public Hearing" date (April 16, 1996).

03/29/96: "Notice of Public Hearing" in the Benicia Herald.

Although the Mayor signed the SSA on December 9, 1995 not a word was said by the Council to the public about it until March 29, 1996, through a "Notice of Public Hearing." As best as we can tell, no newspaper articles mentioning the SSA appeared until late March, and no articles revealing the Council's unprecedented concessions appeared even at that late date. At the June 4, 1996 City Council meeting the Council openly admitted and apologized for withholding news and details of the SSA that they signed December 9, 1995, because of political reasons. The Council held this unprecedented news from Benicians so it would not be a campaign issue in the April, 1996 elections and, more importantly, the simultaneous vote on Measure A and B. Also, the City withheld requested information on City Employee Salaries until a week before election day.

04/11/96: Planning Commission Public Hearing. Last minute changes were phoned in by Legal Services. A statistical update of the "need" was relayed by the Benicia Housing Authority. And, Assistant Planning Director

Hammer told the public and Council at the April 16, 1996 Meeting that the Planning Commission did not have the "detailed findings" in its packet of proposals. Substantial changes were made to the text amendment proposals in the 4 days prior to the City Council's "Public Hearing." I've included a substantial amount of the text with the "additional" changes, but I don't know if I got them all. The library's copy of the packet for the April 16, 1996 City Council meeting was nearly 4 inches thick, and it can't be taken out of the Library. One copy is made available to check out for 24 hours but is discarded after a short period of time and was not available. I copied enough to demonstrate that the last minute changes, which were not made available to the public, are indeed substantial. I'd gone to the City Planning Department and copied, at my own expense, my own 3 inch thick packet a week prior to the April 11, 1996 Planning Commission meeting. It cost me nearly \$40 but was "outdated" as a result of all the changes.

04/16/96: After 4 months of silence, Benicians were told by a "lame duck" City Council, City Staff and others, "It's the law, we have to do it." The City Council voted behind closed doors to sign a Stipulated Settlement Agreement which means the opposing parties, via their lawyers, settled "out of court." A group of lawyers agreeing amongst themselves and then loudly announcing "It's the law!" isn't my idea of due process or standing up to the Law. The defendants (the City) signed the SSA based on opinions from our \$96, 663.68 yearly salaried City Attorney Mason and the consulting \$40,000 opinion of Attorney Judd. Benicians were repeatedly reminded that the City (the City Council) signed the SSA in order to save the attorney fees required to challenge in court. When asked about the legal viability of fighting the lawsuit in court, the City Attorney invoked the "lawyer - client privilege" to keep from answering. See: Exhibit P: Video, so-called Town Hall Meeting, June 26, 1996.

HCD Deputy Director Dellinger's letter (April 12, 1996) to City Manager Giuliani, dated one day AFTER the Planning Commission held its so-called "Public Hearings" stated: *"A telephone conversation with Ms. Kitty Hammer, Assistant Planning Director, on April 11, 1996, assisted our review. This letter summarizes that conversation."* The letter went on to state that HCD was *"pleased to learn of Benicia's enhanced efforts to ensure the rezoning of low- and medium density and commercial sites (if necessary) to high density residential use..."* and *"...while including commendable revisions, still fails to identify sufficient sites to accommodate its entire regional share need for 893 lower-income households..."*

Staff made numerous alterations and five days later the City Council held "public hearings" on the altered Findings, Amendments and Resolutions. Assistant Planning Director Hammer, prior to opening of the public hearing on April 16, 1996, told the Council and public that the changes included, *"...in addition to the changes based on Legal Services*

comments..., a few errors..., some listed in your staff report and a brief sheet of numbers that were in front of you this evening which are recalculations that we discovered were necessary for internal consistency in the housing element.

We have also provided you with a revised Resolution this evening..., ah..., we've done some changes to the Findings based on advice from the City Attorney. It was..., simply a case of not being able to get together any quicker and we do apologize the lateness of putting this before you.

We have included some findings with relation to the housing element law in that Resolution and..., ah..., deleted all the detailed changes..., ah..., that the Staff is proposing in favor of requesting that the Council consider incorporating them into the exhibit."

Language changes via a phone call from Legal Services and changes based on new numbers from the Benicia Housing Authority (substantial increases in their housing "need" list numbers) were also made during the Planning Commission's meeting on April 11, 1996. The public's only notice of these changes was as Staff incorporated them there that evening.

The public was therefore denied the required time necessary to inform themselves on all facts prior to the Planning Commission and City Council's so-called Public Hearings. I say "so-called" Public Hearings because they should have taken place **BEFORE** signing the SSA in December of 1995.

It is my belief these Benicia Planning Commission and City Council actions violate laws requiring the City to fully make available to the public **ALL** facts when "Notice of Public Hearing" is given.

It is my belief that the Benicia City Council also violated the Brown Act by amending our City's housing element, land use element and zoning ordinances, by voting behind closed doors to sign the SSA.

These violations are shadowed and compounded by other very serious violations of law.

The Consultants, HCD, ABAG, AHA, Legal Services and the City of Benicia (City Council and Staff) have used fraud and extortion to obtain the money, land and control of **ALL** land of the current taxpayers, property owners and electors of Benicia. HUD "Guidelines" also permeate this activity and HUD money has played a big role in the criminal activities alleged herein, including but not limited to:

Fraud: *"An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury...."*

"Elements of a cause of action for "fraud" include false representation of a present or past fact made by defendant, action in reliance thereupon by plaintiff, and damage resulting to plaintiff from such representation...."
Black's Law Dictionary, 5th Edition (1979)

Extortion: *"The obtaining of property from another induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right...."* Black's Law Dictionary, 5th Edition (1979).

City Staff:

Prior to opening of City Council Public Hearing (04/16/96):

City Manager, Giuliani: *"This is a court decision.... The City is under mandate by the court decision to take this action prior to May 1st..." And, "If the City fails to act on this this evening, theoretically that will put us back into litigation again..." And, "...the bigger concern is that an impartial judge that has no connection to our fair City would make decisions for us. There would be no public input.... ...and there would be absolutely no control by the part of the Council."*

Planning Director Bunch: *"...as noted by the City Manager, the City subsequently settled the lawsuit with Legal Services which requires additional revisions to the Housing Element which are contained in the document before you.... It is not increasing the powers of the City Council, Planning Commission or Staff with regard to these changes...." (I believe these unprecedented changes and the means used to implement them do represent "new" powers in that they usurp the powers and rights of the current taxpayers, property owners and electors of Benicia, as described herein).*

"...and it is not considering rezoning any properties tonight, although we will do so in the future." (This is true. However, some of the future rezonings would be automatic, according to the Timeline and Priority Statement in the then 4 month old SSA. And, "...not... tonight..." because the 4 month old SSA had already done the rezonings.)

Councilman Silva: *"...Shawn (City Attorney), question for you. Why are we having a Public Hearing?"*

Mason: *"We're having the Public Hearing because it's required by law to have a public hearing whenever you do a zone change or Housing Element Amendment." (Why were we having a Public Hearing on a "zone change...", as stated by the Attorney, if "...it is not considering rezoning any properties tonight...", as stated by the Planning Director? The answer is: We were having a public hearing on housing element, zone and land use changes the Council made 4 months prior in it's unprecedented agreement with Legal Services, which made the public hearing moot.)*

Silva: *"What is the purpose of the Public Hearing?"*

Mason: *"To receive public input on the..., on the proposed changes."*

Silva: *"And then when you have that public input, then you base your decision on what that public input conveys to you?"*

Mason: *"That's the purpose of the public hearing. That's right."*

Compare these statements to those spoken after Public Hearing closed:

City Attorney Mason: *"Additionally, I'd like to clear up that we're not talking about the potential of litigation anymore or going back to court to fight out the issues. The case is over. There was a Judgment. The court isn't going to be interested in evidence provided at this Hearing about, you know, what we*

should or should not have done in December. The, the judge has imposed an order, has imposed a Judgment, has ordered the City to rezone and make the changes in the Housing Element that, that's before you tonight."

Councilman Hayes: *"First, I have a couple of questions for Mr. Mason.... Shawn, first of all, you made a comment that the Judge imposed this. I don't believe that's a correct assessment. I don't believe any Judge imposed this. We agreed to it."*

Mason: *"If I said a Judge imposed it, I mis-spoke."*

"...the judge has imposed an order, has imposed a judgment, has ordered the City...."

That's a mighty big *"mis-spoke."* A Stipulated Judgment was filed with the court on December 26, 1995. The Stipulated Judgment is not an Order or Judgment imposed by a judge or court. Here again, the Attorneys of the opposing parties agreed then submitted a Stipulated Judgment to the court for its approval and enforcement. Attorney Mason told me the Judge could but isn't obligated to dig into the details because the parties, via their respective Attorneys, have already agreed. The court acknowledges the SSA and SJ, then monitors compliance according to the self-imposed Agreement and Judgment.

