

**July 8, 2010**

**BENICIA PLANNING COMMISSION**

**CITY HALL COUNCIL CHAMBERS**

**REGULAR MEETING AGENDA**

**Thursday, July 8, 2010**

**7:00 P.M.**

**I. OPENING OF MEETING**

**A. Pledge of Allegiance**

**B. Roll Call of Commissioners**

**C. Reference to Fundamental Rights of Public - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.**

**II. ADOPTION OF AGENDA**

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**III. OPPORTUNITY FOR PUBLIC COMMENT**

**This portion of the meeting is reserved for persons wishing to address the Commission on any matter not on the agenda that is within the subject jurisdiction of the Planning Commission. State law prohibits the Commission from responding to or acting upon matters not listed on the agenda.**

**Each speaker has a maximum of five minutes for public comment. If others have already expressed your position, you may simply indicate that you agree with a previous speaker. If appropriate, a spokesperson may present the views of your entire group. Speakers may not make personal attacks on council members, staff or members of the public, or make comments which are slanderous or which may invade an individual's personal privacy.**

**A. WRITTEN**

**B. PUBLIC COMMENT**

**IV. CONSENT CALENDAR**

Consent Calendar items are considered routine and will be enacted, approved or adopted by one motion unless a request for removal for discussion or explanation is received from the Planning Commission or a member of the public by submitting a speaker slip for that item.

\*Any Item identified as a Public Hearing has been placed on the Consent Calendar because it has not generated any public interest or dissent. However, if any member of the public wishes to comment on a Public Hearing item, or would like the item placed on the regular agenda, please notify the Community Development Staff either prior to, or at the Planning Commission meeting, prior to the reading of the Consent Calendar.

**A. Approval of Minutes of June 10, 2010**

**V. REGULAR AGENDA ITEMS**

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**A. LOWER ARSENAL MIXED USE SPECIFIC PLAN – RESOLUTION TO DENY**

**(CONTINUED)**

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**PROPOSAL:**

The Draft Lower Arsenal Mixed Use Specific Plan was prepared to implement the Lower Arsenal Mixed Use Designation of the General Plan. On May 13, 2010 the Planning Commission conducted a public hearing and reviewed the proposed Plan and accompanying Environmental Impact Report (EIR). On June 10, 2010 the Planning Commission received and discussed a draft resolution recommending that the City Council not adopt the Plan and EIR as written. The Commission recommended that the draft resolution be brought back for further discussion on July 10, 2010.

**Recommendation:**

Modify and/or confirm the draft resolution recommending that the City Council not adopt the Lower Arsenal Mixed Use Specific Plan and the EIR as written.

**B. RECOMMEND AN ORDINANCE AMENDING THE BENICIA INCLUSIONARY HOUSING ORDINANCE BASED ON A RECENT CALIFORNIA COURT OF APPEALS CASE**

**PROPOSAL:**

A recent court case requires an amendment to the city’s inclusionary housing ordinance in regard to its application to rental developments. The key impact includes removing the requirement for affordable rental housing in newly created rental developments that receive no assistance from the local government. The City of Benicia cannot impose affordable housing requirements on rental housing as a result of this court case. Developers receiving financial assistance can still be required to provide affordable rental housing. Affordable housing requirements on for-sale housing are not affected by this court case.

**Recommendation:**

Recommend City Council adopt an ordinance to modify and update the existing city inclusionary housing ordinance.

**C. RECOMMEND AN ORDINANCE AMENDING THE BENICIA DEVELOPMENT AGREEMENT ORDINANCE**

**PROPOSAL:**

The zoning text amendment would update and amend Title 17 (Zoning), specifically Section 17.116.020 establishing new requirements for any development agreement the City may enter into with a developer, applicant or permittee.

**Recommendation:**

Review and consider proposed revisions to the development agreement ordinance with a recommendation to the City Council regarding potential changes.

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**VI. COMMUNICATIONS FROM STAFF**

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**A. Receive City Policies and Regulations on electronic billboard signs.**

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**VII. COMMUNICATIONS FROM COMMISSIONERS**

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**VIII. ADJOURNMENT**

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**Public Participation**

The Benicia Planning Commission welcomes public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The Planning Commission allows speakers to speak on agendized and non-agendized matters under public comment. Comments are limited to no more than 5 minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the Planning Commission.

Should you have material you wish to enter into the record, please submit it to the Commission Secretary.

**Disabled Access**

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact Valerie Ruxton, the ADA Coordinator, at (707) 746-4211. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

**Meeting Procedures**

All items listed on this agenda are for Commission discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action the Commission may take.

The Planning Commission may not begin new public hearing items after 11 p.m. Public hearing items, which remain on the agenda, may be continued to the next regular meeting of the Commission, or to a special meeting.

Pursuant to Government Code Section 65009; if you challenge a decision of the Planning Commission in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice, or in written correspondence delivered to the Planning Commission at, or prior to, the Public Hearing. You may also be limited by the ninety (90) day statute of limitations in which to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

Appeals of Planning Commission decisions that are final actions, not recommendations, are considered by the City Council. Appeals must be filed in the Public Works & Community Development Department in writing, stating the basis of appeal with the appeal fee within 10 business days of the date of action.

#### Public Records

The agenda packet for this meeting is available at the City Clerk's Office, the Benicia Public Library and the Public Works & Community Development Department during regular working hours. To the extent feasible, the packet is also available on the City's web page at [www.ci.benicia.ca.us](http://www.ci.benicia.ca.us) under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the Public Works & Community Development Department's office located at 250 East L Street, Benicia, or at the meeting held in the City Hall Council Chambers. If you wish to submit written information on an agenda item, please submit to Gina Eleccion, Management Analyst, as soon as possible so that it may be distributed to the Planning Commission.

 [June 10, 2010 Minutes](#)

 [Lower Arsenal Mixed Use Specific Plan-Resolution To Deny](#)

 [Ordinance Amending Benicia Inclusionary Housing Ordinance](#)

 [Ordinance Amending Benicia Development Agreement Ordinance](#)

 [Sign Ordinance - Electronic Billboards](#)



**BENICIA PLANNING COMMISSION  
CITY HALL COUNCIL CHAMBERS  
REGULAR MEETING MINUTES**

**Thursday, June 10, 2010  
7:00 P.M.**

***DRAFT***

**I. OPENING OF MEETING**

**A. Pledge of Allegiance**

**B. Roll Call of Commissioners**

Present: Commissioners Richard Bortolazzo, Don Dean, Rick Ernst, Rod Sherry, Lee Syracuse and Brad Thomas

Absent: Chair Dan Healy

Staff Present: Lisa Porras, Senior Planner  
Sharon Williams, Development Services Technician  
Amalia Lorentz, Economic Development Manager  
Kat Wellman, Contract Attorney  
Kathy Trinque Administrative Secretary

**C. Reference to Fundamental Rights of Public** - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

**II. ADOPTION OF AGENDA**

On motion of Commissioner Ernst, seconded by Commissioner Syracuse, the agenda order was amended to move Item 6A to after the Consent Calendar and adopted by the following vote:

Ayes: Commissioners Bortolazzo, Dean, Ernst, Sherry, Syracuse, Thomas

Noes: None

Absent: Chair Dan Healy

Abstain: None

**III. OPPORTUNITY FOR PUBLIC COMMENT**

A. **WRITTEN**  
None.

B. **PUBLIC COMMENT**  
None.

**IV. CONSENT CALENDAR**

**A. Approval of Minutes of May 13, 2010**

Commission Dean pulled approval of the minutes and recommended corrections.

On motion of Commissioner Ernst, seconded by Commissioner Syracuse, the minutes were adopted by the following vote:

Ayes: Commissioners Bortolazzo, Dean, Ernst, Syracuse, Thomas  
Noes: None  
Absent: Chair Healy  
Abstain: Commissioner Sherry

**VI. COMMUNICATION FROM STAFF (Item moved up on the agenda)**

**A. CONSIDERATION OF ADDING NEW INDUSTRIAL USES FOR ECONOMIC VITALITY TO THE ZONING ORDINANCE**

**Receive a presentation regarding the City Economic Development Strategy initiative to add green and technology uses to industrial and commercial zones to enhance business attraction opportunities; provide feedback to staff on process for changes.**

Amalia Lorentz, Economic Development Manager, gave a verbal presentation from the staff memorandum dated June 3, 2010, contained in the Commission's agenda packet. She reminded the Commission that this item has been pending since 2006/07. The Economic Development Board has been working on implementation of the strategy to update zoning code to include clean energy, high-tech, R&D uses in industrial districts, as listed on the City's Strategic Action 5.C of Goal #3.

This update to the City's zoning regulations will encourage more clean energy, high-tech, research and development uses in the industrial by clarifying that they are allowed and what's allowed. Right now, it's not clear. Ms. Lorentz stated the intent is to make room for technology and be ready for when the next "Google" walks through the door.

Ms. Lorentz identified the issues that Economic Development and Planning Staff will need to address: process; parking implications; include/exclude vivaria (animal labs); and hazardous materials standards. Proposed uses for the Zoning Code could include: biotechnology; cleantech; dry lab; information technology; nanotechnology; occupational health clinic; vivarium; wet lab as listed in the staff memorandum to the Commission.

Commissioners asked questions concerning:

Definition of Biolevel 3.  
Possible Rail Stop in the Industrial Park.  
Next Steps?  
Concerns about vivarian uses and carte blanche approval.  
Clean technology, concerned about the process for approval  
Convalescent homes allowed in the Industrial Park?

Ms. Lorentz explained that the process includes first introducing the concept, taking the feedback from the Commission, continue working with the community, work with the Planning Division, put forth a proposal, and bring it back to the Planning Commission.

Public Comment:

JB Davis of 385 West K Street, member of the Economic Development Board. He commented that this has been talked about since 2006. He stated that it's time we update the Zoning Code to consider businesses that exist today and a technology needs assessment is underway now. He spoke in favor of moving forward with these changes.

Dana Dean, 835 First Street, speaking on behalf of Amports commented that she applauds the effort that has gone into this item. She stated that there are 2 definitions she wants to see worked on: general manufacturing and how the district is defined. She underscored the importance of protecting the industrial area from incompatible uses.

Commission Comments:

Commissioner Ernst stated that he would like to see this work done and encouraged EDB to do so.

Commissioner Dean stated that he would also like to see this work proceed. Regarding Vivarian uses, would like to see us "cast a wider net" then if issues with specific uses come up, it doesn't prematurely preclude any use.

Commission Sherry asked if these changes establish a process so companies don't have to apply for a use permit? He also asked at what point would the City say a vivarian use would not be acceptable?

Ms. Lorentz responded that when these changes come back to the Commission there will be more detail provided. The EDB is trying to make this a good thing for businesses.

Commissioner Thomas asked if we are ahead of or behind the curve compared to other cities?

Ms. Lorentz responded that we were ahead of the curve, but now other cities have caught up. The intent is to clearly articulate what is and what is not allowed in the industrial zone.

Commissioner Thomas stated that he'd like to see it become broader rather than narrower. He's like to see more public notice so more of the public can provide comments.

## V. REGULAR AGENDA ITEMS

**A. USE PERMIT FOR AT&T WIRELESS FACILITY LOCATED AT 257 ESSEX WAY**

09PLN-00039 - Use Permit  
257 Essex Way, APN: 083-210-210

**PROPOSAL:**

The applicant requests approval of a Use Permit to install a wireless communication facility adjacent to the existing water tanks at 257 Essex Way. The facility consists of 12 pole-mounted panel antennas and an associated equipment enclosure.

**Recommendation:** Approve the Use Permit (09PLN-00039) to install a new wireless communication facility consisting of twelve (12) panel antennas mounted to twelve (12) ground-mounted poles measuring 19 feet in height and seven (7) equipment cabinets within a 375 square foot equipment enclosure located near the water tanks at 257 Essex Way, based on the findings, and subject to the conditions listed in the attached resolution and as discussed during the public hearing.

Sharon Williams, Development Services Technician, summarized the staff report contained in the Commission's packet. This project meets all the City of Benicia's zoning ordinance requirements, is consistent with the General Plan and meets all the FCC standards. The site has multiple communication facilities already in place. The cumulative levels of radio frequency electromagnetic exposure will be 35% of the applicable limit, which was measured at the site.

Commission questions/concerns.

Commissioner Sherry asked if the Public Works Department is OK with this project.

Ms. Williams responded that yes, the project had been reviewed and approved by Public Works. Public Works negotiated the lease agreement, which includes various conditions. In this case, Mario Giuliani, Management Analyst for Parks & Community Services, negotiated the lease with AT&T.

Commissioner Syracuse asked about the color of the towers.

Ms. Williams responded that the poles and antenna are painted gray to blend in with the water tank and the equipment and fence are painted brown to blend into the hillside.

Commissioner Ernst stated that there is adequate open space area around the tanks, so no new development would be allowed in close proximity to the tanks. Why is it addressed on Essex? Doesn't see any reason not to approve this application.

Ms. Williams responded that the access gate is on Essex at Panorama.

Katherine Wellman, Attorney, clarified that the Commission does not have to approve the use permit. The Planning Commission can't reject it based on the electromagnetic

exposure. The tall tower at this site is the Solano County Emergency Communications tower that provides service to the City of Benicia.

Commissioner Sherry asked about the lease payment terms concerning an upfront payment but the City doesn't receive rent for 4 years?

