

The Arnold Law Practice

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San Francisco Office

One Sansome Street, Suite 3500
San Francisco, CA 94104
Telephone: 925-284-8887
Facsimile: 925-284-1387
Email: jarnold@arnoldlp.com
URL: www.arnoldlp.com

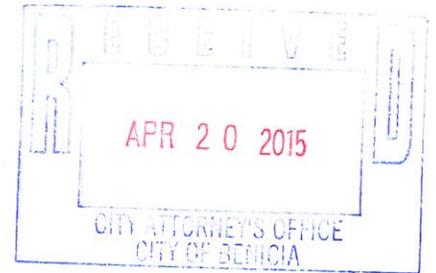
East Bay Office

3685 Mt. Diablo Boulevard
Suite 331
Lafayette, CA 94549
Telephone: 925-284-8887
Facsimile: 925-284-1387
*Please respond to our
East Bay Office*

**BY EMAIL,
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April 15, 2015

Heather McLaughlin, Esq.
City Attorney
City of Benicia
250 East L Street
Benicia, CA 94510



Re: Correcting ERS' summary of Site history.

Dear Heather:

It appears the consultants have a meeting set for next week Wednesday to go over the draft workplan proposal prepared by ERS. We want to bring to your attention the need for ERS to correct its summary of the history of the Historic Arsenal Park, LLC property.

ERS states in Section 2.1, Site Description and History (pp. 1-2)

The United States Army (Army) owned and operated the Arsenal (the Site) for approximately 115 years through 1964. Operations at the Site beginning in 1876 included cleaning and repair of small arms, including metal treatments with acid, solvents, and caustic baths; de-greasing, painting, and parkerizing (an anti-corrosion treatment for the metal surfaces of small arms weapons), electroplating processes, incineration and a small arms test range. Onsite underground fuel tanks stored petroleum products for motor vehicles and boilers. When the Army owned and operated the Site, both the sewer and storm drain systems discharged domestic and industrial wastes without treatment directly to the Carquinez Strait. The City bought the parcels comprising the HAP property in 1965, and subsequently parceled, leased and sold them for use by various industries. In 1969-1970, the City of Benicia reconfigured the sanitary sewer so that it discharged to the City's treatment plant, but the storm drains continued to discharge directly to Carquinez Strait.

The HAP is a California limited liability company that purchased the HAP properties either directly from the City of Benicia, or leased the HAP properties from the City since the Army left in the 1960's. It was likely common practice to dispose of waste fluids using the existing sewer systems which until 1970 discharged to the Carquinez Straits. Between 1966 and 1981, the buildings onsite were used for office space, and commercial rental units.

ERS' historical account is not accurate as to my client, Historical Arsenal Park, LLC. The specific errors include:

1. It was not the City, but rather Benicia Industries, Inc. and Shareholder Properties, Inc. that parceled and sold off property in the Arsenal.

Support: 6/11/75 deed from City to Benicia Industries, Inc. ("BII").
3/20/79 deed from BII to Shareholder Properties, Inc. ("SP")
3/4/77, 3/19/78, 9/20/79, & 11/9/79 parcel maps (these are just a sampling, i.e. maps that pertain specifically to the HAP, LLC parcels)

2. The City didn't really lease/manage the Arsenal property; even during the decade when the City held title, it delegated development/leasing of the property to BII.

Support: 1/7/64 Master Lease
9/8/14 Benicia Herald article

3. HAP, LLC never was a tenant on the property, and certainly did not lease the property from the City after the Army left. It was impossible for HAP, LLC to have leased the property until the 1980s (even setting aside BII's activities in the 1960s and 1970s) because HAP, LLC (as Poly Western, etc.) didn't even exist until the 1980s.

Support: 7/27/88 certificate of limited partnership.

Rather, HAP, LLC (as Poly Western, etc.) received the property through a 1031 exchange from SP in 1979.

Support: 11/29/79 and 4/6/81 deeds

4. The structure of the narrative implies that *HAP itself* dumped waste into the sewer. This is mistaken implication.

Support: 11/5/03 LLC statement of information listing HAP's type of

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business as “rental of art studios”

List of HAP’s tenants attached to May 2014 AEI report

Heather, as a result of these mistakes and unsupported conclusions, it is imperative that ERS correct as soon as possible the paragraph about my client, as follows:

... The City bought the Arsenal in 1965, including the parcels comprising the HAP property currently owned by Historic Arsenal Park, LLC (HAP, LLC). in 1965. Pursuant to a Master Lease from the City, Benicia Industries, Inc. assumed responsibility for developing and subleasing the Arsenal. , and subsequently parceled, leased and sold them for use by various industries In 1965, it was likely a common practice to dispose of liquid wastes using the existing sewer systems, which discharged directly to the Carquinez Strait. In 1969-1970, the City of Benicia reconfigured the sanitary sewer so that it discharged to the City’s treatment plant, but the storm drains continued to discharge directly to Carquinez Strait.

In 1975 the City sold the Arsenal to Benicia Industries, Inc. The parcels owned by HAP, LLC today were leased to office, commercial, and industrial tenants. Over the following years, Benicia Industries, Inc. and its holding company, Shareholder Properties, Inc., parceled and sold off parts of the Arsenal. In a Section 1013 Starker exchange in 1979, Shareholder sold the parcels owned today by HAP, LLC to its predecessor.

The HAP, LLC is a California limited liability company commercial landlord company that has operated since 2003. that purchased the HAP properties either directly from the City of Benicia, or leased the HAP properties from the City since the Army left in the 1960’s. It was likely common practice to dispose of waste fluids using the existing sewer systems which until 1970 discharged to the Carquinez Straits. Between 1966 and 1981the present, the buildings owned today by HAP, LLC have been onsite were used for office space, and commercial rental units.

We hope to hear soon that ERS has corrected its summary of the history of the HAP, LLC property. If you or ERS have any questions, please call me or my colleague John Beard at your convenience.

Very truly yours,


James R. Arnold

Cc: Client, JAB