I believe Attorney Mason, City Manager Giuliani and City Planning Director Bunch made these and other fraudulent, misleading statements to give the public the impression that the City lost IN court, and now the City had no choice but to implement *"the court's decision."* The City Staff then handed the Council a packet 4 inches thick which included substantial changes made within only the last four days.

HCD; ABAG:

Article 10.6 (Housing Elements) of the California Government Code is being held up by all of the above as *"the law"* requiring Benicia to *"...identify sufficient sites to accommodate its entire regional share need for 893 lower-income households...."* (Please note *"households."* Regional policy dictates *"distribution shall seek to avoid further impaction of localities with relatively high proportions of lower income households."* Gov't Code, Section 65584 (Lower income people will thereby be redistributed as if they belonged to the Government. Now that existing extra high density, below standard "Reservations" in larger cities have become dilapidated, high intensity war zones, lower income people will be moved to extra high density, below standard "Reservations" in other cities, like Benicia)).

When HCD certified Benicia's Housing Element back in 1992, the City was told, *"Our finding of compliance is based upon the City's commitment to accommodate its share of the regional housing need for lower-income households by completing the rezoning of vacant low-density residential and commercial land to high-density residential use by the end of 1994.... The element commits the City to: ...initiate the rezoning of vacant land to facilitate the development of at least 517 very low- and 376 low-income dwelling units at a density range of 15-22 du/ac (or 15-25 du/ac (Dwelling units*

per acre) *if in Sky Valley....*" HCD letter, October 2, 1992.

Of course, allegedly, Benicia is not being mandated to build, just rezone. Benicians have been told again and again, "Just because the City is rezoning doesn't mean any housing will be built." This is almost true and it certainly sets the stage for future building. When building does occur, it will progressively change the character of the City from low-density to extra high density. I say "extra" high density because when the dust settles on the density bonuses, housing for low income households (and of course the non "affordable" units mixed in with them) can be built 50% denser than the high density (RH) zoning. Unless "...517 very low- and 376 low-income... households..." can be persuaded to live on rezoned high-density vacant land, extra high-density building will occur.

If HCD and ABAG have their way, Benicia will "...identify sufficient sites to accommodate its entire regional share need for 893 lower-income households...." If only 49% must be set aside (See Legal Services definition of "affordable" below), it seems 1,822 units may need to be built to accommodate the 893 lower income households. And the developers smile all the way to the bank, especially the so-called "non-profit affordable housing developers," with their taxpayer subsidies of grants and low interest loans, free land, waived fees, extra high densities and lowered development standards.

LEGAL SERVICES:

If Legal Services has their way, Benicia will rezone low-density to high density to "...accommodate 180 low or very low income multi-family units...." According to Legal Services' definition of "affordable" in the SSA, only 49% has to be set side for very low income persons in order for the development to be deemed an "affordable housing development," (This definition applies to the 49 housing units required by the SSA). If developers are allowed this formula for the entire 180 affordable units, 368 units will have to be built overall to get the 180. Please note Legal Services' definition of "affordable" stops short of the alleged 50% plus one unit needed to trigger an Article 34 election. And since it is highly unlikely a "Low Rent Housing Project" will ever gain the popular vote of Benicians, the 49% definition will necessarily be used overall.

Legal Services and others who stand to receive personal gain and/or job security have "tracked" Benicia for years. You will find Legal Services included in HCD letter circulation back in 1990. Please note the circulation of all HCD letters. ALL, with the possible exception of the Deputy Attorney General, could receive personal gain and/or job security as a result of Benicia's "mandated" housing:

Circulation of the April 12, 1996 HCD letter included:

Kathleen Mikkelson, Deputy Attorney General

Bob Cervantes, Governor's Office of Planning and Research

Juan Acosta, California Building Industry Association

Kerry Harrington Morrison, Ca. Association of Realtors

Marc Brown, California Rural Legal Assistance Foundation

Rob Wiener, California Coalition for Rural Housing

Susan DeSantis, The Planning Center

Dara Schur, Legal Services of Northern Calif.

David Booher, California Housing Council

Sue Hestor, Attorney at Law

Gary Hambly, Building Industry Association

Gary Binger, Association of Bay Area Governments

Clark Blasdell, Northbay Economic Development

S. Lynn Martinez, Legal Services of Solano County.

Legal Services of Northern California filed suit against the City May 4, 1994, not May, 1995, as stated in the Staff Report above (See Background). Everyone at City Hall, every paper in the area, even the City Attorney states the date as '95. Me and a handful of citizens know the real date only because we have a copy of the Complaint. Exhibit A.

Is it just one of those little errors, or does it have significance? The Complaint was not settled in seven months. It was held at bay for a year and seven months, then settled out of court with a closed session vote. The Mayor signed the SSA just prior to the Christmas holidays (December 9, 1995). The Council then stood mute on the unprecedented concessions given in the SSA until after the April, 1996 elections and a vote on Measures A and B. The Council told the public via a "Notice of Public Hearing" published in local papers on March 29, 1996. These monumental and unprecedented changes to the City's General Plan Housing Element, Land Use Element and Zoning Ordinances were thus to be the last actions of a "lame duck" Planning Commission and City Council.

The timing has played a very important role in the crimes alleged here. Knowing the correct dates of events is critical. I believe this loss of a year from the admitted date the Complaint was filed is a conspicuous "error" with significance. As revealed herein, this kind of misinformation and lack of information permeates the City's entire presentation concerning the Complaint, the SSA and the additional changes attempted to Benicia's Housing Element, Land Use Element and Zoning Ordinances.

Benicia's Housing Element Planning Period (1990-1995) was extended by State "law" until July 1, 1997. Legal Services knew of the extension when it filed the Complaint on May 4, 1994. The Housing Element Planning Period is set by State "law" (I'll get into why I say the "law" instead the law in a bit):

The Complaint (pg. 17) refers to and includes a letter dated October 25, 1993 from HCD to then City Manager Warren (Complaint, Attachment B) which states, "As you may know, Governor Wilson recently signed Assembly Bill 2172 (Chapter 695, Statutes of 1993) into law. This extends the planning period of existing housing elements by two years, postponing the due date for the next revision of your housing element until July 1, 1997. The two year extension provides additional time to develop and implement programs in accordance with State law, including needed programs to provide adequate sites for all income groups sufficient to accommodate Benicia's share of the regional housing need."

*The Complaint was filed 3 years and 2 months before the end of the Planning Period. Even the admitted date of filing (*May of 1995*) is two years and two months before the end of the current planning Period. *Legal Services of Northern California filed suit against the City* for not implementing programs the City still had 3 years and two months "*...to develop and implement....*" (Even without a Planning Period, the Complaint and SSA are criminal and the "obligation" of the City noted above does not exist.*

However, it must be noted here that those determined to implement "the law" as they so determine, don't even obey that "law.") Apparently, if the Complaint and SSA are allowed to stand, a City can be successfully sued for not obeying a "law" the City still had 3 years and 2 months to obey. I believe the Complaint and thus the SSA were grossly premature and do represent fraud, extortion, and other crimes. As does the City's attempt to make additional changes, under the cover of the Complaint and SSA.

The City is currently spending hundreds of thousands of taxpayer dollars to update the City's General Plan (of which the Housing Element is a large part), and has a large volunteer force established called the General Plan Oversight Committee (GPOC) to help. That "public participation" process has been subverted because of Consultants and I'll get to them shortly but, Legal Services couldn't wait for "public participation" or to see if the City would, within the time allowed, obey the "law," they sued, years in advance. And under color of law, with the SSA amended the City's General Plan Housing Element, Land Use Element and the Zoning Ordinances to meet their "needs." Sure, City bureaucracies move slow, especially when they're not doing what you want them to do but, 3 years and 2 months before the City's time was up?

Why couldn't they wait? In order to have the weight of the presumption that Benicia was out of compliance with State law (Article 10.6), the Complaint had to be filed within the "window of opportunity" after Benicia lost it's HCD certified housing element and before recertification. The more weighty reason was:

AHA:

Although Bill McCune, AHA Executive Director, stated "AHA had nothing to do with that lawsuit," there is enough evidence to prove differently. AHA IS one of the major forces behind the premature lawsuit:

04/20/93: City Council Resolution suspends "*planning for the Sky Valley until certain conditions pertaining to the IT hazardous waste facility were satisfied.*" Please note, City Attorney Mason told me that S. Lynn Martinez of Legal Services (and AHA) informed HCD of this Resolution and alleged noncompliance with housing element law.