Katherine Wellman, Attorney responded that the arrangement will help the City Parks & Community Services Department which will receive an upfront lump sum for parks equipment.

Commissioner Dean asked staff to clarify that the project will be less than 29% of the applicable public limit for unlimited exposure? Is that at the location and not in the residential area?

Ms. Williams responded that yes, the houses are 500 feet or so away from the project.

Opened for public comment. None.

Returned to the Commission.

Commissioner Ernst asked if the City needs to disclose to residents and future homebuyers about possible exposure?

Ms. Williams stated it was not necessary since the exposure is within acceptable limits and no risk is associated with this project.

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA APPROVING A USE PERMIT FOR INSTALLATION OF A WIRELESS COMMUNICATION FACILITY AT 257 ESSEX WAY, APN: 083-210-210 (USE PERMIT 09PLN-00039) WAS MADE BY COMMISSIONER SHERRY AND SECONDED BY COMMISSION SYRACUSE**

On motion of Commissioner Sherry, seconded by Commissioner Syracuse, the above Resolution was adopted by the following vote:

Ayes: Commissioners Bortolazzo, Dean, Ernst, Sherry, Syracuse, Thomas  
Noes: None  
Absent: Chair Healy  
Abstain: None

**B. LOWER ARSENAL MIXED USE SPECIFIC PLAN – RESOLUTION TO DENY (CONTINUED)**

**PROPOSAL:**

The Draft Lower Arsenal Mixed Use Specific Plan was prepared to implement the Lower Arsenal Mixed Use Designation of the General Plan. On May 13, 2010 the

Planning Commission conducted a public hearing and reviewed the proposed Plan and accompanying Environmental Impact Report.

**Recommendation:**

Modify and/or confirm the draft resolution recommending that the City Council not adopt the Lower Arsenal Mixed Use Specific Plan and the EIR as written.

Commissioners Bortolazzo and Sherry recused themselves and left the Council Chambers.

Lisa Porras, Senior Planner, introduced this item and stated that it had been continued from the May 13, 2010 Planning Commission Meeting. Before the Commission is a draft resolution to modify and/or confirm recommending that the City Council not adopt the Lower Arsenal Mixed Use Specific Plan and the EIR as written.

Commission Questions/Comments? None.

Public Comments:

Belinda Smith expressed concern that the draft resolution does not provide background from the Historic Preservation Review Commission, specifically, the Secretary of Interior Standards are necessary to ensure a starting point.

Dana Dean, 835 First Street, representing Amports spoke in favor of adopting the resolution but wants language added, specifically, that the documents be recirculated and there is no mention of redoing the economic plan.

Kathleen Olson of 334 West H Street spoke against approval of the resolution. She referred the Commission to a letter received from Dennis Owens today. She also stated that Items 1, 2, 3 don't reflect the discussion that Chair Healy was not in support of the building ratio. She stated concern that this resolution takes away private property rights.

Public Comment closed.

Commissioner Syracuse asked that a section from Dennis Owens' letter be read into the record.

Lisa Porras, Senior Planner, read the section of Dennis Owens' letter.

Kat Wellman, Attorney, advised the Commission that we don't have a quorum represented tonight. Chair Healy is absent, two Commissioners have recused themselves and because Commissioner Syracuse was not present when the Commission made their motion at the May 13, 2010 meeting. This item should return to staff and bring it back to the next Planning Commission Meeting in July 2010.

Commissioner Ernst expressed concern about a new economic analysis should be done and whether the City should add references to the Secretary of Interior standards for historic preservation. He would like to finish this when Chair Healy returns.

Commissioner Dean stated support for the Resolution but has concern about the arsenal area as a whole. It is not one cohesive district, it contains sub-districts and he would like to see it developed as a whole. The outside districts affect the historic integrity of the other districts.

A motion not to adopt the resolution and return it to staff to amend it and continue to the next Planning Commission Meeting in July was made by Commissioner Ernst and seconded by Commissioner Syracuse with the following vote:

Ayes:	Commissioners Dean, Ernst, Thomas, and Syracuse
Noes:	None
Absent:	Chair Healy
Abstain (recused):	Commissioners Bortolazzo and Sherry

## **VI. COMMUNICATIONS FROM STAFF**

Lisa Porras, Principal Planner advised the Commission of a letter received from Steve Goetz, of 347 Goldenlopes Court, concerning follow-up comments on the Caltrans landscaping project at the I-680/I-780 interchange, included in recent discussion of Gateways.

Kathy Trinke, Administrative Secretary, announced the Community Workshop on June 29 at the Senior Center and the Community Priorities Survey now open for the Commissioners to provide input as well as members of the public. The Commissioners and public may access the survey on the City's website at [www.ci.benicia.ca.us](http://www.ci.benicia.ca.us) and click on Community Priorities Survey tab.

## **VII. COMMUNICATIONS FROM COMMISSIONERS**

Commissioner Syracuse asked that staff review the zoning ordinance concerning electronic billboard signs. He noticed that there are 2 now in Vallejo and one at the entrance to the Bay Bridge. He asked staff to scan the zoning ordinance to see if we're protected from this type of sign and make a recommendation at the next Planning Commission meeting.

The Commissioners support Commissioner Syracuse's suggested agenda item on electronic billboard signs.

Kat Wellman, Attorney, reminded the Commissioners that if they want an item placed on the agenda, it requires a consensus from the Commission.

Commissioner Dean asked staff to check into publishing project plans on the City's website in addition to providing them at the Library and City Hall.

Ms. Porras stated that staff will look into that request.

**VIII. ADJOURNMENT**

Meeting was adjourned at 8:05 pm.

**AGENDA ITEM**  
**PLANNING COMMISSION MEETING: JULY 8, 2010**  
**REGULAR AGENDA ITEMS**

**DATE** : June 30, 2010  
**TO** : Planning Commission  
**FROM** : Lisa Porras, AICP, Planning Commission Secretary  
**SUBJECT** : **LOWER ARSENAL MIXED USE SPECIFIC PLAN AND EIR**

**RECOMMENDATION:**

Confirm or modify the attached draft resolution, recommending that the City Council not adopt the Lower Arsenal Mixed Use Specific Plan and EIR as written.

**EXECUTIVE SUMMARY:**

On May 13, 2010 the Planning Commission discussed the Lower Arsenal Mixed Use Specific Plan and directed staff to return with a resolution to deny the Plan and accompanying EIR as written. On June 10, 2010 a draft resolution to deny the project was transmitted to the Planning Commission. The Planning Commission discussed the draft resolution and expressed concerns regarding economic analyses, historic preservation, and the absence of Planning Commission Chair Dan Healy and requested that the draft resolution return to the Commission in July.

A draft resolution is attached for further discussion and to subsequently confirm or modify with recommendation that the City Council not adopt the Lower Arsenal Mixed Use Specific Plan and EIR as written.

Attachments:

- Draft Resolution Recommending that the City Council Not Adopt the Lower Arsenal Mixed Use Specific Plan and EIR as Written
- Lower Arsenal Mixed Use Specific Plan and EIR Staff Report and Attachments of June 10, 2010 (Planning Commission)
- Lower Arsenal Mixed Use Specific Plan and EIR Staff Report and Attachments of May 13, 2010 (Planning Commission)

**DRAFT RESOLUTION**

**RESOLUTION NO. 10- (PC)**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA  
RECOMMENDING THAT THE CITY COUNCIL NOT ADOPT THE LOWER  
ARSENAL MIXED USE SPECIFIC PLAN AND THE EIR AS WRITTEN**

**WHEREAS**, the Lower Arsenal Mixed Use Specific Plan to implement the Lower Arsenal Mixed Use Designation of the Benicia General Plan has been prepared and subject to public review; and

**WHEREAS**, the Planning Commission held a public hearing on April 12, 2007 to solicit public comment on the scope of the Draft Environmental Impact Report (DEIR); the DEIR was published July 19, 2007, and the public comment period ran until September 6, 2007; and

**WHEREAS**, the Hazards and Hazardous Materials Section and the Cultural and Paleontological Resources Section of the DEIR were recirculated from April 22, 2008 to July 22, 2008 to disclose significant new information and the Planning Commission held a public hearing on June 12, 2008 to receive public comment; and

**WHEREAS**, the Global Climate Change, Energy Use and Sustainability Section and the Noise Section of the DEIR were recirculated from August 21, 2009 to October 22, 2009; and

**WHEREAS**, the Planning Commission and Historic Preservation Review Commission held a joint public hearing on October 22, 2009 to receive public comment on the DEIR including the recirculated sections; and

**WHEREAS**, the Historic Preservation Review Commission at its regular meeting of March 25, 2010 held a public hearing on the draft Lower Arsenal Mixed Use Master Plan and Final Environmental Impact Report, and considered other pertinent documents, information and public comment and recommended that the Plan not be adopted and the EIR not be certified; and

**WHEREAS**, at a regular meeting on May 13, 2010, the Planning Commission conducted a public hearing and reviewed the proposed Plan and EIR; and

**WHEREAS**, at a regular meeting on June 10, 2010, the Planning Commission conducted a public hearing and reviewed the proposed Resolution recommending that the City Council not adopt the Lower Arsenal Mixed Use Specific Plan and EIR as written.

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the City of Benicia hereby recommends that the City Council not adopt the Lower Arsenal Mixed Use Specific Plan in its present form, and recommends that the Plan be modified, at a minimum, to:

1. Limit the size of any new buildings on the Jefferson Ridge to no larger than the Commanding Officers Quarters;
2. Allow no more than one new building for every three historic buildings, both in each National Register Sub-district and in the Specific Plan area as a whole; and

3. Definitively determine whether and which, if any, type(s) of residential development will be allowed in each of the proposed zoning districts.

**BE IT FURTHER RESOLVED THAT** the Planning Commission recommends that the EIR for the Lower Arsenal Mixed Use Specific Plan not be adopted as written, and instead be revised appropriately to reflect the above recommended changes, and that the modified Specific Plan and environmental documents be reviewed again by the Historic Preservation Review Commission and the Planning Commission prior to any action by the City Council.

\* \* \* \* \*

On motion of Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, the above Resolution was adopted by the Planning Commission of the City of Benicia at a regular meeting of said Commission held on July 8, 2010 by the following vote:

Ayes:

Noes:

Absent:

Abstain:

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Dan Healy  
Planning Commission Chair

**PLANNING COMMISSION STAFF REPPORT  
LOWER ARSENAL MIXED USE SPECIFIC PLAN  
AND EIR AND ATTACHMENTS OF JUNE 10, 2010**

**AGENDA ITEM**  
**PLANNING COMMISSION MEETING: JUNE 10, 2010**  
**REGULAR AGENDA ITEMS**

**DATE** : May 20, 2010  
**TO** : Planning Commission  
**FROM** : Charlie Knox, Public Works & Community Development Director  
**SUBJECT** : **LOWER ARSENAL MIXED USE SPECIFIC PLAN AND EIR**

As discussed at the May 13, 2010 Planning Commission meeting, attached is a draft resolution, to confirm or modify, recommending that the City Council not adopt the Lower Arsenal Mixed Use Specific Plan and the EIR as written.

/kt

Attachment: Draft Resolution

# **DRAFT RESOLUTION**

**RESOLUTION NO. 10- (PC)**

**A RESOLUTION OF THE PLANNING COMMISSION  
OF THE CITY OF BENICIA RECOMMENDING THAT THE CITY COUNCIL NOT  
ADOPT THE LOWER ARSENAL MIXED USE SPECIFIC PLAN AND THE EIR AS  
WRITTEN**

**WHEREAS**, the Lower Arsenal Mixed Use Specific Plan to implement the Lower Arsenal Mixed Use Designation of the Benicia General Plan has been prepared and subject to public review; and

**WHEREAS**, the Planning Commission held a public hearing on April 12, 2007 to solicit public comment on the scope of the Draft Environmental Impact Report (DEIR); the DEIR was published July 19, 2007, and the public comment period ran until September 6, 2007; and

**WHEREAS**, the Hazards and Hazardous Materials Section and the Cultural and Paleontological Resources Section of the DEIR were recirculated from April 22, 2008 to July 22, 2008 to disclose significant new information and the Planning Commission held a public hearing on June 12, 2008 to receive public comment; and

**WHEREAS**, the Global Climate Change, Energy Use and Sustainability Section and the Noise Section of the DEIR were recirculated from August 21, 2009 to October 22, 2009; and

**WHEREAS**, the Planning Commission and Historic Preservation Review Commission held a joint public hearing on October 22, 2009 to receive public comment on the DEIR including the recirculated sections; and

**WHEREAS**, the Historic Preservation Review Commission at its regular meeting of March 25, 2010 held a public hearing on the draft Lower Arsenal Mixed Use Master Plan and Final Environmental Impact Report, and considered other pertinent documents, information and public comment and recommended that the Plan not be adopted and the EIR not be certified; and

**WHEREAS**, at a regular meeting on May 13, 2010, the Planning Commission conducted a public hearing and reviewed the proposed Plan and EIR.

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the City of Benicia hereby recommends that the City Council not adopt the Lower Arsenal Mixed Use Specific Plan in its present form, and recommends that the Plan be modified, at a minimum, to:

1. Limit the size of any new buildings on the Jefferson Ridge to no larger than the Commanding Officers Quarters;
2. Allow no more than one new building for every three historic buildings, both in each National Register Sub-district and in the Specific Plan area as a whole; and
3. Definitively determine whether and which, if any, type(s) of residential development will be allowed in each of the proposed zoning districts.

