



City Attorney's Office
MEMORANDUM

Date: May 3, 2012
To: Heather McLaughlin, City Attorney
From: Greg Henry, Law Clerk
Re: **Summary of April 23, 2012 Arsenal Meeting**

Council Member Alan Schwartzman opened the meeting at 4:04 p.m. on Monday, April 23, 2012, in the Council Chambers of City Hall, 250 East L Street by reiterating his goal of limiting the affected area and slowing down the process which he believed they were achieving.

Mayor Patterson then spoke about "the team" made up of herself, Council Member Schwartzman and City Attorney Heather McLaughlin. She then reviewed the rules for Stakeholder Participation and emphasized that one of the purposes of the meeting was to allow for questions. She stated her goal as to avoid being "railroaded by DTSC," (Department of Toxic Substance Control) and working together to interface with DTSC, a regulatory body over which the City can exert no control.

Mark O'Brian from ERS was on-hand to answer questions regarding the DTSC letter reducing the area of concern. Mark O'Brian began by comparing the current situation to where it was when he first started working. He said that when he began the whole Arsenal area was under eminent threat of an Order from DTSC. Currently, DTSC has limited the list and currently there are only a "handful" of sites that they are interested in. Further, on the State Water Board's Geotracker site, the Arsenal Area is listed as Inactive.

Council Member Alan Schwartzman then distributed a copy of the letter to everyone in attendance. It was then asked if a copy would be added to the City website which City Attorney Heather McLaughlin affirmed.

Q: Can you clarify the Geotracker and has the Arsenal been removed from the Cortese List?

A: Yes the Arsenal has been removed from the Cortese List, but it is unclear which regulatory body will be in control moving forward.

Q: Are the new sites listed on the Regional Water Quality Control Board (or Water Board)?

A: Mr. O'Brian replied, no and reaffirmed that his initial goal was the delay of an Order from DTSC encapsulating the whole of the Arsenal.

Q: Which specific areas would be identified by DTSC as requiring further action?

A: Mr. O'Brian replied that he had no specific knowledge regarding which property owners would be identified but stated that you could use a map, presented by DTSC, which generally marked the areas that DTSC was focusing on to "guess" who would be notified.

Mayor Patterson added that the City would be using the notes given by DTSC to ensure that the limited areas would remain so, restricting DTSC to those areas.

Q: Is it possible to force DTSC could be forced to give a timetable?

A: Mr. O'Brian replied that there was not, but that there were "no secrets" going on at DTSC.

Q: Are the Minutes from the Jan 12th meeting available online?

A: City Attorney McLaughlin replied not currently.

Q: The next question involved a map that was available as part of a PowerPoint presentation by DTSC, the questioner wished to know which areas were still under concern of the DTSC.

A: Mayor Patterson replied that based upon the Army Report, only the "Lower Arsenal" was still currently under investigation by DTSC, this corresponded to the purple area on the map.

Q: Will there be future "land use restrictions" on properties in the Arsenal which weren't part of the limited list and how is such an action triggered?

A: Mr. O'Brian emphasized that DTSC wasn't "going away" and that if in the future there was an event, which must be reported, for example finding something buried or releasing a smell, such an incident, once reported to DTSC, could cause restrictions to be placed upon the land.

Q: Is it the Preliminary Plan on future development that triggers DTSC involvement?

A: Mr. O'Brien replied that there must be an event to trigger further DTSC involvement. After testing following an event, there could be land use controls or capping but it must involve a specific technical issue. The focus now is on the sites of concern.

Q: Then are those of us outside the limited area we are free from DTSC?

A: Mr. O'Brien then reiterated his "there is no issue if there's no trigger" statement.

Q: For those of us in the area of concern, do we know specifically who is targeted? Do you [Mr. O'Brien] know what DTSC will do next? Since we are off the Cortese List and inactive on the Geotracker, is the Pending order for the General Arsenal off?