05/93: AHA created "*to generate development of low and very-low income housing in Benicia.*" Legal Services Attorney S. Lynn Martinez, lead Attorney for the Plaintiffs, is Vice President of AHA.

10/25/93: "*...HCD de certified the City's Housing Element stating that the City could no longer demonstrate that it had adequate sites to accommodate its "fair share" of housing as determined by ABAG.*"

04/-/94: AHA , "*a non-profit affordable housing organization,*" incorporates and "*immediately started applying for government grants to begin development of its housing projects.*"

05/04/94: With guidance from lawyers of the Housing Element Enforcement Project (HEEP) and the Western Center on Law and Poverty, S. Lynn Martinez filed the Complaint (Case No. L004789). Although "guided," Ms. Martinez, lead attorney for the Plaintiffs and Vice President of AHA is a key player. Six months and eleven days after Benicia lost it's HCD certification, one month after AHA incorporated, and only two weeks

after the City officially abandoned Sky Valley, the Complaint was filed.
AHA is mentioned throughout the Complaint.

I believe a major reason the premature Complaint was filed was because AHA couldn't get the Federal HOME funds for which it had applied. AHA couldn't get the HOME funds because Benicia didn't *receive significant extra points* from HCD as a result of Benicia's decertified Housing Element (As noted elsewhere in this Complaint, allegedly, according to City Attorney Mason, there is no law requiring the City to have a Housing Element certified by HCD).

A letter dated October 2, 1992 HCD Deputy Director Thomas B. Cook to then City Manager Michael Warren states, *"In order to assist local governments in implementing their housing programs, this Department will be allocating funds from the HOME Investment Partnership Program (HOME), one of the new federal housing programs created by the 1990 national Affordable housing Act. Local governments can use HOME funds to expand the resources available for housing rehabilitation, acquisition of land and structures, tenant based rental assistance and under certain circumstances, new construction. As you are aware, Benicia is an eligible applicant for HOME funds. The first notice of Funding Availability (NOFA) is scheduled to go out to eligible applicants within the next few weeks."*

"This Department's draft HOME program regulations include housing element status as a rating factor in the competitive application process for HOME funds. Jurisdictions with an adopted housing element that is in compliance with state housing element law as determined by this Department will receive significant extra points if their application has met the threshold criteria." See HCD letters, pg 2.

On May 3, 1996 I called the Western Center on Law & Poverty in Los Angeles. A recording told me "funding cutbacks" was the reason no one could answer my call. I then called the Legal Aid Society of Alameda County in Oakland. A real person answered. I asked for information on the HEED. After being told, "I've never heard of that," I was connected with HEED's Michael Rawson. I asked him who funds HEED. After quizzing me about why I was asking, he told me HEED was funded by Legal Services Corporation, an independent Federal Agency (According to Daniel S. Garcia, research assistant at the Family Research Council, a Washington, DC-based research and advocacy organization, *"The Legal Services Corporation (LSC) is an independent, nonprofit corporation funded by the federal government to the tune of \$415 million a year."*). And, funds from the Legal Aid Society of Alameda County, the Bar Association, and private foundations. I asked if I could get a list of the private foundations from which HEED received funds and I was told, "No."

The taxpayers, property owners and electors of Benicia need to know who those private foundations are. They gave money to defraud and extort money and property from the taxpayers, property owners and electors of Benicia. I suspect private developer money is helping HEED and other such organizations across the State. We have a right to know who our accusers are.

Also, if these Legal Services are receiving all these funds from public and private sources to provide a "service," then why did the City have to pay \$95,000 to them?

And, who established the Housing Element Enforcement Project? I suspect developer money helped pave the way and may be among the "private foundations" unnamed by Mr. Rawson. Developer money can obviously be seen in California's housing element law.

Bill McCune, AHA Executive Director The Developer. I understand AHA applied for approximately \$1,000,000 of the Federal HOME funds. AHA already has a housing project under way, called RockRidge. I have limited information on Rockridge at this time. I understand AHA is the "managing partner" but there's nothing to manage yet. AHA didn't get the HOME funds (\$1,000,000). The property was for sale at a selling price of \$990,000. And I know HOME funds can be used to purchase land. The Rockridge Project proposes 69-71 housing units at a cost of \$10,000,000. For 55 years, 26 units set aside for persons with below 35% annual median income (AMI); 22 units at 50% of AMI; 21 units at 55% of AMI. At the June 26, 1996 so-called Town Hall meeting, Bill McCune claimed the Project, including 2 duplexes (4 units) on another sight, will be 100% affordable housing. Yet, no mention of a Article 34 election on this project has been made by the City. . We're told if more than 50% plus one are set aside for low income persons then it's a low rent housing project, and would require an Article 34 election.

Although Mr. McCune claims the units he will build will be for couples just starting out, the majority of people in need of "affordable" housing are single mothers. The question arises: How do you build housing that a single mother of two, making \$607 a month can afford? At 30% of her monthly income she would pay \$182.10 for a 2-3 bedroom unit and I believe the taxpayer would make up the difference, unless the owner is required to accept the 30%, which I don't believe is the case.

I understand AHA and the Rural California Housing Corporation are the General Partners. Money sources include:

FHL Bank ===== \$191,000

General Partners Equity == \$419,578

Limited Partners Equity ===== \$6,095,000

Bank of America Mortgage = \$1,485,000

Federal and State Credits == \$1,879,879

Deferred fees = \$800,000 --- land off site = \$129,752

This is "affordable" housing? The cost of building this so-called "affordable" housing apparently has nothing to do with it being defined as an "affordable housing development." The definition of "affordable" housing development only requires a certain percentage of the units be aside for very low and low income persons to rent with subsidizes from the taxpayers. The

building cost and cost to Benicia taxpayers, property owners and electors, and the General and Limited Partners of this AHA Project deserve further investigation.

Since it is the developers who are reaping financial benefits, I believe they "encourage" and assist in the extortion. During the recent "Town Hall" meeting on June 26, 1996, AHA Executive Director Bill McCune was a panelists and revealed that AHA received "help" from BRIDGE, a major Northern California affordable housing developer:

"The City shall make available 2 vacant City-owned parcels, at no cost, to housing developers willing to develop those parcels.... The City shall advertise the availability of these parcels by notifying non-profit housing developers in Northern California.... The City shall entertain all reasonable offers from developers until the parcels are committed to development...."

The taxpayers, property owners and electors of Benicia are thus condemned by the SSA to give up their land, to "keep building" at extra high density and are ordered to only use certain developers. In spite of holding a non-profit status with the IRS, these development corporations are privately owned. I don't think it's a coincidence that BRIDGE is a major *non-profit housing developer(s) in Northern California* and that AHA gets "help" from BRIDGE, and that AHA is referred to throughout the Complaint (AHA did this and AHA couldn't do that, and if AHA was allowed to build the Plaintiffs feel they would qualify for one of the units, so on and so forth), and that the SSA is a dream come true for *non-profit housing developer's of Northern California*.

One Plaintiff (Maureen Goss) is on the AHA Board of Directors; her husband (Dave Goss) serves on one of the AHA committees; another Plaintiff (Brandi Sheperd- Bennett) is a past board member of AHA. The AHA also includes David S. Burgess, AHA President On April 4, 1996 Mayor Hayes reappointed Mr. Burgess to a 4 year term with the Benicia Housing Authority. I don't know what role Mr. Burgess plays on the Benicia Housing Authority. I don't think he has anything to do with the tweaking and inflation of Benicia's Housing Authority need list. I suspect Mr. Burgess is like the majority of the members of AHA: Good people misled into accepting the offered solution. This is done in the same manner with which the Consultants guide public participation, as with our GPOC. The offered solution is a governmental solution, a Regional Government solution. Trillions of Federal taxpayer dollars, billions of State taxpayer dollars, and millions of local taxpayer dollars are thus spent on an elaborate, expensive, bureaucratic, competitive application process which requires compliance with Regional Government goals.

Please note that the housing "need" list generated by the Benicia Housing Authority has escalated greatly within the last few months. At the April 11, 1996 Planning Commission meeting, Assistant City Manager

Hammer said the Housing Authority had given here a recent update reporting over 500 on their housing need list. At the June 26, 1996 so-called Town Hall meeting it was reported to now be over 800. It is my firm belief that the Housing Authority's housing need list is highly inflated. Eighty percent of the Plaintiffs have housing in Benicia, but they claim that they pay too much for it, and allegedly, the building of so-called "affordable" housing alleviates that problem. A lack of housing is not the problem. A lack of rent money is the problem. Building another housing unit won't cure that problem, yet we in Benicia have been commanded to "Keep Building."

I understand people are not restricted from being on the Housing Authority's housing need list of neighboring cities. A person could be on the Vallejo, Fairfield, Vacaville, Concord and Benicia list, all at the same time. So, people who already have housing in Benicia can be on the housing need list, and people on other City rolls can also be on our list.