**BE IT FURTHER RESOLVED THAT** the Planning Commission recommends that the EIR for the Lower Arsenal Mixed Use Specific Plan not be adopted as written, and instead be revised appropriately to reflect the above recommended changes, and that the modified Specific Plan and environmental documents be reviewed again by the Historic Preservation Review Commission and the Planning Commission prior to any action by the City Council.

\* \* \* \* \*

On motion of Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, the above Resolution was adopted by the Planning Commission of the City of Benicia at a regular meeting of said Commission held on June 10, 2010 by the following vote:

Ayes:  
Noes:  
Absent:  
Abstain:

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Dan Healy  
Planning Commission Chair

**PLANNING COMMISSION STAFF REPORT  
LOWER ARSENAL MIXED USE SPECIFIC PLAN  
AND EIR STAFF REPORT AND ATTACHMENTS  
OF MAY 13, 2010**

**AGENDA ITEM  
PLANNING COMMISSION REGULAR MEETING: MAY 13, 2010  
PUBLIC HEARING**

**DATE** : May 3, 2010  
**TO** : Planning Commission  
**FROM** : Charlie Knox, Public Works & Community Development Director  
**SUBJECT** : **LOWER ARSENAL MIXED USE SPECIFIC PLAN AND EIR**

**RECOMMENDATION:**

Confirm or modify the Commission's prior recommendation that the City Council certify the Environmental Impact Report (EIR) and adopt the Lower Arsenal Mixed Use Specific Plan.

**EXECUTIVE SUMMARY:**

The Planning Commission recommended Plan approval and EIR certification in 2008; however, recirculation in 2009 of the Draft EIR Noise section and the Global Climate Change, Energy Use, and Sustainability section requires an update to that recommendation. The Commission initially reviewed these new sections at a joint meeting with the Historic Preservation Review Commission in October 2009, at which time the two commissions decided to continue consideration separately. HPRC recommended on March 25, 2010 against adopting the Plan or certifying the EIR due to a belief that historic resources would not be adequately protected.

In addition to concerns about historic resources, public comment on the Plan and EIR has focused on whether residential uses should be allowed, given potential hazards in the area and compatibility issues with nearby industrial operations. City staff has been working with representatives of the State Division of Toxic Substances Control toward initiating a comprehensive investigation of potential hazards at the Arsenal.

**GENERAL PLAN:**

Relevant General Plan Goals and Policies include:

- Goal 2.5: Facilitate and encourage new uses and development which provide substantial and sustainable fiscal and economic benefits to the City and the community while maintaining health, safety, and quality of life.
- Goal 2.8: Maintain the viability of the Port now and in the future to benefit the City of Benicia.
- Goal 2.11: Encourage the retention and continued evolution of the lower Arsenal into a

historic/cultural/commercial/industrial center of mutually compatible uses.

- Policy 2.11.1: Retain and expand the mix of compatible and balanced uses in the lower Arsenal area.
- Policy 2.11.2: Continue to allow live/work uses in the lower Arsenal where it can be demonstrated that adequate buffers exist, including noise buffers, and that the presence of residents would not significantly constrain industrial operations, including the flow of goods and materials.

## **STRATEGIC PLAN:**

Relevant Strategic Plan Goals and Strategies:

- Strategic Issue #3: Strengthening Economic and Fiscal Conditions
  - Strategy #5: Increase economic viability of industrial park and other commercial areas, while preserving economic strengths and historic resources.

## **BUDGET INFORMATION:**

Preparation of the Plan and EIR was funded with \$440,000 from the General Fund during FY's 06-09.

## **ENVIRONMENTAL ANALYSIS:**

The Draft EIR was released for public review from July 19, 2007 to September 6, 2007. In response to public comment, a first partial recirculation document was distributed from April 22, 2008 to July 22, 2008. It contained "significant new information" per California Environmental Quality Act (CEQA) Guidelines 15088.5, including hazards and cultural resource impacts not previously identified in the Draft EIR.

In addition to the two original mitigation measures for the Hazards and Hazardous Materials section of the EIR that dealt with what must occur when hazardous materials are uncovered, another measure was included that acknowledges the potential presence of hazardous materials throughout the lower Arsenal area and directs property owners to investigate and remediate contaminated areas if discovered, in conjunction with any potentially responsible parties such as prior owners and regulatory agencies. (A more comprehensive hazard mitigation strategy involving the State Department of Toxic Substances Control and the Department of Defense would be preferable but as yet has not been attainable through discussions with these parties.)

The Cultural and Paleontological Resources section retained eight of the original 13 mitigation measures pertaining to cultural resources and added a mitigation measure to address construction of new buildings that could adversely affect National Historic Register District D in the South of Grant Street Zone.

A Response to Comments (RTC) Document was prepared and circulated in August 2008 that addresses all comments received on the Draft EIR to that date, including the first set of recirculated sections.

A second partial recirculation of the DEIR occurred from August 21, 2009 through October 22, 2009, which includes the Global Climate Change, Energy Use, and Sustainability (formerly Sustainability and Energy) section and the Noise section. This recirculation is not required pursuant to CEQA; instead, it is intended to comply with Assembly Bill 32 directives to reduce greenhouse gas emissions, reduce energy consumption and increase energy efficiency, as well as to satisfy a request from the Port of Benicia for analysis of a noise study it submitted. No new mitigation measures were added as a result of this second recirculation. Any comments obtained through May 2010 will be incorporated into the final RTC document to be included in the Final EIR to be considered by the City Council.

#### **BACKGROUND:**

The Benicia General Plan establishes a Lower Arsenal Mixed Use designation for approximately 50 acres generally bounded by I-780, the Port of Benicia, and residences east of East 7th Street. "This category includes residential, live/work, office, retail, public and quasi-public, and limited industrial uses" (General Plan page 28). (Work/live use was not contemplated at the time of the 1999 General Plan update.)

In August 2006, the City began a process to involve citizens in planning for preservation and change in the lower Arsenal with a community workshop and stakeholder interviews, followed by a multi-day charrette in September 2006. In January 2007, the Planning Commission and Historic Preservation Review Commission recommended the Draft Specific Plan to the City Council, and Council approved a Draft Plan for Environmental Review in February 2007 that was published March 30, 2007.

The Planning Commission held an EIR scoping hearing in April 2007, and the Draft EIR was published in July 2007. The first Draft EIR recirculation was published in April 2008, and the Planning Commission held a public hearing on the recirculated sections in June 2008, and another to recommend Council approval of the Draft Plan and Draft EIR in August 2008.

After considering the Draft Plan and Draft EIR at its October 21, 2008 regular meeting, the City Council directed that an additional public workshop be held, primarily to provide Council with additional information regarding the historic preservation and residential/industrial compatibility issues.

Following that April 2009 workshop, Council directed staff to revise and recirculate the Sustainability and Energy section of the EIR to become the Global Climate Change, Energy Use, and Sustainability section in compliance with AB 32. In addition, the Noise section was revised and recirculated in response to the Port's request to analyze the noise report submitted on the Port's behalf (rather than merely respond to it as a comment on the Draft EIR).

Public comment for the second recirculation concluded with an October 22, 2009 joint meeting of the Planning Commission and Historic Preservation Review Commission. As the second recirculation has not (at least yet) resulted in additional proposed Draft EIR mitigation measures, the Mitigation Monitoring and Reporting Program presented to the City Council in October 2008

remains valid. Any additional comments through May 2010 will be responded to and included in the Final EIR to be forwarded to the City Council for action.

**SUMMARY:**

The Draft Plan includes a different set of development and land use standards for the Lower Arsenal area than are presently established by the zoning ordinance. The Plan includes standards for building form, architecture, open space, and circulation. These standards would replace current zoning provisions for allowable uses, permit requirements and site development; however, the Arsenal Historic Conservation Plan (AHCP) would continue to provide additional design guidelines that will supersede the Specific Plan provisions in the event of any conflict. (Specific Plan Appendix B compares Plan provisions to those of the AHCP.)

The Specific Plan would allow approximately 215,000 square feet of new development, which is roughly one-third the additional amount of office, commercial and live-work square footage that could be allowed under current zoning. The majority of new development could occur at the Jefferson Ridge, which is the only area for which the Plan considers more than one development pattern option, based on public input. Put simply, these alternatives are preservation of the ridge largely as open space versus significant development of large-scale buildings.

**ALTERNATIVES FOR JEFFERSON RIDGE**

Option	Major Components
1	This option would preserve and rehabilitate existing structures on the ridge without the addition of new ones. This scenario, identified in the Draft EIR as the “environmentally superior” alternative, would require financial control of the ridge area by an entity able to afford the conservation effort without additional development.
1.5	This preservation-oriented scenario would allow two new commercial buildings approximately 35,000 sq. ft. each and devote most of the existing open space to a park.
2	This alternative includes new streets and 185,000 sq. ft. of new mixed-use development in seven large buildings intended to complement the existing formal military architectural and spatial arrangement of the site.
Senior Housing	This proposal by a land owner would allow 50 below-market-rate apartments in one new building above Jefferson Street and 30 market-rate townhouses in nine structures below Jefferson Street.

At its August 14, 2008 regular meeting, the Planning Commission recommended approval of the Plan including Option 2 (by a vote of 3-to-1) and certification of the EIR (by a vote of 4-to-1), with modification of Specific Plan Action 4.6.2 to prohibit HPRC consideration of alteration any structure in the Plan area more than 50 years old until the Lower Arsenal historic resource inventory has been updated. (HPRC members have noted that the added condition is superfluous as the AHCP applies to the entire Plan area and all buildings within it.)

The HPRC March 2010 action recommends that: (1) the Plan not be adopted “because it includes development that could adversely affect the National Register District, does not appear to meet the Secretary of the Interior Standards, and does not address sustainability goals and policies of the General Plan; and (2) the EIR not be certified “because impacts to historic resources are not adequately analyzed, and adequate mitigations measures are not included.”

The issue of whether any new residential use is appropriate at the lower Arsenal hinges on compatibility with neighboring industrial uses, as well as potential hazards on site. Although a comprehensive characterization of potential hazards is preferable, and individual parcel analysis involves uncertainty regarding the level of investment needed to obtain State approval for housing, the Draft EIR includes adequate required mitigation to determine whether residential development can occur.

Following Planning Commission action on this matter, a Resolution will be prepared for approval at the next Planning Commission meeting to be forwarded to the City Council.

Attachments:

- March 2010 Historic Preservation Review Commission Minutes
- October 2009 Planning Commission/HPRC Minutes
- April 2009 Workshop Report
- August 2008 Planning Commission minutes
- Planning Commission Resolution No. 08-7
- Mitigation Monitoring and Reporting Program
- August 2009 Draft EIR Recirculation\*\*
- April 2008 Draft EIR Recirculation\*\*
- Lower Arsenal Mixed Use Specific Plan \*\*
- Draft Environmental Impact Report (including July 2007 Responses to Comments) \*\*

*\*\* Available online, these attachments are available to view in the Community Development Department or the Benicia Public Library. In addition, all documents are available on the City's website ([www.ci.benicia.ca.us](http://www.ci.benicia.ca.us)) under Public Works & Community Development/Current Projects/Arsenal Plan.*

**MARCH 2010 HPRC MINUTES**



## BENICIA HISTORIC PRESERVATION REVIEW COMMISSION

### CITY HALL COMMISSION ROOM

### REGULAR MEETING MINUTES

Thursday, March 25, 2010

6:30 P.M.

#### **I. OPENING OF MEETING**

- A. **Pledge of Allegiance**
- B. **Roll Call of Commissioners**

Present: Commissioners Donaghue, Mang, McKee, Taagepera, White and Chair Haughey  
Absent: Commissioner Crompton (excused)

Staff Present:

Charlie Knox, Director  
Gina Eleccion, Management Analyst

- C. **Reference to Fundamental Rights of Public** - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

#### **II. ADOPTION OF AGENDA**

On motion of Commissioner White, seconded by Commissioner Mang, the agenda was adopted by the following vote:

Ayes: Commissioners Donaghue, Mang, McKee, Taagepera, White and Chair Haughey  
Noes: None  
Absent: Commissioner Crompton

#### **III. OPPORTUNITY FOR PUBLIC COMMENT**

- A. **WRITTEN**  
None.

**B. PUBLIC COMMENT**

None.

**IV. CONSENT CALENDAR**

On motion of Commissioner Taagepera, seconded by Commissioner White, the Consent Calendar was approved by the following vote:

Ayes: Commissioners Donaghue, Mang, McKee, Taagepera, White and Chair Haughey  
Noes: None  
Absent: Commissioner Crompton  
Abstain: None

**A. Approval of Minutes of February 25, 2010**

**B. TANNERY BUILDING – COLOR FOR ENTRANCE DOORS ALONG FIRST STREET**

09PLN-01 Design Review  
127 First Street; APN 89-24050

**PROPOSAL:**

Pursuant to Condition No. 15 of Historic Preservation Review Commission (HPRC) Resolution No. 09-13, which approved new entry doors along First Street, the applicant requests HPRC review and approval of the proposed paint color for the new doors.

**Recommendation:** Review and approve paint color for new entrance doors along First Street for an existing building located at 127 First Street.