A: Mr. O'Brien replied, there is no longer a pending Order for the General Arsenal.

Q: If I order a Phase One and call DTSC, what will DTSC say?

A: Mr. O'Brien affirmed, they have not reason to say it is dirty. City Attorney McLaughlin added, the goal is to not raise flags. Mayor Patterson

Q: If none of the property still under investigation by DTSC is City controlled, will the City continue to stay concerned with this issue?

A: Mayor Patterson answered that the Priority Development Action Plan (PDA) for the Arsenal retains the involvement as part of the "road map" and is currently City Policy. Mr. O'Brien added that this was part of the reason that he couldn't name details about property owners was that he represented the City.

Q: Concerning the Lower Arsenal Use Plan, this is still an issue for the plan?

A: Mayor Patterson replied that the PDA would need to be redone and asked City Manager Brad Kilger to comment. City Manager Kilger first responded with news about State of California funding for the City Capital State Park. Then, he said that this time the City of Benicia's plan was to lead until more information is obtained from DTSC. Public Works and Community Development (PWCD) Director Charlie Knox added that the plan would have to go back to the Planning Commission to decide what types of uses would

be appropriate. Mayor Patterson stated that the Arsenal was part of the City's Priority scheme.

Q: Could you force neighbors to clean their property due to uses in the plan?

A: Mayor Patterson responded that it was mostly the Residential element that triggered increased cleanliness.

Q: If you force a plan with residential uses would we be forced to clean?

A: Mayor Patterson replied just having people work there might be enough to trigger a cleaning order.

Q: Could residential use be revisited as part of the plan?

A: PWCD Director Knox answered that it was unknown.

Q: Why change the Industrial Park with residential?

A: Mayor Patterson responded that the working group would look into this and that by speaking out against you add to the concern.

The audience member then added that he didn't wish to see the act of adding residential create greater problems.

Mayor Patterson stated that the original plan didn't have any residential.

Q: Did the Priority Development Agreement Mandate the inclusion of residential?

A: City Manager Kilger replied that the mandate was only for the option and that the City would be vigilant to prevent residential from "sneaking in." Mayor Patterson added that the ABAG, land use and transportation grant money all went to the southern part due to its greater employment and that Benicia was much more residential. Our request for the Grant money was to grow jobs and do business planning. Mr. O'Brian stated that they were looking into financial options for the city to get the areas cleaned. These involved Federal money, Insurance claims and Military aid. Parts of this involved checking which liability claims were against companies who were still solvent. He emphasized that getting money was the next step.

Q: If we still don't know where the trouble is, why bother taking all these steps?

A: Mr. O'Brian replied because there may be problems.

Q: Why make added trouble over issues that might never happen?

A: Mr. O'Brian answered that we want to be ready because any future development may cause issue.

Q: Are we currently filling any claims?

A: City Attorney McLaughlin answer first saying that the City needed to get rolling, that is was inevitable that orders are coming from DTSC. Mr. O'Brian further added that everyone should be ready since DTSC may come back. Mayor Patterson then suggested the two "working groups." The first, called the FAQ group would meet shortly. The purpose of this group was to ask questions, create a decision tree and help create a source of information. The second would be the Effected Property Owners. This group would initially be made up of only people affected by DTSC orders. Would work together with DTSC. Mayor Patterson then opened the floor to suggestions and questions.

Q: Would the FAQ group meet directly with DTSC?

A: Mayor Paterson answered, "Yes with Mark [O'Brian]'s team."

Q: How long then can Mark stick around?

A: Mr. O'Brian responded that he would be around for a while still. Mayor Patterson emphasized the need for everyone to work together.

Q: What makes up the group?

A: Mayor Patterson replied the effected parties decide who will make up the group. Mr. O'Brian added that it was still unclear who contributed to the problem. Mayor Patterson also added that the Army generally waited until after the clean up had occurred and then reimburse funds.

There was a final statement by an attendee who stressed her lack of concern about the PDA including a residential area.