Kitty Griffin, AHA Board of Directors is a General Plan Oversight Committee (GPOC) member. I have no reason to believe Ms. Griffin has committed any crimes, but her position with GPOC and AHA do not compliment each other. On the contrary, I think it is a conflict of interest, as with Mr. Burgess in the Housing Authority.

The Consultants; HCD; ABAG; City Council:

Public (Affordable) Housing pushed by Regional Agencies like HUD, HCD, ABAG; nonprofit affordable housing developers like AHA; and legal services like Legal Services, was carried into Benicia by Laurence Mintier & Associates, Planning Consultants. Naphtali Knox & Associates, Inc., Planning Consultants took over where Mintier left off as "overseer" and guide to City Staff in the implementation. These Consultants, and HCD with it's "recommendations" concerning the General Plan Housing Element, fraudulently committed Benicia to Regional "Guidelines" and simultaneously introduced Benicia to the multi-billion dollar world of Regional Grant-making Agencies to which the City could apply and thereby join the *competitive application process* required in order to receive *public subsidies*.

No matter the City, no matter the Agency (EPA, HHS, FEMA, DOE, DOT, HUD), the "*competitive application process*" IS the "process" used. For housing in Benicia, as determined by the Regional Agencies of HUD, HCD and ABAG, the "*process*" will continue to contribute to the extortion of millions of taxpayer dollars and other property, in violation of the lawfully guaranteed rights of the current taxpayers, property owners and electors of Benicia:

"This Committee (Illinois Joint Committee on Regional Government) found that the Federal Government has used the "carrot and stick" approach to promote the formulation of the substate regional districts in Illinois and

other states. By offering to finance local projects through federal assistance programs, the Federal Government has induced many units of government to establish the required regional structure to apply for and review grant applications for federal funds. Thus, in many cases, for units of local government to receive federal money, they must belong to regional planning districts. Once they belong to a regional commission, all federal guidelines must be met in order to receive the federal funds, and it is the planning commissions who determine if the guidelines have been met. Within a short time, the units of local government become dependent upon the federal funds and are under pressure to meet all federal requirements continually, or else have the funding cut off." Illinois Report (upon request) pg. 20-21 (1979).

In a letter dated September 4, 1990, Nancy J. Javor, Chief, Division of Housing Policy Development (HCD is a Division Of Housing Policy Development), states on page 3 of the Appendix, "We note the City consulted with the Solano Board of Realtors on the availability of financing, and suggest the City also should talk with local builders or nonprofit developers about the availability of financing. Information may also be available from local financial institutions under the Home Mortgage Disclosure Act (HMDA), and under the Community Reinvestment Act (CRA). Both are federal requirements." See HCD letters.

"Various other measures are included in this section that augment the affordable housing program and include actions by the City to rezone underutilized commercial land for residential use, to use City-owned properties for affordable housing development, and to pursue public subsidies from the state and federal governments for underwriting affordable housing development." Benicia Housing Element, pg. H-2.

Now that the City is indebted and addicted to living off of the "public subsidies" and is equally committed to increasing and perpetual dependency, the "Guidelines" are now claimed to be "Mandates" ---"HCD indicated that only ABAG could revise the fair share calculations, and only for the next required housing Element update in 1995. Due to state budget cuts, ABAG has not yet revised the fair share calculations, and the due date for the next Housing Element update has been extended to July 1, 1997. Housing Element Amendment. And,

"However, Benicia's draft element, while including commendable revisions, still fails to identify sufficient sites to accommodate its entire regional share need for 893 lower-income households..." HCD letter.

Throughout the process "public participation" is used as evidence that the public played a part in indebting and addicting their City. However, public participation was (is) always guided. For example, the preparation of a City's General Plan requires "Public participation." Accordingly, Benicia has a General Plan Oversight Committee (GPOC), composed of citizen volunteers currently undertaking a major update of the

General Plan. The GPOC is headed by the Consultant Naphtali Knox. A slip of the tongue at a taped meeting of GPOC, Mr. Knox said, *"I've carried you this far...."*

One of the citizen volunteers of GPOC vented her frustrations in the Benicia Herald in a Guest column titled, *Connect the blue dots, "Knox - albeit extremely experienced and a conscientious tracker of all our meetings, surveys, elections, background reports and speaker series - has appropriated to himself the task of deciding on policies. In contrast, for those of us who have spent hundreds of hours studying planning issues, reading background reports, and talking with citizens, it's all come down to playing the Blue Dot game...."*

"Since the Blue Dot game has some advantages - sidestepping fist fights, saving time, and having the appearance of fairness - and since this round is practically over anyway, we are willing to do it Knox's way. We are prepared to be pleased with what he writes."

"Last week, however, we made it clear to Knox that we have long intended to have a long, hairy dialogue among ourselves, and we won't be cheated out of it, nor will we cheat the public out of it either. This will be the dialogue where we confront the big issues that have divided our community, to agree or perhaps to vote if agreement is impossible. GPOC member Bob Berman calls it "duking it out" and GPOC member Bonnie Silveria repeatedly warns that if we don't have that discussion now, it will just get postponed until later."

"But Knox says it's not in the work plan...." Newspaper Articles, pg. 1.

09/05/95: City Council Resolution No. 95-131, *"...directing City staff to...: Recalculate the City's fair share of regional housing needs, recognizing that housing development in Sky Valley will not occur in the near term...*

...Incorporate the revised fair share calculations into the Housing Element...

...Update the inventory of vacant sites suitable for affordable housing and identify appropriate development standards for those sites to meet the recalculated housing needs and to contribute to the feasibility of producing affordable housing.

*The City Council approved an agreement settling the lawsuit, December 5, 1995 (wrong date). That agreement required certain revisions to the policies and programs of the Housing Element and those revisions are also included in the amendments now proposed for adoption." Housing Element Amendment (HEA), pg. 2. And again on page 3, *"For the most part, the changes to policies and programs reflect requirements of the settlement agreement with Legal Services...."**

"... Are also included" and "For the most part," denotes that not all revisions being proposed were the result of the Complaint and SSA. Distinction between the changes required by the SSA and the "additional changes" could and should have been made very clear in the proposed

Amendments. This was far from the case. No one reading the proposed Amendments could tell which revisions were the result of the Settlement and which were "additional."

The revisions proposed to the "lame duck" Planning Commission on April 11, 1996, and "lame duck" City Council on April 16, 1996, greatly exceeded the requirements of the Stipulated Settlement Agreement, which was known by the Council and should have been made explicitly clear to all Benicians. While the public was led to believe that all the Amendments were proposed as a result of the Lawsuit and Settlement, additional revisions attempted to "accommodate its 'fair share' of housing as determined by ABAG" in order to regain an HCD certified housing element (Receiving the coveted HCD Housing Element Certification is a voluntary prerequisite to receiving millions of taxpayer dollars via the "competitive application process.")

The attempt failed. HCD refused to certify Benicia's Housing Element because it allegedly still fell short of meeting the regional housing need as determined by ABAG. Staff knew the answer was "No" on April 11, 1996, the day of the Planning Commission's so-called "Public hearing," as noted in HCD's follow-up letter, dated April 12, 1996, *"...A telephone conversation with Ms. Kitty Hammer, Assistant Planning Director, on April 11, 1996, assisted our review. This letter summarizes that conversation...."*

Benicia's revised draft housing element makes a number of programmatic changes, including changes such as the contribution of vacant City-owned parcels to non-profit developers at no cost (Housing Program 3.09), increasing the likelihood that additional housing affordable to lower-income households will be constructed in Benicia. We are pleased to learn of Benicia's enhanced efforts to ensure the rezonings of low- and medium density and commercial sites (if necessary) to high density residential use (Housing Programs 3.01 and 3.02).

However, Benicia's draft element, while including commendable revisions, still fails to identify sufficient sites to accommodate its entire regional share need for 893 lower-income households, as required by Government Code "Section 65583 (c) (1), and therefore does not yet comply with the requirements of State housing element law, as was summarized in our letters of October 25, 1993 to Mr. Michael Warren, and June 28, 1994 to Mr. Ernie Ciarrocchi."

The Complaint and SSA were perfect cover for the additional revisions. What was the City trying to cover? The City was trying to cover it's long standing commitment to HCD, that is, to rezone vacant land in low density neighborhoods to high density neighborhoods by blaming it all on the Complaint and the less expensive than going to court, SSA.

Even though the additional revisions showed the potential for hundreds of "affordable" units MORE than those required by the SSA was still not enough to meet HCD's demand for the *"...entire regional share need*

for 893 lower-income households, as required by Government Code Sec. 65583 (c) (1)" The last sentence of Subdivision (c) reads, "In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following: (Please note, "...the program shall do all of the following... ..to make adequate provision for the housing needs of all economic segments of the community....") "...OF THE COMMUNITY...." And the following being:

(1) "...Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584...."