**V. REGULAR AGENDA ITEMS**

**A. LOWER ARSENAL MIXED USE SPECIFIC PLAN AND EIR**

**LOCATION:**

The Lower Arsenal is generally bounded by lands adjoining I-780 on the north, lands adjoining I-680 on the east, Port of Benicia land and the Carquinez Strait on the south, and residential neighborhoods extending into downtown Benicia on the west.

**PROPOSAL:**

The Specific Plan for the Lower Arsenal site, which is designated for mixed uses in the Benicia General Plan, covers four distinct zones, each of which exhibits a unique physical character. The Specific Plan includes a form-based code to shape future development on the project site, with primary emphasis on the physical form and character of new development. After build-out of the Specific Plan, the area could contain approximately 741,865 square feet of mixed uses, 22 new single-family residential units, and 6.39 acres of open space. The Specific Plan area currently contains approximately 525,000 square feet of mixed uses. The Draft Specific Plan is available for public review at the City's Public Works & Community Development Department or on the City's website at [www.ci.benicia.ca.us](http://www.ci.benicia.ca.us).

**Recommendation:**

Make a recommendation to the Planning Commission and the City Council regarding certification of the Environmental Impact Report and adoption of the Lower Arsenal Mixed Use Specific Plan.

Commissioner McKee recused himself due to economic interest in the Arsenal and left the room.

Charlie Knox, Director, gave an overview of the project. He discussed the workshop that was held at the last meeting and reminded the Commission of their purview. He thanked the Commission for submitting their comments in advance, which were included in the staff report. Based on Commissioner comments, he suggested the Commission start with whether they want to recommend adoption of the Plan. He suggested that if this is the case, the Commission should make recommendations for changes to assist the Planning Commission if it desires to make a recommendation for adoption to the City Council.

Chair Haughey questioned if the form-based code only deals with new construction. Charlie Knox noted that the Arsenal Historic Conservation Plan would supercede when there is a conflict with the Arsenal Specific Plan. Further, Charlie Knox clarified that if the Plan is not adopted, any project could come forward under the current regulations. He clarified that a Specific Plan is intended to implement the General Plan for a specific area.

Commissioner Taagepera asked for clarification on which plan applies to which buildings. Charlie Knox agreed that there are wording errors on page 83 of the Draft EIR. The Plan would replace current zoning but not the Arsenal Historic Conservation Plan. Charlie Knox also noted that the statement regarding the Arsenal Specific Plan being the primary document on page 3.1-2 of the Specific Plan should be stricken. In addition, he recommended striking the word "historic" on Page 3.1-3 in the first bullet.

Commissioner Taagepera commented that she does not believe that impacts to historic resources can be characterized as "less than significant."

Commissioner Mang questioned why Option 2 would require grading on Jefferson Ridge in Area E. Charlie Knox noted that this was due to the proposed new building complementing the spacing between the Clocktower and the Commanding Officer's Quarters.

The public hearing was opened.

Jerry Hayes, President, Benicia Historical Society – He noted that the Historical Society met regarding the Specific Plan and has a number of concerns with the report and EIR. The Historical Society submitted a letter to the Commission. He read the letter into the record.

Kerry Carney, 155 East O Street – She thanked the Commission for their service. She commented on HPRC's charge as outlined in the Benicia Municipal Code. She opposes

the Plan, particularly based on the idea that photographs of resources that could be lost was an adequate mitigation measure.

Belinda Smith, Resident – She submitted a letter to the Commission. She referred to Master Comment 1 related to integrity. She noted that the district would not have been listed on the National Register if it did not have integrity. She does not believe there is any supporting documentation regarding loss of integrity in the Arsenal.

Marilyn Bardet, Resident – She stated that she has been active in protecting the Arsenal. She thanked the Benicia Historical Society for taking a stand, and thanked Belinda Smith for her comments. She does not believe the EIR or Specific Plan properly address the significance of the district. She commented on the form-based code and the elevations proposed. She does not believe there is any rush in adopting the plan. She has been reviewing and has assembled Army Corps and DTSC documents, which are available for review. She believes that Option 1 is acceptable.

Dana Dean, Attorney – She spoke on behalf of Amports. She commented on the purview of the Commission. She believes the Commission should review the entire Plan and EIR. She believes there are problems with the Plan and the EIR. She recommended that the Plan not be adopted and the EIR not be certified. She asked that if the Commission moves forward with Option 1, they include mitigations she requested in previous documents submitted. She requested a response regarding deferred mitigations.

Bob Whitehead, Property Owner – He commented on the Jefferson Ridge area, which currently contains 2 privately owned historic buildings. One of the buildings hasn't had any exterior modifications, where the other does not look as it originally did. He noted that Option 2 distributes the square footage between 6 buildings. He noted there should be an appreciation for both old and new buildings.

Jim Wallace, Resident and Arsenal Leaseholder – He compared to the Boston historic path that navigates among modern buildings to and a national historic battlefield park in Tennessee where spatial relationships between historic features are preserved without new development. The infrastructure of the Arsenal would need to be improved to support a tourist destination.

Jon Van Landschoot, Resident – He said the Arsenal is truly a historic area. Experts say that it is, as it was listed on the National Register. Secondly, he questioned if the EIR protects historic assets in the Arsenal. He cited the absence of the Secretary of the Interior Standards in the EIR and the Plan. He commented on Option 2 and its mitigation measure of photographing resources. He suggested that the Presidio in San Francisco is successful because it is comprised mostly of historic buildings. He does not believe the EIR protects the landscape and view corridors.

Richard Bortolazzo, Property Owner – He questioned if the acreage included in the Housing Element is affected by the ridge property. In response, Charlie Knox noted that the City is being pressed by HCD regarding sites and densities.

The public hearing was closed.

Commissioner Taagepera questioned how many buildings and square feet are proposed under Option 2. Charlie Knox noted that there are 7 major buildings with a few smaller buildings. The maximum new square footage would be 185,000.

In addition, Charlie Knox responded to the issue of deferred mitigation. He noted that a Plan or Program EIR should offer appropriate mitigation measures for projects in the future. He noted that if development is allowed, property owners need to know about remediation. He commented on multi-phase hazards mitigations. If a property owner wants to develop, the property owner must work with DTSC and County Environmental Health.

Chair Haughey asked the Commissioners to convey their concerns with the Plan and the EIR.

Commissioner Taagepera said she does not believe the Plan adequately protects historic resources. She commented on restoration of buildings, and does not see how the Specific Plan addresses restoration or rehabilitation. She stated specific concerns regarding architecture and materials. She was concerned with mimicking architectural styles, which would create a false sense of history.

Commissioner Taagepera said that the EIR was difficult to read. She believes the EIR is inadequate in its analysis of impacts to historic resources. She believes the 1025 Grant Street project is not adequately analyzed in the EIR. New roads have not been analyzed. She cited a SHPO letter regarding the inadequacy of the EIR. She believes the EIR is flawed and that deferred mitigations are not appropriate.

Commissioner White agreed with Commissioner Taagepera's concerns. He believes the Plan would overpower the existing district and he does not support the Plan or the EIR.

Commissioner Mang questioned if Option 2 and 2A are a single item. Charlie Knox noted that they are separate. Commissioner Mang would like to see something happen in the Arsenal and it should be a living area that respects the historic integrity. He noted that the cleanup is a major challenge. He supports Option 2A (Senior Housing), and would like to see some development in the area.

Commissioner Donaghue agrees that there should be some development in the Arsenal. He has concerns with the EIR regarding development on the Jefferson Ridge. He believes the EIR failed to address the historic aspects of the district as a whole. He commented on sustainability and economic development, promoting higher density development that reduces vehicle dependency. He does not support adoption of the Plan or certification of the EIR and instead believes the City should focus on updating the Arsenal Historic Conservation Plan and perhaps zoning for the area.

Chair Haughey commented on historic integrity and development. She stated that the more she reads the Plan, the less she can support it. She would like the integrity retained, but would like to see development. She doesn't want to see anything larger than the Commanding Officer's Quarters. She does not believe the EIR adequately addresses the Plan.

Commissioner Taagepera made a motion, seconded by Commissioner White for the following:

1. Recommend Specific Plan not be adopted
2. Recommend staff revise Plan to reduce significant impacts to district
3. Recommend the EIR not be certified as adequate

Commissioners discussed the motion above.

Commissioner Mang commented that all projects would have their own environmental review. Commissioner Taagepera doesn't think the EIR is legally defensible based on CEQA law. She does not think the mitigation measures are adequate.

Commissioner Donaghue questioned if implementation of this would change the General Plan. Charlie Knox noted that this Plan is intended to implement the General Plan.

Charlie Knox noted that having staff revise the Specific Plan would be a major undertaking, but that with very specific direction, staff could try to accomplish the goals of the Commission. Anything that becomes a lesser project than Option 2 would be covered by the existing EIR. Charlie Knox recommended that if there is a general basis for the Commission's recommendation, it should be included in the motion.

Charlie Knox commented on the Downtown Mixed Use Master Plan and the fact that it's not a Specific Plan. The Arsenal Specific Plan was intended to initiate reinvestment.

Commissioner Donaghue suggested language that the Plan not be adopted because it does not address the type of development that can occur that is consistent with the historic integrity of the district and compliant with the Secretary of the Interior Standards in relation to building form, architecture and protection of open space.

Commissioner Taagepera amended her motion, seconded by Commissioner White, to read as follows:

Recommend the Lower Arsenal Mixed Use Specific Plan not be adopted because it includes development that could adversely affect the National Register District, does not appear to meet the Secretary of the Interior Standards, and does not address sustainability goals and policies of the General Plan.

Recommend the Environmental Impact Report not be certified because impacts to historic resources are not adequately analyzed, and adequate mitigations measures are not included.

Commissioner Taagepera made the above motion, seconded by Commissioner White, and carried by the following vote:

Ayes:	Commissioners Donaghue, Taagepera, White and Chair Haughey
Noes:	Commissioner Mang
Absent:	Commissioner Crompton
Abstain:	Commissioner McKee

#### **VI. COMMUNICATIONS FROM STAFF**

Gina Eleccion reminded the Commission and the public that Earth Day is April 22<sup>nd</sup>. The next HPRC meeting will be a special meeting date on April 29<sup>th</sup>.

Gina Eleccion also reminded the Commission and the public that May is National Preservation Month. This year's theme is "Old is the New Green". The Commission will promote this concept at Earth Day with sustainable practices for historic property owners.

#### **VII. COMMUNICATIONS FROM COMMISSIONERS**

Commissioner Mang commented on the roofline at Big-O. He thought staff did a good job with that.

In addition, Chair Mang noted that he went to an informative workshop in Napa.

#### **VIII. ADJOURNMENT**

Chair Haughey adjourned the meeting at 8:52 p.m.

**OCTOBER 2009 PLANNING COMMISSION /  
HPRC JOINT MEETING MINUTES**



## BENICIA HISTORIC PRESERVATION REVIEW COMMISSION

### SPECIAL JOINT MEETING WITH THE BENICIA PLANNING COMMISSION CITY COUNCIL CHAMBERS

SPECIAL MEETING MINUTES  
Thursday, October 22, 2009

6:30 P.M.

#### **I. CALL TO ORDER – JOINT MEETING OF PLANNING COMMISSION AND HISTORIC PRESERVATION REVIEW COMMISSION**

- A. Pledge of Allegiance
- B. Roll Call of Commissioners

#### **Planning Commission:**

Present: Commissioners Dean, Ernst, Syracuse and Chair Healy  
Absent: Commissioners Bortolazzo and Sherry (excused). Commissioner Thomas arrived late at 6:55 pm.

#### **Historic Preservation Review Commission:**

Present: Commissioners Donaghue, Mang, McKee, Taagepera and Chair Haughey  
Absent: Commissioners Crompton and White (excused)

#### **Staff Present:**

Charlie Knox, Public Works & Community Development Director  
Lisa Porras, Senior Planner  
Rhonda Corey, Senior Administrative Clerk  
Heather McLaughlin, City Attorney

- C. **Reference to Fundamental Rights of Public** - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

**II. AGENDA CHANGES AND DISCUSSION**

**A. Approval of Agenda**

On motion of Commissioner Donaghue, seconded by Commissioner Mang, the agenda was approved by the following vote:

**Planning Commission**

Ayes: Commissioner Dean, Commissioner Ernst, Commissioner Ernst and Chair Healy  
Noes: None  
Absent: Commissioners Bortolazzo, Sherry and Thomas (arrived late at 6:55 pm)  
Abstain: None

**Historic Preservation Review Commission**

Ayes: Commissioner Donaghue, Commissioner Mang, Commissioner McKee,  
Commissioner Taagepera and Chair Haughey  
Noes: None  
Absent: Commissioners Crompton and White  
Abstain: None

**III. OPPORTUNITY FOR PUBLIC COMMENT**

**A. WRITTEN**

None.

**B. PUBLIC COMMENT**

None.

**IV. PRESENTATIONS**

**A. REPORT FROM OPEN GOVERNMENT COMMISSION**

Clare McFadden gave an Open Government Presentation to both Commissions.

**V. PLANNING COMMISSION CONSENT CALENDAR**

The Planning Commission Consent Calendar was continued to the meeting of November 12, 2009 due to Commissioners Dean and Ernst being absent at the last meeting and the absence of Commissioners Bortolazzo, Sherry and Thomas from tonight's meeting and the lack of a quorum.