Section 65584--- "...a locality's share of the regional housing needs... ..determined by the appropriate council of governments...."

Reading over the Housing Element law (Article 10.6) reveals that what was once law pertaining to housing needs of the community now "mandates" regional housing needs. In my opinion, the first paragraph of a Government Code Section, as in Section 65583, defines the PURPOSE of that Section's content:

The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, quantified objectives, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, and mobile homes, and shall make adequate provisions for the existing and projected needs of all economic segments of the community."

"... OF THE COMMUNITY." Not "accommodate its 'fair share' of housing as determined by ABAG." This so-called mandate far exceeds the purpose, that is, ...to make adequate provision for the housing needs of all economic segments of the community...."

Allegedly, Benicia must have a Housing Element that meets the requirements set forth in the Government Code. City Attorney Mason tells us having an HCD certified housing element is not required by law, and, not having it gives the presumption that the housing element is not in compliance with the law. I don't think it can be both ways.

ABAG is Benicia's "Council of Governments." ABAG doesn't just predict housing needs in the low and very-low income categories, ABAG predicts the housing needs for ALL income levels. And when you see the "factors" used (Page H-36) you see that those projections will always be grossly incorrect. The proof of this is the projections themselves. They were made back in 1987-88. One only needs hold them up to what actually happened over the past eight years to see how grossly erroneous those unlawfully enforceable PROJECTIONS really are. Knox and Associates and City Staff recalculated the ABAG numbers: "The new figures are a great deal lower than ABAG's because growth during the last several years has been

much slower than projected, and because projected growth in Sky Valley has been removed from the calculations." But even these recalculation's of the *projected* housing needs are still grossly overstated because, in recalculating, they still used ABAG determinations and projections, which are compiled using grossly overstated calculations of the need made by the Housing Authority and other like Agencies.

If Benicia has a supposed mandate to rezone and reach potential occupancy by certain dates, such mandates being based on an admittedly unrealistic number (893) which can't be changed except by a Regional Council of Government (ABAG)) using it's "official process," which has been delayed for several years because of Federal budget cuts, who is in control of the Land known as Benicia? We're told our Council of Government (ABAG) has no power to enforce the number it gives to Benicia. But it seems to me that if no other agency or unit of government has the power to change the number but ABAG, and if HCD won't certify unless we meet the ABAG number, then ABAG is the agency in charge.

But ABAG is just an Association! It's number is just a **PROJECTION**. A Projection made eight years ago! You might get better predictions from the "Psychic Hot Line." However, it doesn't matter whether ABAG's predictions come from eight years or eight seconds ago, or if it's a big or little number, because Benicia is being forced to ultimately build the exact number projected by the Regional Agency ABAG when every one agrees, even HCD and ABAG, that the number is wrong and unrealistic. Housing Element law does not give a specific number. The number is only an associations projection made back in 1989. But it is alleged that this 1989 ABAG projection is law and must be implemented. Benicia residents were told that HCD and ABAG officials "unofficially" agreed the number was unrealistically high, but only ABAG could change the number by using it's "official process." Also, because of Federal budget cuts, ABAG did not have the money for the "official process," and the latest opinion is that ABAG may have the money within the next four years to start the "official process" of recalculating the so-called "fair share" numbers.

Although HCD has repeatedly told the City only ABAG can recalculate the "fair share" number, the "law" says different:

"Based upon data provided by the Department of Housing and Community Development relative to the statewide need for housing, each council of governments shall determine the existing and projected housing needs for the region. The Department of Housing and Community Development shall ensure that this determination is consistent with the statewide housing need and may revise the determination of the council of governments if necessary to obtain this consistency." Gov't. Code, Sec. 65584.

As stated in the "law," HCD can revise ABAG's determination, which is blatantly contrary to what HCD has repeatedly told the City (Only ABAG

can revise the "fair share" numbers). The alleged statewide housing need being so great that Benicia must *identify sufficient sites to accommodate its entire regional share need for 893 lower-income households* is a separate issue than whether or not HCD has the power to change the number. If HCD contends it can't change the number when it can, then how do we trust anything HCD says? The answer is: We can't. HCD is trying desperately to uphold the ABAG number because to do otherwise would break the regional chain of command. HCD is a Regional Clearinghouse with access to billions of taxpayer dollars; a Regional Bulldog enforcing Regional policy by certifying or de certifying housing elements (opening or closing the door to the money).

I believe Regional "Guidelines" can become true mandates only "voluntarily" because they require waiving lawfully recognized Rights. However, only if the Rights are knowingly waived. In this case of implementing Regional "Guidelines" it has been the City, Inc. waiving the Rights of the taxpayers, property owners and electors of Benicia, without their knowledgeable consent. Certainly the citizenry would not be creating such a roar now, had we knowingly committed ourselves to this in the past. Allegedly, ignorance of the law is no excuse, and yes, Benicia "voluntarily" joined the Association and "voluntarily" has in it's Housing Element and other major spots of its General Plan the old, bogus projections and determinations of its council of governments, ABAG (Thanks to past and present consultants), and thus waived our Rights, but that doesn't make such actions lawful. HCD certifies or de certifies the Housing Element based on bogus ABAG numbers, and AHA and Legal Services can sue and reach a Stipulated Settlement Agreement and a Stipulated Judgment based on them, but none of that will ever make the Association's old, bogus projections stand up as Law. And thus, the process of forcing Benicia to "voluntarily" build so-called affordable housing "*as determined by ABAG*" requires the criminal activity and cover up described herein.

Benicia will grow. If these so-called mandates of HCD, projections of ABAG and Complaint, and subsequent SSA acquired by Legal Services and AHA are allowed to stand, Benicia will not grow according to the needs and dictates of the taxpayers and electors who created a highly desirable, safe and suitable place to live, but according to the so-called "regional need" predicted and illegally dictated by Regional forces like HUD, HCD, ABAG, Legal Services, Developers and a "needful" City.

THE PLAINTIFFS; "AFFORDABLE" HOUSING:

If the Plaintiffs are supposed to represent evidence of the need for very low and low income housing in Benicia, then there is no need. All but two Plaintiffs already live in Benicia, and the other two live in Solano County. Sure, they're struggling to live where they live, but building

extra-high density, below standard "Reservations" will never fix that problem. Most people struggle to live where they live, no matter where they live.

Plaintiff Beth Winterhawk: With a monthly income of \$660, was *"forced to move to Vallejo when she and her husband could not find a two bedroom house which she could afford in Benicia."* What about the Husband? How much was his income at that time? Currently divorced, Ms. Winterhawk *"resides in a one bedroom unit in Benicia with the help of the Section 8 program."* Her complaint? She is allegedly *"informed and believes she would have much difficulty finding another Section 8 unit in Benicia if her current landlord decides to opt-out of the Section 8 program."*

What Ms. Winterhawk *"believes"* about *"if"* certainly doesn't demonstrate a housing need, especially since she was able to move back to Benicia and currently receives taxpayer subsidized housing in Benicia. This shows an improvement, not a lack of availability. Affordable? No housing exists and certainly new housing can not be built that would be *"affordable"* to a person making \$660 a month.

***Please read other Plaintiffs' stories in the Complaint.**

Overall, the Plaintiff's stories do not demonstrate a need for more Public (affordable) housing in Benicia. Certainly, we taxpayers can not be lawfully compelled to build housing based on what this or that person *believes* based on *ifs*, and based on old, bogus *projections* of a powerless, penniless Association. We could, however, enact affordable housing based on this criteria voluntarily if no laws were broken in establishing the justification for such alleged voluntary cooperation on the part of the citizens of Benicia, which is not the case here.

How many names on the Benicia Housing Authority *"need"* list are like 80% of the Plaintiffs and already live in Benicia? How many on the Benicia list are on the lists of our surrounding neighborhoods? Duplication of names on these lists must be investigated. Those already receiving subsidized housing IN Benicia but think they might not find another place IF they lose the one they have, must be removed from the lists.

"The Legislature finds and declares... the availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every California family is a priority of the highest order." California Government Code Section 65580 (a).

That's the stated California housing *goal*, and Benicia is a shining example of the attainment of that *goal*. Benicia's character, accented heavily by it's methodical restoration of existing housing and rapid, low-density growth, created a very high demand for housing, but not so high as to prevent 80% of the Plaintiffs from finding housing here. The other two Plaintiffs (20%) have housing in Solano County but, as stated, they would *"like"* to live in Benicia. If asked, so would perhaps millions of other Californians.