**A. Approval of Planning Commission Minutes of October 8, 2009**

**VI. HISTORIC PRESERVATION REVIEW COMMISSION CONSENT CALENDAR**

Minutes from September 24, 2009 pulled with changes to item IV with the following addition:

Commissioner Donaghue nominated Commissioner Haughey as Chair and Commissioner Crompton as Vice Chair. Commissioner Crompton stated he would do it. Commissioner McKee reconsidered and stated that he would serve as Vice Chair.

Item VI (B) amended to reflect the following addition:

Staff noted that it did not find evidence of a wood porch originally, but made a recommendation based on other properties in town. Staff recommended adding language to indicate no evidence of porch.

On motion of Commissioner Donaghue, seconded by Commissioner Mang, the Historic Preservation Review Commission Consent Calendar with the above changes was approved by the following vote:

Ayes: Commissioners Donaghue, Mang, McKee, Taagepera and Chair Haughey  
Noes:  
Absent: Commissioners Crompton and White (excused)  
Abstain:

- A. Approval of Historic Preservation Review Commission Minutes of September 24, 2009
- B. Approval of 2010 Meeting Schedule

## VII. REGULAR AGENDA ITEMS

- A. LOWER ARSENAL MIXED USE SPECIFIC PLAN - DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)  
City of Benicia

**PROJECT LOCATION:** The project site is located in the City of Benicia in Solano County. The project site consists of approximately 50 acres east of Downtown Benicia, and is a portion of Benicia's former Arsenal known as the Lower Arsenal. The site is generally bounded by lands adjoining I-780 on the north, lands adjoining I-680 on the east, Port of Benicia land and the Carquinez Strait on the south, and residential neighborhoods extending into downtown Benicia on the west.

**BRIEF DESCRIPTION OF PROJECT:** The proposed project includes implementation of a Specific Plan for the Lower Arsenal site, which is designated for mixed uses in the Benicia General Plan. The Specific Plan covers four distinct zones, each of which exhibits a unique physical character. The Specific Plan would implement a form-based code to shape future development on the project site, with primary emphasis on the physical form and character of new development. After build-out of the Specific Plan, the area would contain approximately 741,865 square feet of mixed uses, 22 residential units, and 6.39 acres of open space. The Specific Plan area currently contains approximately 525,000 square feet of mixed uses. The Draft Specific Plan is available for public review at the City's Public Works & Community Development Department or on the City's website ([www.ci.benicia.ca.us](http://www.ci.benicia.ca.us)).

**Recommended Action:** Confirm, modify, and/or augment the August 2008 Planning Commission recommendation that the City Council certify the Environmental Impact

Report and adopt the Lower Arsenal Mixed Use Specific Plan, including modification of Specific Plan Action 4.6.2 to prohibit granting of City permit for alteration of any structure in the Plan area more than 50 years old until the Lower Arsenal historic resource inventory has been updated.

Adam Weinstein from LSA gave a presentation regarding the Draft EIR for the Lower Arsenal Mixed Use Specific Plan.

Commissioner Syracuse expressed concern about pollution and the Ozone Layer. Adam Weinstein stated that toxic air contaminants are an issue addressed in the EIR.

Commissioner Taagepera questioned how noise is measured. Adam Weinstein advised that the Leq Standard is used in the EIR in accordance with City regulations.

Charlie Knox gave an overview of the Lower Arsenal Mixed Use Specific Plan process.

He advised commissioners that there are two reasons for recirculating the noise and greenhouse gas sections of the EIR. The Port wants its noise study analyzed in the EIR and the City needs to follow direction from the Attorney General's Office to meet greenhouse gas emission reduction targets per Senate Bill AB32.

Staff believes the document is ready for approval by both Commissions. Residential / industrial compatibility remains the primary issue. The Planning Commission already recommended approval to City Council in August 2008. The City Council directed that another public workshop be held and a recommendation on the EIR be obtained from HPRC.

Commissioners had questions regarding the following issues: What considerations do developer applicants face in regard to zoning? Are permits going to be required? Are interior alterations subject to CEQA review? What is the current zoning for 1025 Grant Street and how long has the current zoning classification been in affect? For housing uses, is it currently zoned work/live? Could a deed restriction be put in place so tenants or residents could not complain about the Port operations? How will cross-contamination issues be addressed?

Charlie Knox addressed these questions. The top third of the Arsenal is zoned office, the middle third is general commercial, except for the 1025 Grant Street property. The area south of Grant Street is zoned planned development. Minor interior alterations are allowed without HPRC or CEQA review as long as the structural integrity of the building is not compromised the work complies with the Secretary of the Interior's Standards. Two options exist regarding housing and contamination issues: - a comprehensive characterization of the Plan area, or site-by-site analysis. The Army Corps of Engineers and DTSC have not yet been able to agree on a comprehensive process. The only feasible mitigation measure for the Environmental Impact Report is to allow individual property owners to perform their own analyses of issues of contamination and pay for any necessary

clean up. Charlie Knox agreed with HPRC Commissioner Taagepera's idea of requiring HPRC review for exterior alteration of all structures, instead of what she called a moratorium on alteration of all structures more than 50 years old.

The public hearing was opened.

Marilyn Bardet- 333 East K- Expressed concern regarding the hazards section. Asked where the record is to substantiate the claim by DTSC regarding full disclosure adequacy. She stated that the public has not been made aware of the details. She feels the DTSC and the Army Corps of Engineers need to get together and coordinate a clean up similar to the Tourtelot site clean up. Feels public health and safety are at risk and understands that funding is a problem. She stated that lead hazards, oil and ordinance will be a problem. Requests that the commissions recommended that Council ask that the Army be determined the primary responsible party. If others are determined to be responsible, maybe funding for clean up could be paid for by subsequent property owners. If the Department of Defense is the primary responsible party, the City of Benicia needs to solicit political support for DTSC to come in and fix the problem.

Robert Whitehead- 755 West 6<sup>th</sup>- Stated he is 50% owner of the "8-acre" vacant lot on the ridge of the Lower Arsenal area. Stated that regarding the issue of contamination, \$80,000 has already been spent on that site with a report finding the area clean with exception of one small area near the tennis court. Supports approval of the EIR. Said it is about time to act on this plan, develop the area and stop putting it off. Feels that a handful of people continue to delay the project. Recommends City approval for housing purposes.

Andy Siri- 716 West H- Stated he owns 2 developed properties in the Industrial Park and is a member of the Benicia Industrial Park Association. Feels that the lower area of the Arsenal needs something but is not convinced that housing is the answer. His main concern is the Port as it is vital to the Industrial Park and feels no restrictions should be placed on the Industrial Park. Believes noise should not be a concern as it is a pre-existing condition. Prospective buyers should be asked to sign a waiver preventing them from filing complaints

Dana Dean- 835 First- She stated that her submittal of written comment was not intended to be "new" information. Noise measurement is still an issue. The fact that noise averaging was not used, does not mean the conclusions are invalid. She asked that the Commission not recommend adoption of the Plan. She stated that housing might run businesses out. Mere disclosure of potential noise issues is not sufficient as it only protects the seller, not the City.

If Commissioners recommend adoption of the plan, she requested:

- Limit residential to work/live
- Require deed restrictions and nonsuit waiver
- Include an ordinance requiring real estate disclosures

Belinda Smith- In regard to the response to comments in the Draft EIR she believes it is not thorough enough as there would be significant impact to air quality. She is concerned

about design standards not being in line with the Secretary of Interior's standards. Requested that the district be evaluated as a whole. Would like to see an analysis of the impact the historic areas may have on each other which is not included in the plan. Asked that a response to comments be done on the re-circulated sections. Charlie Knox advised her that it was already done on July 22, 2008.

Bonnie Silveria- 641 West I- Stated that when it was first called the Lower Arsenal there was no industry there. Officers' residences were above Adams Street. When she was on the Planning Commission she asked that residences not be built to the West side of Polk Street south of Grant Street, as reflected in the Draft Plan. She thinks industry can be compatible with housing above Grant Street. Stated the lower area is of concern due to weaponry and industry that previously existed.

Mark Hajjar- 1025 Grant Street- Stated that the Commission can provide a vision of the area. The property he owns used to have barracks and he doesn't think that anyone would have been so careless as to leave munitions behind. A Phase One Study found nothing to indicate that a Phase Two Study would be required. The current zoning on Grant Street allows work-live and commercial businesses. He stated this part of the city is not operating at full capacity. Looking at the big picture, there is not much of a difference between work-live and live-work. Housing units would bring vitality to the area. Requests that the EIR and the Lower Arsenal Specific Plan be approved.

Jon Van Landschoot-175 West H- Feels the Plan is incomplete and there are a lot of incompatibilities with the General Plan. Stated that the historic context needs to be preserved. Questioned whether or not there will be full disclosure regarding toxics. Stated that the City of Benicia is financially solvent because of the Industrial Park and the Port. Feels houses don't create value. Factories do and warehousing slightly. Said that in the downtown area we do not have to be worried about toxics. In his opinion, it would be unfair to approve the plan due to incompleteness. Suggested following the clean up procedure used for Tourtelot.

The public hearing was closed.

#### Commissioner Comments:

Commissioner Ernst questioned whether or not there might be more retail opportunities in the area. Doesn't see any need to raise rents on Tyler Street. Feels there is not sufficient economics to promote a thriving artist community but would like to see it. Had questions about DTSC being the lead agency. Envisions the area becoming similar to Cannery Row in Monterey. Is it possible for the plan to be broken down into smaller pieces to consider individually? Historic integrity needs to be a priority.

Commissioner Dean stated that when the Army was there it was industrial land. Historically, it was not typically residential family units. Feels the push for more residential development is financially driven. Would not want to jeopardize the Port. Culturally, an artist community is important. Integrity of the Historic District needs to be

preserved and the number one priority. Feels the plan overshadows that. If developed, it could be detrimental to cultural and artist community as well as historic integrity in the district as a whole. Feels the City and the community have neglected the area. The area needs revitalization but not by the current plan. Parts of the original EIR need to address mitigation measures for land use, cultural, biology prior to an application instead of on a case-by-case basis. Criteria needs to already be in place.

Commissioner Thomas stated that the clean up issue is important but the historic uses are most important. Feels work/live needs to be supported.

Commissioner Syracuse feels the plan needs to include specific criteria with regard to historic integrity for the future. How it looked in the past and how it will look in the future.

Planning Commission Chair Healy expressed the desire for Valero representatives to show up to the meetings instead of sending comments in letterform. Rejects the idea that commenters are anti-development or anti-City. Has concerns about "developer roulette" and believes that the City owes the community a better plan than that. Expressed concern that there may be a big price tag for clean up by the Army as it is unknown what is hidden underneath the ground. Questioned whether or not we should incorporate additional measures into the EIR in regard to contaminants.

Commissioner Donaghue expressed concern about residential uses not being compatible with the General Plan and that the General Plan is inconsistent by allowing residential in industry's back yard. Said that artists need to put up with noise from the Port. There is too much uncertainty regarding residential housing that the General Plan does not adequately address. Would like to exclude interior changes in HPRC's purview. The Plan needs to simplify things and doesn't in its current form.

Commissioner Taagepera feels that the Historic Preservation Review Commission is at a disadvantage due to not being consulted on the original EIR. She would have preferred a workshop on the issue. She stated that there are too many outstanding issues and more specific mitigation measures need to be developed and asked if this is a program level EIR which Charlie Knox confirmed). She also questioned whether there would be design standards, to which Charlie Knox responded the Specific Plan, includes architectural design standards. She also questioned if the EIR addresses the ratio of historic to non-historic buildings. Charlie Knox stated that the plan did not specifically control the ratio, but the vision was for several large buildings on the Ridge.

Commissioner Healy asked if the Arsenal Historic Conservation Plan could be included in the Arsenal Specific Plan. Charlie Knox advised that unfortunately they needed to be separate due to State requirements for conservation plans.

City Attorney Heather McLaughlin asked Commissioners if they have all received the full EIR. Charlie Knox responded that they should have all received the document. Commissioner Taagepera stated that she believed she had not received a hard copy and had only reviewed it online. Commissioner Donaghue stated that he borrowed a copy from

Gina Eleccion. Heather McLaughlin advised Commissioners that they could not make a decision on a document that they have not adequately reviewed. If not, the item needs to be continued. Commissioner Donaghue stated that he has adequately reviewed the document. Commissioner Mang did review the document and feels comfortable making a decision. HPRC Chair Haughey stated that she is not comfortable with a decision due to lack of adequate review of the document.

Commissioner Mang asked when DTSC would get involved. Charlie Knox advised the earliest would be July. Commissioner Mang expressed interest in knowing more about the difference between Phase I and Phase 2 studies.

HPRC Chair Haughey stated that contamination needs to be addressed before housing issues. Agrees with other Commissioners that the site needs to have a clean up procedure similar to the Tourtelot clean up. Feels historic review is inadequate. Stated that previously only three Planning Commissioners supported the plan.

Commissioner Donaghue stated that ceiling heights listed in the plan need adjustments.

#### **Planning Commission Motion**

On motion of Commissioner Ernst, seconded by Commissioner Syracuse the item was continued to the next meeting of each Commission separately to recommend to the City Council to have DTSC become lead agency on clean up and to clarify the historic integrity of the area by the following vote:

Ayes: Commissioners Dean, Ernst, Syracuse and Chair Healy  
Noes: Commissioner Thomas  
Absent: Commissioners Bortolazzo and Sherry  
Abstain: None

#### **HPRC Motion**

There was no motion or second recorded and the item was continued to the next meeting of each Commission separately to recommend to the City Council to have DTSC become lead agency on clean up and to clarify the historic integrity of the area by the following vote:

Ayes: Commissioners Donaghue, Mang, Taagepera and Chair Haughey.  
Noes: None  
Absent: Commissioners Crompton and White  
Abstain: Commissioner McKee

Planning Commission adjourned their portion of the meeting at 9:55 pm

Recess at 9:55 pm. Reconvened at 10:01 pm.

**ADJOURNMENT OF JOINT MEETING WITH PLANNING COMMISSION;  
CONTINUATION OF REGULAR MEETING OF HISTORIC PRESERVATION  
REVIEW COMMISSION**

**B. 127 FIRST STREET (TANNERY) – BAY TRAIL PUBLIC ACCESS**

Design Review  
127 First Street, APN: 089-244-050

**PROPOSAL:**

Design review request of a new public access bay trail located along the waterfront and behind the existing building at 127 First Street.

**Recommendation:**

Approve the design of a new public access bay trail located along the waterfront and behind the existing building at 127 First Street, based on the findings and subject to the conditions listed in the proposed resolution.

Lisa Porras announced to the Commissioners that the item needs to be continued due to CEQA requirements. Ms. Porras provided an overview of the proposed trail.

Commissioners discussed questions they had about the project as follows: Lights along the Bay Trail, handrail dimensions, removal of construction debris, what type of rock may be used, will path be continued to Captain Blythers, are the benches going to be the same as those that already exist at 221 First, is the location of Shoreline protection in place and where exactly is the property line,

James Morgan – Applicant- will look into handrail issue. BCDC worked with the applicant to make sure continuity exists with 221 First Street.

Commissioner McKee feels design of the benches is nice and thinks that non-uniformity of the benches may be a nice touch.

On motion of Commissioner Donaghue, seconded by Commissioner Mang, the above item was continued without a resolution by the following vote:

Ayes: Commissioners Donaghue, Mang, McKee, Taagepera, and Chair Haughey  
Noes: None  
Absent: Commissioners Crompton and White  
Abstain: None

**D. CITYWIDE HISTORIC CONTEXT STATEMENT – Formation of Ad Hoc  
Committee  
City of Benicia**

**PROPOSAL**

The City of Benicia has received Certified Local Government (CLG) grant funds for the development of a historic context statement. The City has entered into a contract with Page

& Turnbull to prepare this context statement. As part of the matching funds for the grant, in-kind staff and volunteer services have been committed to the consultant for research and public outreach purposes.

**Recommendation:** Authorize formation of a committee consisting of two Commission members, two Benicia Historical Society representatives, and one City staff member to perform research on behalf of the consultant and staff regarding the development of a historic context statement, and appoint 2 members of the Commission to this committee.

Commissioners nominated Commissioner Taagepera and Commissioner Donaghue.

On motion of Commissioner Mang, seconded by Commissioner McKee, formation of the committee and the above nominations were approved by the following vote:

Ayes:	Commissioners Donaghue, Mang, Taagepera, and Chair Haughey
Noes:	None
Absent:	Commissioners Crompton and White
Abstain:	None

#### **VIII. COMMUNICATIONS FROM STAFF**

Charlie Knox advised Commissioners that the Intermodal Workshops scheduled for Tuesday October 27 and Wednesday November 18, 2009 are being postponed while staff is in the process of exploring additional design and site options.

#### **IX. COMMUNICATIONS FROM COMMISSIONERS**

Commissioner Taagepera asked a question regarding Mills Act property taxes seeming to vary from year to year. She was advised that the taxes are re-evaluated year to year by the Solano County Assessor's Office and that the number will vary from year to year. Demand for rental units has increased property taxes.

Commissioner Mang suggested that members of the Commission go out on field visits with staff to meet homeowners to help them understand the process.

Chair Haughey advised that it would need to be agendaized and discussed at the next HPRC meeting.

#### **X. ADJOURNMENT**

Chair Haughey adjourned the meeting at 10:30 pm.

## **APRIL 2009 WORKSHOP REPORT**

## Community Workshop Summary – April 6, 2009

On April 6, 2009, the City of Benicia hosted a workshop at the Benicia Library to get community input on the Lower Arsenal Mixed Use Specific Plan. Specifically, participants discussed issues and opportunities related to the following two topics:

- Historical and cultural resources
- Residential / industrial use compatibility

Mayor Elizabeth Patterson opened the meeting and welcomed the participants. Planning Director Charlie Knox provided background information on the Lower Arsenal Mixed Use Specific Plan and an overview of the meeting agenda.

Daniel Iacofano and Vikrant Sood from MIG, Inc., facilitated the meeting and recorded comments.

Meeting handouts included an agenda and a comment card (see Appendix A). A total of 17 comment cards and three letters were submitted as written comments (see Appendix B).

### Summary of Comments

This report summarizes comments received at the workshop and from comment cards.

#### A. Historical and Cultural Resources

Many participants consider the Lower Arsenal area as a unique resource similar in some ways to the Presidio in San Francisco and the Gas Light District in Grand Rapids. Most participants agreed that the City should protect historic structures as well as the public and open spaces around buildings that define this area's character.

Participants identified the following historic resources that should be protected:

- **Commanding Officer's Building.** The building is a major landmark in the Lower Arsenal. A number of social and cultural events took place in this building when the base was active including the Sunday Afternoon Tea for example.
- **View Corridors and Access-Ways.** The placement of buildings in the Lower Arsenal defines view corridors that symbolize the character of this area. In addition, the Lower Arsenal stairway and other access-ways are part of the landscape that contributes to a sense of place and ambience.
- **Character of the District.** The scale and layout of buildings and public spaces on Jefferson Ridge, especially the parade grounds and overall layout of buildings and structures are integral components of the historic sub-districts C and D. Historic buildings, structures, sites and landscapes in the Lower Arsenal maintain its sense of time and place.

Participants identified the following issues and challenges as barriers to resource protection:

- Maintaining economic viability of the Lower Arsenal through revitalization and reuse.
- Integrating new development in the historic districts. The type of use, character and scale of new buildings and placement on the site should be consistent with existing buildings and landscape.
- Maintaining the historic character of this area as the City develops the Lower Arsenal for cultural-heritage tourism and economic development.

- Supporting private property owners in meeting both economic development and historic preservation goals. Unlike the Presidio, this area is privately owned. Low rents in the area often make renovations economically infeasible.
- Addressing structural defects in the foundations of many historic buildings. For example, the price tag for retrofitting the foundations of four buildings may exceed \$1 million.
- Identifying an appropriate and economically viable use for the Commanding Officer's Building.

To address these issues and challenges, participants identified the following strategies:

- Purchase the property and create a natural heritage area to protect the Lower Arsenal. The Carquinez Strait Preservation Trust (CSPT) is currently reviewing the feasibility of this option.
- Provide incentives to private owners to rehabilitate and reuse historic buildings. Funding sources may include tax credits, Mills Act funds, bonds and improvement districts.
- Seek external funds and grants for preservation.
- Allow economic activity in the Lower Arsenal including artist work-live units and retail mixed use to activate the area and generate revenue.
- Create a marketing program for the rehabilitated Commanding Officer's Building.
- Conduct a survey of properties that may be 50 years or older for potential designation as historic resources on the National Register.
- Explore the feasibility of a land-swap to protect the hillsides.
- Pursue partnerships with organizations and agencies that share similar goals for preservation.
- Identify appropriate models and best practices that are applicable to the Lower Arsenal. Examples may include the Presidio, Cannery Row, etc.
- Other strategies to revitalize the Lower Arsenal suggested by community members include:
  - Publishing a book on 'The Arsenal' to attract tourists;
  - Dramatizing the late-1800's era setting with costumes on weekends; and
  - Building an aquarium on the fringe of the historic area.

#### B. Residential / Industrial Use Compatibility

Many participants expressed concern for public health and safety of residents who may live close to industries if residential uses were allowed on the Lower Arsenal. Other participants, many of whom rent or own residential units in the area highlighted current and future demand for affordable and flexible living space for artists and entrepreneurs.

Participants identified the following challenges associated with residential and industrial use compatibility:

- Polluting industrial uses in the area pose significant risk to public health and safety especially for children. Hazards include coke dust, unexploded military ordinance, diesel emissions, soil contamination, odors and noise, among others.
- Residential uses are inconsistent with the General Plan description for this area and will affect the viability of adjacent industrial operations over time.
- Buildings in the Lower Arsenal were never intended to be used for residential purposes.

Other participants identified the following benefits of including residential uses in the Lower Arsenal:

- Work-live units provide an affordable and flexible space that allows residents to live next to where they work. Demand for these units is high as evidenced by low vacancy rates in existing units. The Housing Element identifies this area for additional housing development.
- These units provide space that supports non-traditional lifestyles that suit many households and individuals. No other area in the City provides such space. The space is compatible with the type of uses that attract artists and entrepreneurs.
- People living in the historic district can bring life to the area and contribute to the economic vitality of all uses on the Lower Arsenal. Market trends suggest that this area is difficult to develop profitably for any one use.
- Residents living in the Lower Arsenal are likely to become active in improving the quality of the area over time.

While there was no consensus on whether residential uses would be appropriate in the area, participants identified the following conditions that may lead to a working arrangement on this issue:

- **Define work-live.** Define what percentage of work and live space constitutes each category. While live-work is more suitable for commercial areas, work-live may be suitable in industrial areas. In the Lower Arsenal, work-live units that exclude families and sensitive populations may be appropriate south of Adam Street.
- **Restrict sensitive populations.** To the extent feasible and practical, restrict sensitive and vulnerable populations from inhabiting work-live units close to industrial uses such as young children and the elderly.
- **Include buffers and open space.** Physical separation, landscaping and transitional uses can mitigate the impacts of locating residential units close to industrial uses in the Lower Arsenal.
- **Ensure full disclosure and transparency.** The City should require developers and owners to provide full disclosure of potential health impacts of environmental toxins and contaminants in the area, and full disclosure of information with respect to the nature of ongoing industrial operations.
- **Include protections for existing industry.** Allowing new residential uses in the area should not threaten or undermine the viability of existing industrial uses.
- **Ensure toxic remediation.** Buildings and sites must be remediated to appropriate levels for residential use.
- **Provide alternative access to site.** Providing alternative emergency access routes to the site will improve safety conditions.

Participants provided the following observations regarding residential and industrial use compatibility:

- The City of Benicia General Plan identifies the Lower Arsenal as a target area for economic development opportunities.
- Some industrial uses in the area are 24-hour operations that may have significant impacts on adjacent residential uses.
- The cost of remediating sites to Environmental Protection Agency (EPA) standards may be prohibitive to residential development in rehabilitated buildings.
- Level of concern for public health should be balanced with the need to provide affordable and flexible living options.
- High density residential uses already exist on the Lower Arsenal.

- Existing residents have not complained about environmental quality. In addition, workers in the Lower Arsenal are exposed to environmental contaminants as well.
- Pollution is not restricted to the Lower Arsenal.
- This is a great opportunity to develop non-industrial uses on the Lower Arsenal.
- Projects in the Lower Arsenal should promote social, economic and environmental sustainability.
- The Final Environmental Impact Report (FEIR) does not address AB 32 and SB 375 and the potential cumulative impacts of environmental hazards.
- Work-live should emphasize green businesses.

### **Next Steps**

Mayor Patterson and Mr. Knox thanked the participants for attending the workshop and closed the meeting. Mr. Knox outlined the following next steps:

- Community input from this workshop will be recorded in a meeting summary.
- The summary will be presented to the City Council for review and further discussion.

### **Appendix**

The following materials are attached to the meeting summary:

- Meeting Agenda
- Wall-Graphic
- Comment Cards, Letters and Emails

**AUGUST 2008 PLANNING COMMISSION  
MINUTES**



**BENICIA PLANNING COMMISSION  
CITY COUNCIL CHAMBERS**

**REGULAR MEETING MINUTES**

**Thursday, August 14, 2008**

**7:00 P.M.**

**I. OPENING OF MEETING**

- A. Pledge of Allegiance**
- B. Roll Call of Commissioners**

Present: Commissioners Rick Ernst, Dan Healy, Rod Sherry, Lee Syracuse, Brad Thomas and Chair Fred Railsback

Absent: Commissioner Richard Bortolazzo (excused)

Staff Present: Charlie Knox, Community Development Director  
Gina Eleccion, Management Analyst  
Kat Wellman, Contract Attorney

- C. Reference to Fundamental Rights of Public** - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

**II. AGENDA CHANGES AND DISCUSSION**

None.

**III. OPPORTUNITY FOR PUBLIC COMMENT**

- A. WRITTEN**  
None.

- B. PUBLIC COMMENT**  
A citizen stated that on Sunday, September 7<sup>th</sup>, the Benicia Bicycle Club is sponsoring a race.