A wish to live in Benicia does not translate into a *"Right"* to live in Benicia if, without my knowledge and consent, it requires violating my

Rights to accomplish the wish. Taking my property in mass quantities to build housing for people who can't afford to satisfy their "likes" or even their "needs" violates my Rights. In my opinion, I can not be lawfully compelled by the SSA or any other legal means to build 5 million, 1017, 180, 49, 10, 2 or even 1 unit so as to satisfy another person's housing preference or need any more than Benicia can be lawfully compelled to build to satisfy the "regional housing need," notwithstanding the SSA.

Whether it's a home on the hill, or an extra high density, below standard public housing project, most people struggle to live where they live. And many who finally reach the point where they can comfortably afford to live where they live, move. This is the struggle people voluntarily endure trying to increase the quality of life for their families and themselves. Affordable housing? For low income people? No matter the City, no matter the site, no matter the density, there is no housing built, nor can any ever be built that is by itself, "affordable" to low income people.

"Affordable Housing" IS the same old, inhumane, discriminatory "Public Housing," that's been with us for 50 years and it has never been nor will it ever be "affordable." Every unit must be subsidized with abundant and increasing amounts of taxpayer money in order to build and then supplement the rent of or supposed purchase of such units, none of which the tenants or prospective buyers can afford. Changing the term "Public Housing" to "Low-Rent Housing" and then to "Affordable Housing" gave proponents a psychological edge. Who could be against "affordable" housing? New terms are already in the works: "Mixed - Income Housing" and "Neighborhood Choice."

Although the taxpayers, property owners and electors of Benicia face far more peril from the obvious loss of their political power over the City, this "partnership" between developers and Regional Agencies is also extorting millions of dollars and their land from them, in addition to State and Federal taxpayer dollars needed to make the developed units "affordable." Millions of taxpayer dollars as well as millions of dollars in cost to Benicia specifically (aggregate, not just Rockridge) will flow to AHA and other developers, and Plaintiffs get first pick of any housing built.

HCD-ABAG-City of Benicia:

Violation of California Constitution, Article 34:

Section 1. "[Approval of Low Rent Housing Projects by Electors]

"No low rent housing project shall hereafter be developed, constructed, or acquired in any manner by any State public body until, a majority of the qualified electors of the city, town or county, as the case may be, in which it is proposed to develop, construct, or acquire the same, by voting upon such issue, approve such project by voting in favor thereof at an election to be held for that purpose, or at any general or special election.

["Low Rent Housing Project"]

"For the purposes of this article... shall mean any development

composed of urban or rural dwellings, apartments or other living accommodations for persons of low income, financed in whole or in part by the Federal Government or a State public body or to which the Federal Government or a State public body extends assistance by supplying all or part of the labor, by guaranteeing the payment of liens, or otherwise. For purposes of this Article only there shall be excluded from the term "low rent housing project" any such project where there shall be existence on the effective date hereof, a contract for financial assistance between any State public body and the Federal Government in respect to such project.

["Persons of Low Income"] "For the purposes of this Article... shall mean persons or families who lack the amount of income which is necessary (as determined by the State public body developing, constructing, or acquiring the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

["State Public Body"] "For the purposes of this Article... shall mean this State, or any city, city and county, county, district, authority, agency, or any other subdivision or public body of this State."

Section 4. "[Scope of Article]"

The provisions of this Article shall supersede all provisions of this Constitution and laws enacted thereunder in conflict therewith. " Article 34 - Public Housing Project Law.

Also, "There is no redevelopment agency, and the City and the Housing Authority are limited by Article 34 restrictions of the State Constitution in their ability to develop affordable housing in the community."

Benicia Housing Element, pg. H-3.

The SSA-proposed 49 housing units to be built on public land donated by the City of Benicia (at least 49% (24) of which must be "affordable" to very low income persons), the 180 very low or low income units also resulting from the lawsuit and the 893 lower income units projected by ABAG and "mandated" by HCD are all "...development composed of urban or rural dwellings, apartments or other living accommodations for persons of low income, financed in whole or in part by the Federal Government or a State public body or to which the Federal Government or a State public body extends assistance by supplying all or part of the labor, by guaranteeing the payment of liens, or otherwise.

HCD, ABAG and the City of Benicia, is each a "State Public Body." ALL are restricted by California Constitution, Article 34, from developing, constructing or acquiring any low rent housing projects, "...in any manner, ...until a majority of the qualified electors of the city, ...in which it is proposed to develop, construct, or acquire the same, by voting upon such issue, approve such project by voting in favor thereof..." However, under color of law, HCD, the City of Benicia, it's Housing Authority, along with others, have conspired for the purpose of developing, constructing, and acquiring "low rent housing projects" in Benicia and thereby circumvented California Constitution, Article 34 and other laws.

For example, "The City of Benicia proposes policy and text amendments to the Housing Element of the General Plan. The Amendments include changes in policies and programs to encourage and promote affordable housing development by rezoning property for higher density, by relaxing ordinance restrictions and standards for affordable housing projects, and by providing other programs and incentives for development of affordable

housing; provisions of an inventory of sites suitable for affordable housing development; and recalculation of Benicia's "fair share" of affordable housing." Benicia Housing Element Amendment.

Amendments to land use and zoning, including the recent proposed Amendments rezone land in our low density residential neighborhoods to high density residential for the sole purpose of providing "*sufficient sites to accommodate its entire regional share need for 893 lower-income households as required by Government Code Section 65583 (c) (1). Under the terms of the Stipulated Settlement, low density to high density rezoning for 180 lower-income units is required.*" HCD letter, dated April 12, 1996; HCD letters, Attachments A and B of the Complaint (Exhibit A); Stipulated Settlement, pg. 3, ln. 6-16.

As stated by the City Attorney, allegedly (but I don't understand how it can be) the definition of a "Low Rent Housing Project" as define in California Constitution Article 34 has been altered by a court decision. While Article 34 states the term means "*...any development... ..for persons of low income...*," the court allegedly declared a housing project is not a "Low Rent Housing Project" unless 50% plus 1 of the units are set aside for persons of low income. Thousands of low-rent housing units have been built, and thousands more will be built without a vote of the citizens as required by Article 34, because so-called non-profit affordable housing developers build at a 49% ratio. Even in the SSA this limit is used: "*For purposes of this section, affordable shall mean any development that makes at least 49% of its units affordable to very low-income families.*" SSA, pg. 8.

HCD, ABAG and the City of Benicia (City Council-City Staff) are deeply involved in developing, constructing and acquiring low rent housing projects in Benicia, without a vote of the citizens, thereby violating California Constitution, Article 34, along with other serious violations of law. Note: AHA's Rockridge Project is allegedly 100% "affordable housing."

REGIONAL GOVERNMENT

(Loss of Constitutionally Guaranteed Representative Form of Government AND All Rights Enjoyed Thereunder:

Benicians losing control of their land is not an isolated case, it is a revealing example of a State and National phenomena. We still vote and elect people to preserve, protect and defend our Law, but those we elect are no longer in charge. Their current status is more or less that of a bank teller and promoter of the misleading claim, "We have to do it or we won't get the money."

The evidence is overwhelming: ALL our elected officials (City, County, State, and United States) have systematically lost control and since they have lost control "We the People" have lost control. We have all taken a back seat to the so-called "laws," dictates and mandates of appointed Secretaries, Agents and Councils of the Regional Government.

Most people know nothing about Regional Government even though it's been with us for many decades. After being little more than a wishful "think tank" topic for more than 30 years, Regional Government grew steadily in the '50s, grew rampant since the late '60s and today has a momentum that in effect defies our Law and defies the ability and resources of citizens who consider challenging. Individual disenfranchised taxpayers, property owners, electors and individual units of government, especially small cities like Benicia, can't afford to challenge while the "Legal Services"

of Regional Government have all resources necessary to force, under color of law, the accelerated implementation of Regional Governance.

I know why and how Regional Government overrules our lawfully guaranteed Representative Government, so I'm against OUR City knuckling under to it's illegal edicts, including those concerning housing. As a citizen, I'm against losing control over OUR City, OUR County, OUR State, OUR United States by continually treating only the effects of problems created by an illegal, plundering government with a mind of its own and the assumed power to back it up.

REGIONAL GOVERNMENT

President Office
Office of Management & Budget (OMB)
UnderSecretaries Group for Regional Operations

(HUD, DOE, DOT, HHS, EPA,
LSC (Legal Services Corp.), etc.)

Federal Executive Boards

Governor's Office
Office of Planning and Research
Clearinghouse
(HCD)

Council of Governments
(Association of Bay Area Governments (ABAG))

City Manager-Planning Staff-Consultants

CONSTITUTIONAL GOVERNMENT

FEDERAL

Legislative Executive Judicial
(Congress) (President) (Courts)

STATE

Legislative Executive Judicial
(Assembly) (Governor) (Courts)

COUNTY

Supervisors Courts Sheriff

CITY

Council
City Manager-Planning Staff

Regional Government is a centralization of power within the Executive Branch of the Federal Government. It is a Government of Appointed Secretaries, Agents and Administrators answering to the Executive vs. a Constitutional Government of mostly Elected Representatives answering to the people and their written Laws. It is a Government of centralized power vs. a Government of decentralized power. It is Slavery vs. Freedom.

Regional Government has no lawful footing. It has the color of law and the assumed power to back ^{it} up. Numerous State Legislatures (like the Illinois Legislature in 1979, referenced herein) have conducted investigations (which included the testimony of competent Constitutional Authorities) and have condemned Regional Governance. Numerous Counties and Cities have passed Resolutions in the past condemning Regional Government and calling for State and Federal Legislative investigations leading to corrective actions.

"Public Housing," "Low-rent Housing" and "Affordable Housing" (as it is called today) has almost nothing to do with providing *decent, safe and sanitary dwellings, without overcrowding*, or even affordable housing to lower-income households. Fifty years of Government housing is evidence that the Government provided just the opposite. Government housing is extra high density, below standard "Reservations" that warehouse poor

people, and is an ever-growing condition resulting from an illegal Government's plunderous ways. Government housing has to do with discrimination, greed, fraud, extortion, usurpation, and sedition; it has to do with the overthrow of lawful units of government (City, County, State, United States) and imposition of Regional Governance. This objective has long been met. All that's left to do is to make it "legal." Benicia taxpayers and electors are already being told, "It's the law." If true, then the U. S. Constitution and the California Constitution are dead; and we, the current taxpayers, property owners and electors of Benicia are surfs on the land that once was ours.

The combined actions of those listed herein have thereby contributed to:

Violations of United States Constitution:

(a) Article IV, Section 4, Protection of States Guaranteed.

"The United States shall guarantee to every state in this union a republican form of government...."

(b) Article VI, Section 2, Supreme Law of the Land.

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding."

(c) Amend. IX, Sec. 1, Certain Rights Not Denied to the People.

"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

(d) Amend. XIII, Slavery. *"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States...."*

(e) Amend. XIV, Citizenship.... *"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."*

Violations of the California Constitution:

(a) Article 1, Section 1, Inalienable Rights. *"All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."*

(b) Article 1, Section 6, Slavery Prohibited. *"Slavery is prohibited. Involuntary servitude is prohibited except to punish crime."*

(c) Article 1, Section 7 (a), Due Process of Law.... *"A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws...."*

(d) Article 1, Section 7 (b), Privileges and Immunities. *"A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens...."*

(e) Article II, Section 1, Purpose of Government. *"All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter it when the public good may require."*

**(f) Article III, Section 1, United States Constitution Supreme Law.
"The State of California is an inseparable part of the United States of America,
and the United States Constitution is the supreme law of the land."**

(g) Article 34 (supra).

Note: I am continuing to gather and analyze available information regarding all of the issues described herein. Indications at this point are that implementation of any part of the SSA that is defined by it's time frame deadlines will require the City to deny private and public property owners of public hearing rights.

Also, implementation of the SSA would automatically require certain distinct segments of Benicia's population to bear the consequences of the law more than other distinct segments of the community, and currently would involve perpetuation of fraud regarding the City's claims of intended land use. Results from ongoing research and my personal testimony (and others) available upon request.

TIME AND DATE YOU FIRST LEARNED OF THE PROBLEM.

In the evening of March 29, 1996, which is the date the "Notice of Public Hearing" was first published in the local papers.

WHOM DO YOU THINK SHOULD BE CONTACTED?

- 1. Law enforcement officials, including but not limited to:**
 - (a) The County District Attorney;**
 - (b) State Attorney General;**
 - (c) United States Attorney General. And,**
- 2. Elected Representatives:**
 - (a) County Supervisors;**
 - (b) State Assembly and Senatorial Representatives;**
 - (c) United States Representative and Senators.**

WHAT ACTION DO YOU WANT THE GRAND JURY TO TAKE?

- (1) Issue a finding that this Complaint deserves the immediate attention of each person listed above, and that the specific law violations falling within their particular sphere of influence be investigated and prosecuted to the highest extent of the law allowable.**
- (2) Forward a copy of this Complaint to Judge Dwight Ely who is overseeing the Stipulated Settlement Agreement (SSA) and the Stipulated Judgment (SJ); ask Judge Ely to freeze implementation of the SSA and SJ until the issues in this Complaint are fully investigated and adjudicated.**
- (3) Subpoena Housing Authority housing need lists from Benicia and surrounding cities checking for multiple listings of the same names. Also, request from each of the cities the names of persons on the housing need list who already live in the community.**
- (4) Subpoena Legal Services for a list of private foundations from whom they receive money, and check for developers and others without "standing" who may receive personal gain from these types of lawsuits.**
- (5) Do all in your power to return lawful control of Benicia and its housing to the current taxpayers, property owners and electors of Benicia.**
- (6) Subpoena from the City Of Benicia complete parcel information, including ownership and acreage of the 23 sites noted in the SSA, the proposed Infill Site Inventory map (all 42 sites), and the 28 parcels that were proposed to be removed from the current Site Inventory. The history of the 28 parcels removed is part of our ongoing research. Have they been developed? If so, did they include "affordable housing?" Were some removed from the list just to save certain areas of town from "affordable housing?" Is there a connection between ownership and developers?**

Note: It's very curious that the current site inventory is listed by parcel number (including the 28 parcels proposed to be removed) while the proposed map is listed by address, which made it impossible to cross-reference the parcels. I requested a list of parcels numbers for the 42 sites from Planning Director Bunch. He told me no such list had been compiled and would not be until the first group of parcels came up for rezonings. I find this very difficult to believe.

Supporting evidence includes the following exhibits:

- A. The Complaint (Case No. L.004789)**
- B. Stipulated Settlement Agreement (SSA)**
- C. Stipulated Judgment (SJ)**
- D. Housing Element Amendment**
- E. Benicia Housing Element**
- F. Land Use Element Amendment**
- G. Zoning Ordinance Text Amendment**
- H. Urban Design Background Report (Defines the "character" of Benicia.)**
- I. Text of changes made by Staff within 4 days of Public Hearing, April 16,1996**
- J. Notice of Public Hearing, published March 29, 1996**
- K. HCD letters**
- L. Newspaper Articles-Public Opinion**
- M. Housing Element Law (Government Code, Article 10.6)**
- N. Health and Safety Code Sections (Definitions)**
- P. Video, Benicia City Council Meeting, April 16,1996**
- Q. Video, Planning Commission Meeting, April 11, 1996**
- R. Video, Benicia City Council Meeting, June 4, 1996. Under the "Public Comment" period which is towards the end of the tape and meeting is where the Council admitted it withheld information concerning the SSA for "political reasons." (The first part of the tape is also informative in that the Council is again saying, "We have to do it or we won't get the money." Only in this particular case they are talking about grant money from the Federal Agency, Department of Transportation (DOT). It is another revealing example of how Regional Government works.)**
- S. Video, so-called Town Hall Meeting, June 26, 1996**

To: Solano County Grand Jury
From: Donnie Mason
35 El Bonito Way
Benicia, Ca. 94510
707-745-4020

July 22, 1996

CJ # 22

Re: Addendum to Grand Jury Complaint delivered July 9, 1996;
Violations of the Brown Act.

I have alleged the City Council violated the Brown Act by taking numerous actions in closed session, including taking a vote and signing the Stipulated Settlement Agreement (SSA). I now understand the City Council can vote and conclude such matters (lawsuit settlements) in closed session. However, the Brown Act has various levels of required disclosure depending on whether the body's closed session action was that of accepting a settlement offered by plaintiffs or offering a settlement which plaintiffs accepted:

(1) If it's a closed session on "Conference with Legal Counsel - Existing Litigation" ...the body must announce... *specifics* about any decision to *defend* or *accept settlement* of a lawsuit.... This announcement must be made immediately after the closed session and must name the other parties and describe what the suit was about and what it seeks, or what terms the settlement involves."

(2) If it's a closed session where the plaintiff "...has accepted, for example, the body's most recent settlement offer... disclosure must be made as soon as the settlement is final..., but it need be made only "upon inquiry" and need not, for example, be announced on the body's own initiative in a press release or at a later meeting. On the other hand, the agency may volunteer the information, and should be encouraged to do so."

The New Brown Act, First Amendment Coalition.

Mayor Hayes (Council member at the time) has repeatedly told the public he was the only one to vote against signing the SSA, but that still doesn't tell us whether the body's closed session action was (1) to accept settlement of..., or (2) the Council's "*most recent settlement offer*" accepted by the plaintiffs.