**IV. CONSENT CALENDAR**

On motion of Commissioner Ernst, seconded by Commissioner Syracuse, the Consent Calendar was approved by the following vote:

Ayes: Commissioners Ernst, Healy, Sherry, Syracuse, Thomas and Chair Railsback  
Noes: None  
Absent: Commissioners Bortolazzo  
Abstain: Commissioner Sherry (Item IV-C only)

- A. Approval of Agenda
- B. Approval of Minutes of June 12, 2008
- C. Approval of Minutes of July 10, 2008

V. REGULAR AGENDA ITEMS

- A. USE PERMIT FOR BODY ART AS AN ANCILLARY USE  
08PLN-34 Bombshell Hair and Ink  
120 East G Street; APN: 89-342-030

PROPOSAL:

In accordance with Downtown Mixed Use Master Plan Town Core (TC) development regulations, the applicant requests approval of a Use Permit for the establishment of an ancillary body art business as part of an existing hair salon.

**Recommendation:** Adopt a resolution approving application 08PLN-34 to establish an ancillary body art use at 120 East G Street, with the condition that body art other than only facial aesthetic treatments customarily incidental to salon use not be allowed.

Charlie Knox, Community Development Director, gave an overview of the project.

Commissioners questioned the timing of the application in relation to the Downtown Mixed Use Master Plan. Charlie Knox noted that this was originally applied for at the time the Plan was recommended for adoption. The Plan requires a Use Permit for this type of use. He noted that this use is limited to certain zoning designations, and is allowed in other areas without a Use Permit.

Commissioners commented on the General Plan conformance difference between permanent makeup vs. tattooing. Charlie Knox noted that this is the Commission's determination to make. He noted that whatever conditions are applied to this applicant must be applied fairly in the future.

Commissioners commented on the definition of "body art." Charlie Knox noted that this has not been clearly defined by the City Council. Kat Wellman, Contract Attorney, noted that the purpose of a conditional Use Permit is to allow consideration of certain uses, and under specific conditions. She noted that each Use Permit is considered independent of previously approved uses.

The definition of ancillary was discussed. Charlie Knox noted that it is considered "secondary."

Quality of life was discussed in relation to this project. Charlie Knox noted that he does not question the quality surrounding this particular business, however, there is the potential for an impact on the quality of life in the downtown.

Kat Wellman noted that it is typical to adopt a Resolution approving a Use Permit, which makes specific findings and places specific conditions on the allowable use.

The public hearing was opened.

Cheri Graf, Applicant – She noted that she has been working on this for some time. She had originally looked at her current location, and at the time, met the requirements for that location. Subsequently, she looked at a location at 636 First Street, which was not allowed. She commented on other communities that allow tattooing. She provided information that tattooing is a fast growing industry, and has become mainstream. She noted that there are strict regulations for cleanliness and safety. In addition, she noted that she is not a permanent makeup artist, so that use would not assist her business. She cares about the quality of work and the quality of her employees. She commented on letters of support she has received, including a letter from Studio 41. She read a letter into the record from Susan Phillips. A list of supporters was read.

The applicant was questioned about what licensing is required for tattooing. Cheri Graf noted that there is no professional licensing, however individuals register themselves as professional tattoo artists. In contract, a permanent makeup artist requires a state license.

The applicant was questioned about the use of needles and any potential health risks. She noted that there is a sharps container for disposal.

A citizen spoke in support of the business. She received her first tattoo in Vallejo and would prefer to have this done in a reputable salon in Benicia.

A citizen noted that tattooing is now an art form. She supports the project.

A citizen spoke in favor of the project.

Carla Jewell, Business Owner – She supports the project and does not believe this business will attract a negative element.

Owner of 321 First Street – She supports the project and believes this business has extremely high standards.

Robert Whitehead, landlord – He stated his support of the project.

David Archer, resident – He supports the project. He believes the downtown was established to have businesses succeed.

Earl Miller, 903 West 3<sup>rd</sup> – He supports the project.

Manny Pereira, resident – He stated that he has numerous friends with tattoos. He supports the project.

Jim Strebis, 450 East D – He commented on the variety of people he knows with tattoos. He supports the project.

Lisa Filangeri, resident – She supports the project.

A customer of the salon commented that she does not believe this will negatively affect the downtown character. She supports the project.

Mark Hancock, resident – He commented on the growth of Benicia and the diversity of First Street. He commented on the history of tattooing. He supports the project.

A stylist at the shop commented on the professionalism of the salon. She fully supports the project and noted the owner's support of other businesses in town.

Alex Pines, resident – He commented on this as an ancillary use and also how this will affect the small town character of Benicia. He stated that this business owner exemplifies the character of Benicia and enhances the small town atmosphere.

Linda Jones noted that this is Cheri Graf's dream. She disagrees with any conflict with the City's General Plan policies.

John Sheppard spoke in support of Cheri Graf. He noted that Ms. Graf truly wants to have a quality business that does not detract from the downtown character.

The public hearing was closed.

Commissioners thanked the applicant.

Charlie Knox noted that this Use Permit goes with this particular use at this particular location.

Commissioners commented on what the easiest way to define ancillary is. There was a suggestion to define ancillary as less than 50% of the square footage.

The motion included the following modified conditions:

1. Strike 120 East G (re: limitation of body art), add "based on the following conditions"
2. Add ancillary body art use at this particular business would not detract from the small town character.
3. Strike condition 3
4. Condition #4 – at no time shall approval of this construe approval of tattooing without appropriate use permit approval
5. Add condition that ancillary use is limited to less than half of the overall square footage of the primary use.
6. Condition #2 – Include definition of body art.

Commissioner Ernst stated he had a conversation in September 2007 with the applicant. Chair Railsback and Commissioner Sherry stated they had ex-parte communication with the applicant.

**RESOLUTION NO. 08-6 (PC) - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA APPROVING A USE PERMIT (08PLN-34) FOR AN ANCILLARY BODY ART USE AT 120 EAST G STREET**

On motion of Commissioner Healy, seconded by Commissioner Sherry, the above Resolution was adopted by the following vote:

Ayes: Commissioners Ernst, Healy, Sherry, Syracuse, Thomas and Chair Railsback  
Noes: None  
Absent: None  
Abstain: Commissioner Bortolazzo

A recess was called at 8:15. The meeting was reconvened at 8:23.

**B. RECOMMENDATION TO CITY COUNCIL ON THE LOWER ARSENAL MIXED USE SPECIFIC PLAN AND EIR**

The project site consists of approximately 50 acres in southeastern Benicia, and is a portion of Benicia's former Arsenal known as the Lower Arsenal. The site is generally bounded by lands adjoining I-780 on the north, lands adjoining I-680 on the east, Port of Benicia land and the Carquinez Strait on the south, and residential neighborhoods extending into downtown Benicia on the west.

**PROPOSAL:**

The proposal is implementation of a Specific Plan for the Lower Arsenal site, which is designated for mixed uses in the Benicia General Plan. The Specific Plan covers four distinct zones, each of which exhibits a unique physical character. The Specific Plan would implement a form-based code to shape future development on the project site, with primary emphasis on the physical form and character of new development. After build-out of the Specific Plan, the area would contain approximately 741,865 square feet of mixed uses, 22 residential units, and 6.39 acres of open space. The Specific Plan area currently contains approximately 525,000 square feet of mixed uses.

**Recommendation:** Recommend City Council certification of the Environmental Impact Report and adoption of the Lower Arsenal Mixed Use Specific Plan, with modification of Action 4.6.2 to prohibit granting of City permit for alteration of any structure in the Plan area more than 50 years old until the Lower Arsenal historic resource inventory has been updated.

Commissioner Sherry stated a conflict of interest on this item due to business interests and recused himself.

Charlie Knox introduced this item. He noted that the recommendation on the content of the Plan was forwarded to the City Council last year. The City Council directed staff to prepare the environmental documents. Charlie Knox noted that there would need to be an update of the Arsenal Historic Resource Inventory. He noted that the Arsenal Historic Conservation Plan protects the integrity of the historic structures in the Arsenal Historic District. He commented on the 1025 Grant Street project and the property owners' involvement in the public charrette process. A number of comments have been submitted in relation to this project being included in the Plan. The Jefferson Ridge is the only parcel subject to EIR alternatives. The senior housing alternative was highlighted. The General Plan allows consideration of live/work uses.

Adam Weinstein, LSA, gave a brief presentation. He introduced David Clore and Theresa Bravo, colleagues from LSA. An overview of the CEQA process was given. He highlighted Mitigation Measure HAZ-1. He noted that LSA met with City staff, the Army Corps of Engineers, and the Department of Toxic Substances Control. EIR adequacy was highlighted.

The public hearing was opened.

Robert Whitehead, property owner – He stated his support of the senior housing project. He commented on the different options proposed. He believes it is time to develop in the Arsenal.

Dennis McCray, SAHF – He submitted a letter to the Commission. He would like the senior housing option to be labeled as the “preferred alternative.” He stated his disagreement with Opticos' recommendations in the Plan.

Marilyn Bardet – She does not believe the Plan should be adopted at this time. She disagrees with staff's recommendation of approval. She highlighted disagreements that have not been resolved. There are contradictions in the Response to Comments. She is concerned with safety and health issues. The City has a responsibility to investigate and clean up the area.

Claudia Keppelyuhas, resident – She commented on the eclectic nature of the community. She has been waiting for the Arsenal to be restored. The General Plan intends mixed use and residential living has been happening. She commented on the 22-unit project at 1025 Grant Street and their contribution to the tax base. She referenced the tax contribution of Amports.

Dana Dean, representing Amports – She alleged missteps in the process. There was not sufficient time to review this Plan. She referred to page 291 of the Response to Comments and the City's communication with DTSC and the Army Corps of Engineers. She alleged that DTSC was not involved in developing mitigation measures. In addition, she believes the Plan is complicated for property owners to follow.

Belinda Smith, resident – She referenced the cultural resources. She commented on a letter from Knox Mellon, State Office of Historic Preservation, and believes that the Arsenal was designated as a historic district after this letter was written. She commented

on potential substantial adverse impacts. She stated the importance of the setting. There are issues regarding the Secretary of the Interior Standards. She believes the hearing should be continued.

Donald Dean, 257 West I Street – He commented on the cultural resources section of the EIR. He questioned how this plan would affect the historic integrity of the district as a whole. He does not believe this question was sufficiently answered. There needs to be a balance in developing the Arsenal and retaining its historic integrity. He would like this item continued.

Bill Simpkins, Simpkins Auto – Spoke on behalf of the owner of Star Motors and himself. He doesn't believe residential is a compatible use. There are hazards in commercial and industrial uses.

Mark Hajjar, property owner – He commented on his project at 1025 Grant Street. He submitted design items related to his project. He noted that the General Plan calls for mixed use.

A resident at 940 Grant Street – She stated that the Arsenal has a sense of community. There is a thriving artist community. She supports development, but thinks work/live is the solution. She would like development compatible with existing uses. She would like to see this move forward.

Kathleen Olson, 920 First Street – She noted that the General Plan drives this process. She reminded the Commission that there are over 190 acres in the Lower Arsenal. There are very few undeveloped properties. Individual property owners assume risk of developing. The property owner met with Amports, who stated they would be neutral on this project with proper deed notification.

Norm Koerner, 1150 West 7<sup>th</sup> Street – He commented that other residents are not here. He supports the Plan.

The public hearing was closed.

Commissioner Ernst stated he had ex-parte communications with a number of the speakers. Commissioner Healy stated he had ex-parte communications with Dana Dean and Kathleen Olson. Chair Railsback stated he had ex-parte communications with many of the speakers, as did Commissioner Thomas.

Commissioners discussed the EIR. There should be more certainty in the process. There are questions that need to be answered. The difference because Phase 1 and Phase 2 analysis was discussed. There is a risk that developers take, but they are aware of that risk.

Commissioners commented on the need to protect the historic integrity of the Arsenal. The Commandant's restoration has cost a significant amount of money.

Charlie Knox noted that Option 3 is now referred to as Option 1.5. In addition, he noted that any applicant coming forward would be required to perform environmental analysis of their site. The City would like to see the Army Corps continue its cleanup, but has no confidence that will happen.

Charlie Knox noted that if the Plan is not adopted, developers can come forward with proposals.

Charlie Knox noted that there had been a lot of agreement at the end of the charrette process, some of which has now been lost. Opticos prepared the Plan based on the feedback from the charrette. In addition, he noted that the 1025 Grant Street project came before the Commission and was received favorably prior to the Specific Plan process.

Charlie Knox noted that the hazards section of the EIR addresses those hazards that are known. There is no mechanism to have the environmental information available to property owners prior to purchase. The Army Corps has identified some areas of contamination.

Charlie Knox noted that the Commission can recommend certification of the EIR without an option recommended. A recommendation would be forwarded to the City Council no earlier than September 16<sup>th</sup>.

There is a discussion on the small percentage of developable land. The senior housing proposal was discussed. The cork oak grove is important to preserve.

Kat Wellman reminded the Commission that a Specific Plan can be amended as many times as needed. In addition, projects proposed will come before the Commission for review and environmental analysis.

Commissioner Thomas moved to recommend approval of both EIR and Plan. The motion died for lack of a second.