Either way, the SSA represents an unprecedented give away of public land, public moneys and the power Benicians enjoy over the land known as Benicia. This was done in closed session, on or about December 9, 1996. The Council then withhold that information from the taxpayers, property owners and electors of Benicia until it was too late to have any impact on the upcoming April, 1996 elections and vote on Measures A and B. During the Public Comment period of the June 4, 1996 Council meeting, the Council openly admitted that information concerning the SSA was withheld for political reasons. One Council member admitted it was wrong and apologized. Do these Council actions only represent unethical behavior or do they also represent, as I have alleged, violations of the Brown Act and other crimes?

I respectfully request and urge the Grand Jury to fully investigate these matters to the best of its abilities. I will assist in any manner the Grand Jury deems appropriate.

Sincerely,



Donnie Mason

To: Solano County Grand Jury

07/29/96

CJ
22

From: Donnie Mason
35 El Bonito Way
Benicia, Ca. 94510
707-745-4020

Re: Addendum (2) to Complaint delivered for Grand Jury, July 9, 1996.

I now understand the lawsuit filed by Legal Services (L004789) was filed on May 4, 1995 not 1994 as I have claimed in my original Complaint. I obtained my copy of the lawsuit from City Attorney Mason's Office in mid April of 1996. I wonder what the odds are that this Case could be "*Endorsed FILED*" with the wrong date? The filing was made at AM 11:02, well maybe it was filed at that time, maybe that's an error too. If the Grand Jury doesn't get to it first, I'm going to find out if it was just this Case "*Endorsed FILED*" with the wrong date on May 4, 1995.

I'm not an Attorney, but it seems the first thing to look at would be the date the Case was filed with the court. It's my understanding, deadlines for responding to the suit all hinge on the date the Case is "*Endorsed Filed*." When a group of us met with City Attorney Mason he told us the first thing he claimed was that the Statute of Limitations had ran out but the court thought different. He never told us why he thought that was the case. Maybe he thought as I did, that the lawsuit was filed in 1994. Even if this is not the case, I certainly believe Mr. Mason knew the "*Endorsed Filed*" date was wrong. And, I certainly feel he should have informed me and others who obtained their copies from him of this important error.

Our research and challenge are ongoing. After spending over a thousand hours researching (others have done the same) and because we had a mountain of material to get through (as you can see by the amount of exhibits presented to you all), it was sort of low on the priority list to call the court and ask, "Oh, by the way, did you stamp Case Number L004789 "*Endorsed FILED*" with the right date?"

Yes, I filed the Complaint without knowing all I needed to know, 'half cocked' some would say. However, sometimes, if you expect to get off a shoot at all, that's the way it has to be. While being questioned under public comment at the May 7, 1996 Council Meeting, the Council informed the public that it had met it's legal obligation for public hearings on the proposed Amendments. Even though a Town Hall meeting was scheduled and held on June 26, 1996 the City could, at any time, pass the Amendments without any further consideration to public comment or hearing on the matter.

If the City had any intentions of consulting the taxpayers, property owners and electors of Benicia, it would have held a Town Hall Meeting and the public hearings on the changes BEFORE the Council voted to approve them in the SSA back in December of 1995, not months after the fact. Their so-called Town Hall Meeting was as moot as the after the fact public hearings.

I had this "strange" idea a "Town Hall Meeting" would be held at Town Hall and that a "Town Hall Meeting" would be dialogue between the taxpayers, property owners and electors of Benicia and their elected officials, the Council. The so-called "Town Hall Meeting" (June 26, 1996) was held in a small room at the library. The room was packed and concerned citizens

overflowed into the hall, along with the line of those waiting to speak.

Each Panelist and City Council member had a microphone in front of them, but not for the benefit of those in the crowded room, they were for the live TV broadcast only. Those in the back of the room were continuously yelling, "Speak up!" Some left to watch it on TV at home. Still, many concerned citizens remained in the hall along with the long line of those waiting to be heard, where not a word could be heard.

If you review the taped meeting please notice where the Panel and City Council were seated and the parts each played. It is a "picture perfect" example of Regional Government as a whole. The elected City Council set aside while the City Manager, the Developer, one of the Plaintiffs Attorneys, the City Planner and the City Attorney each took a turn at "*educating the public*," as the City Manager put it. Please note that under Regional governance, since there is no longer a need for an elected City Council, the City Manager is the most important regional agent within the City, having the job of managing his staff in the implementation of regional policy. When the Panel was finished "*educating the public*," our elected City Council hung their heads low and piped up with the same old song, "We don't like it but it's the law, we have to do it." Come to find out the SSA is indeed an offer made by the City and accepted by the Plaintiffs.

I understand (after a three hour meeting with City Planner Bunch) the SSA went back and forth. So, I suppose it's just the luck of the draw that this precedent setting Case was settled as the SSA went "back" instead of "forth," allowing the City to only "legally" disclose "*upon inquiry*," the details of the unprecedented action they took when they voted to approve and sign the SSA behind closed doors.

If the Brown Act and the other laws that are supposed to protect the rights of the taxpayers, property owners and electors can be interpreted to allow what has been done to Benicia, then the Spirit of our laws has been slain and all that is left is the subverted Letter of the law (A review of the Brown Act and others like the California Housing Element law (GC, Article 10.6) reveals that this is indeed the case). You will notice that the word "shall" is used throughout but it means will. If you don't believe it, then I urge you to read the Complaint filed by Legal Services and the SSA again, or just ask the taxpayers, property owners and electors of Benicia.

Please note the "translation" of the SSA into the text of the various sections of our General Plan. You will see, notwithstanding Legal Services ongoing instructions, that the word "shall" is used in the SSA (Attachment B, Timeline and Priority Statement) and transformed to "will" and in the proposed Amendments. In the SSA we see, "*The City shall rezone to high density....*" And, "*The remaining rezonings shall be completed by July 1, 1997....*" Contrasted with the proposed Housing Element Amendment, page H-8, Program 3.01 which states, "*The City will rezone suitable low- and medium-density residential parcels for high-density use to accommodate 180 lower-income units.*"

I have already asked the Grand Jury to consider the difference between the word "shall" and "will" in law? It is my understanding "shall" means "may" if an interpretation of "will" violates lawfully recognized rights, as is the case here. Are we to believe this is an appropriate translation and that the transformation of "shall" to "will" doesn't reduce the City's options? Even though the lawsuit was not filed on May 4, 1994 but on May 4, 1995, the

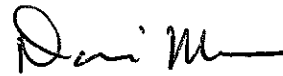
City still had (has) until July 1, 1998 (Planning Period set by State law) to "develop and implement" programs. The City Council, via the SSA agreed to implement specific programs prematurely demanded by the Plaintiffs via AHA and Legal Services.

I suppose many members of the Grand Jury know by now that everybody and their brother including some press have a copy of the Complaint. It was not my intention this document get wide distribution because of the seriousness of the charges made therein. I'm now working on getting the word out to the public in order to warn anyone who may have a copy of that document that it has been amended twice, and may be amended again. This makes those copies invalid and they should not be distributed any further. A lot of people have been asking for copies but I have now been advised not to make copies available to anyone until this matter is adjudicated by the proper authorities. We need more from the Grand Jury than it's annual report sometime next year. If this is all the Grand Jury can do, then we the taxpayers, property owners and electors of Benicia must seek another course to protect our inalienable rights, which we are doing but, we need your help, NOW!

I'm faxing this Addendum (2) as I did the first so that the Grand Jury would have the updates as soon as possible. I will also mailing a copy, along with a copy of an invitation I received in the mail just a few days ago to the "GOVERNMENT GRANTS AND LOANS SEMINAR." It is a related and revealing example of only one means by which our tax dollars are being abusively misused in the name of "affordable housing."

I would like notification as soon as possible that my Complaint delivered on July 9, 1996 and the two addendums have been received by the appropriate authorities.

Sincerely,



Donnie Mason

Supporting evidence includes the following exhibits:

- A. The Complaint (Case No. L.004789)**
- B. Stipulated Settlement Agreement (SSA)**
- C. Stipulated Judgment (SJ)**
- D. Housing Element Amendment**
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- Q. Video, Planning Commission Meeting, April 11, 1996**
- R. Video, Benicia City Council Meeting, June 4, 1996. Under the "Public Comment" period which is towards the end of the tape and meeting is where the Council admitted it withheld information concerning the SSA for "political reasons." (The first part of the tape is also informative in that the Council is again saying, "We have to do it or we won't get the money." Only in this particular case they are talking about grant money from the Federal Agency, Department of Transportation (DOT). It is another revealing example of how Regional Government works.)**
- S. Video, so-called Town Hall Meeting, June 26, 1996**

***Available on Request**