**RESOLUTION NO. 08-7 (PC) - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL CERTIFICATION THE ENVIRONMENTAL IMPACT REPORT FOR THE LOWER ARSENAL MIXED USE SPECIFIC PLAN**

On motion of Commissioner Thomas, seconded by Chair Railsback, the above Resolution (DEIR) was adopted by the following vote:

Ayes:	Commissioners Ernst, Syracuse, Thomas and Chair Railsback
Noes:	Commissioner Healy
Absent:	None
Abstain:	Commissioners Bortolazzo and Sherry

**RESOLUTION NO. 08-8 (PC) - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL ADOPTION OF THE LOWER ARSENAL MIXED USE SPECIFIC PLAN**

On motion of Commissioner Thomas, seconded by Commissioner Syracuse, the above Resolution (LAMUSP), with City Council determination of appropriate option, was adopted by the following vote:

Ayes: Commissioners Syracuse, Thomas and Chair Railsback  
Noes: Commissioner Ernst  
Absent: Commissioner Bortolazzo  
Abstain: Commissioner Healy

**VI. COMMUNICATIONS FROM STAFF**

Charlie Knox noted that the Climate Action Plan will be coming before the Commission in October. In addition, he noted that the Housing Element update will begin with public workshops on October 3<sup>rd</sup> and 4<sup>th</sup>.

**VII. COMMUNICATIONS FROM COMMISSIONERS**

Commissioner Ernst stated his concern with potential future tattoo issues. He would like City Council to place a moratorium on this use until an ordinance can be drafted. Kat Wellman stated that a request of staff can be made. Charlie Knox noted that City Council members can be petitioned to request this item be agendaized.

**VIII. ADJOURNMENT**

Chair Railsback adjourned the meeting at 10:50 p.m.

**PLANNING COMMISSION RESOLUTION 08-7**

**RESOLUTION NO. 08-7 (PC)**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL CERTIFY THE ENVIRONMENTAL IMPACT REPORT FOR THE LOWER ARSENAL MIXED USE SPECIFIC PLAN**

**WHEREAS**, a Draft Lower Arsenal Mixed Use Specific Plan to implement the Lower Arsenal Mixed Use Designation of the Benicia General Plan has been prepared and subject to public review; and

**WHEREAS**, the Community Development Department prepared an Initial Study consistent with the California Environmental Quality Act (CEQA), as amended; and

**WHEREAS**, the Planning Commission held a public hearing on April 12, 2007 to solicit public comment on the scope of the Draft Environmental Impact Report (DEIR); the DEIR was published July 19, 2007, and the public comment period ran until September 6, 2007; and

**WHEREAS**, the DEIR was recirculated from April 22, 2008, to July 22, 2008 to disclose significant new information in the form of hazards and cultural resource impacts not previously identified and mitigation measures to address those impacts; and the Planning Commission held a public hearing on June 12, 2008 to receive public comment on the recirculated DEIR; and

**WHEREAS**, the Planning Commission at a regular meeting of August 14, 2008 held a public hearing on the draft Lower Arsenal Mixed Use Master Plan and Final Environmental Impact Report, and considered other pertinent documents, information and public comment.

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the City of Benicia recommends that the City Council certify the Final Environmental Impact Report (EIR) for the Lower Arsenal Mixed Use Master Plan, based on the following findings and conditions:

1. The Draft Lower Arsenal Mixed Use Specific Plan shall incorporate by reference all EIR mitigation measures to reduce all potentially significant environmental effects described in the EIR to a less-than-significant level.
2. Any development proposals resulting from the implementation of the Lower Arsenal Mixed Use Specific Plan will be evaluated in accordance with Section 15002 (d) of the CEQA Guidelines. Prior to approval of any new projects within the Lower Arsenal Mixed Use Specific Plan area requiring Use Permit or Design Review approval, the City shall conduct project-specific environmental review to determine whether the project would cause any significant environmental impacts and, where possible,

identify measures to mitigate any potential significant environmental impacts.

3. Implementation of the Lower Arsenal Mixed Use Specific Plan would not result in a significant environmental impact on the Arsenal District, and would not eliminate important examples of major periods of California history or prehistory.
4. The Lower Arsenal Mixed Use Specific Plan has impacts that are individually limited but cumulatively considerable, however, based on the findings of the Environmental Impact Report, the Lower Arsenal Mixed Use Specific Plan would not result in significant cumulative environmental effects.

\* \* \* \* \*

On motion of Commissioner Thomas, seconded by Chair Railsback, the above Resolution was adopted by the Planning Commission of the City of Benicia at a regular meeting of said Commission held on the 14<sup>th</sup> day of August, 2008 by the following vote:

Ayes: Commissioners Ernst, Syracuse, Thomas and Chair Railsback

Noes: Commissioner Healy

Absent: Commissioners Bortolazzo and Sherry

Abstain: None



Fred Railsback

Planning Commission Chair

**MITIGATION MONITORING  
AND REPORTING PROGRAM**

## EXHIBIT "D"

# MITIGATION MONITORING AND REPORTING PROGRAM

### Introduction

This document describes the mitigation monitoring and reporting program (MMRP) for ensuring the effective implementation of the mitigation measures required for City of Benicia approval of the Lower Arsenal Mixed Use Specific Plan (project). The Plan Area comprises approximately 50 acres and is generally bounded by lands adjoining I-780 on the north, lands adjoining I-680 on the east, Port of Benicia land and the Carquinez Strait on the south, and residential neighborhoods extending into Downtown Benicia on the west.

### City of Benicia

When a lead agency approves findings pursuant to §15074 of the *CEQA Guidelines* upon completion of an Environmental Impact Report (EIR), it is required to adopt a reporting and monitoring program. The purpose of the reporting and monitoring program is to ensure that measures adopted to mitigate or avoid significant environmental impacts are implemented. A mitigation monitoring and reporting program does not need to be included with the EIR, as at times the findings which trigger the program are made after considering the EIR. Note that mitigation measures are enforced through permit conditions, agreements, or other measures. The reporting and monitoring program will not only direct the implementation of mitigation measures by the City, but also facilitate the monitoring, compliance and reporting activities of the City and any monitors it may designate.

### Project Background

The City is considering approval of the proposed project, which would result in adoption of the Lower Arsenal Mixed Use Specific Plan, adoption of a form-based code for the Plan Area to replace the City's zoning ordinance, and amendments to the General Plan and Zoning Ordinance to reflect adoption of the Specific Plan.

The Final EIR for the Lower Arsenal Mixed Use Specific Plan project found that the resulting actions would have potentially significant impacts in the areas of:

- Land Use and Planning Policy
- Geology, Soils, and Seismicity
- Hazards and Hazardous Materials

- Biological Resources
- Transportation and Circulation
- Air Quality
- Noise
- Visual Resources
- Cultural and Paleontological Resources

In addition, no mitigation measures were identified for the following areas as all potential project impacts were determined to be either not significant or less than significant:

- Population, Employment and Housing
- Hydrology and Water Quality
- Public Services
- Utilities and Infrastructure
- Sustainability and Energy

#### **Roles and Responsibilities**

As the lead agency under CEQA, the City of Benicia will be responsible for ensuring full compliance with the provisions of this monitoring program and has primary responsibility for implementation of the monitoring program. The City of Benicia has the authority to halt any activity associated with the Lower Arsenal Mixed Use Specific Plan projects if the activity is determined to be a deviation from the approved project or the adopted mitigation measures. The City of Benicia will act as the mitigation monitor and will designate to the applicant how to contact the monitor.

#### **Mitigation Monitoring and Reporting Program**

The attached table presents a compilation of the mitigation measures in the EIR, together with the required monitoring and reporting actions, effectiveness criteria, and timing.

The attached table includes columns identifying: (1) each impact identified in the Final EIR; (2) each mitigation measure included in the Final EIR; (3) the procedure for implementing each mitigation measure; (4) the party responsible for implementing each mitigation measure and any related requirements with respect to the timing of implementation; (5) the procedure for monitoring and reporting implementation of each mitigation measure; (6) the sanction for non-compliance with the provisions of each mitigation measure; (7) the criteria to determine whether each mitigation measure has been effective; and (8) the timing of the monitoring procedure. These checklist categories are discussed in more detail below.

#### **Identified Impact**

This column includes each identified significant adverse impact as it is described in the Final EIR summary table.

Mitigation Measure (Performance Criteria)

This column includes each mitigation measure as it is described in the Final EIR summary table, including associated performance criteria.

Implementation Procedure

This column describes the specific actions associated with each mitigation measure that must be implemented.

Implementing Entity

This column describes the "implementing entity" responsible for carrying out each mitigation measure (e.g., a City department, another public agency).

Monitoring/Reporting Action

This column describes the "type of monitoring action" required (e.g., condition of project approval, established plan check and/or inspection procedures or, if these are not sufficient, specialized monitoring procedures).

Non-Compliance Sanction

This column describes the consequences of not implementing the action outlined in the previous columns.

Effectiveness Criteria

This column sets forth standards for determining if the monitoring action is succeeding.

Timing

This column describes specific implementation timing requirements (e.g., at the completion of a particular development review or construction phase, prior to occupancy, or when some specific threshold is reached).

**Table 1: Mitigation Monitoring and Reporting Program**

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
<b>A. LAND USE AND PLANNING POLICY</b>							
<p>LU-1: Residential uses developed within the Plan Area may be incompatible with existing industrial uses.</p>	<p>LU-1: The following changes shall be made to Action 1.5.3:                      Action 1.5.3: Allow residential uses, including artist live/work and work/live units, where it can be demonstrated that adequate buffers exist, including noise buffers, and that the presence of residents will not significantly constrain industrial operations, including the flow of goods and materials. Proposed residential uses located in areas where industrial uses can be seen or heard shall be evaluated to determine whether they would be incompatible with industrial uses. Site specific evaluation may include acoustical or air quality analysis as determined by the City. New work/live uses shall not be permitted along those portions of Jackson Street that are south of Grant Street and west of Park Street.</p>	<p>The City shall revise the language of Action 1.5.3 in the Final Lower Arsenal Mixed Use Specific Plan.</p>	<p>City of Benicia</p>	<p>City of Benicia Planning and Building Department to ensure that the text of Action 1.5.3 is revised.</p>	<p>No approval of the Final Lower Arsenal Mixed Use Specific Plan.</p>	<p>Revised text of Action 1.5.3 that is consistent with Mitigation Measure LU-1.</p>	<p>Prior to approval of the Final Lower Arsenal Mixed Use Specific Plan.</p>
<p>LU-2: Implementation of the Draft Specific Plan could result in conflicts between residential uses and industrial uses.</p>	<p>LU-2: Implement Mitigation Measure LU-1.</p>	<p>Refer to Mitigation Measure LU-1.</p>	<p>Refer to Mitigation Measure LU-1</p>	<p>Refer to Mitigation Measure LU-1</p>	<p>Refer to Mitigation Measure LU-1</p>	<p>Refer to Mitigation Measure LU-1</p>	<p>Refer to Mitigation Measure LU-1</p>
<b>B. POPULATION, EMPLOYMENT AND HOUSING</b>							
<p>There are no significant Population, Employment and Housing impacts.</p>							

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
<p><b>C. GEOLOGY, SOILS AND SEISMICITY</b></p> <p>GEO-1 (All Zones): Seismically-induced ground shaking in the Specific Plan Area could result in damage to life and/or property at new development sites.</p>	<p>GEO-1a (All Zones): Prior to the issuance of any site-specific grading or building permit in the Specific Plan Area, a final design-level geotechnical investigation report shall be prepared and submitted to the City of Benicia Planning and Building Department for review and confirmation that the proposed project fully complies with the California Building Code (Seismic Zone 4). The report shall determine the project site's geotechnical conditions and address potential seismic hazards such as seismic shaking. The report shall recommend foundation techniques appropriate to minimize seismic damage. In addition, the geotechnical investigation shall conform to the California Division of Mines and Geology (CDMG) recommendations presented in the <i>Guidelines for Evaluating Seismic Hazards in California</i>, CDMG Special Publication 117.</p> <p>All subsequent parcel-specific development and building plans shall comply with the California Building Code (Seismic Zone 4) requirements, or requirements superseding California Building Code requirements. In addition, future development plans shall comply with the requirements of the final design-level geotechnical investigation report unless superseded by a parcel-specific design-level geotechnical investigation report.</p> <p>All mitigation measures, design criteria, and specifications set forth in the geotechnical reports shall be fully implemented.</p>	<p>1) Individual project sponsors shall retain a licensed professional to prepare a final design-level geotechnical investigation for individual projects proposed in the Specific Plan Area. The report shall meet the requirements of Mitigation Measure GEO-1.</p> <p>2) Future development plans shall comply with the final design-level geotechnical investigation unless superseded by a parcel-specific design-level report.</p>	Project sponsor	City of Benicia Planning and Building Department to ensure that the design-level geotechnical investigation complies with the requirements of Mitigation Measure GEO-1 and all applicable regional, State, and federal regulations.	No issuance of site-specific building or grading permits.	A final design-level geotechnical investigation that meets the requirements of Mitigation Measure GEO-1.	Prior to the issuance of any site specific grading or building permits for individual projects in the Specific Plan Area.

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
<p>GEO-2 (All Zones): Seismically-induced ground shaking in the Specific Plan Area could result in damage to life and/or property in adaptively reused buildings.</p>	<p>GEO-2 (All Zones): Prior to approval of an occupancy permit for redeveloped buildings in the Specific Plan Area, a design-level seismic upgrade report shall be prepared, submitted to the City for review and approval, and the upgrade recommendation(s) shall be fully implemented. Prior to approving the design-level report, the City shall independently review the seismic upgrade report to determine the adequacy of the hazard's evaluation and proposed mitigation measures. Such reviews shall be conducted by a structural engineer or registered civil engineer who has competence in the field of seismic hazard evaluation and mitigation.</p>	<p>Individual project sponsors for re-used buildings in the Specific Plan Area shall retain a licensed professional to prepare a design-level seismic upgrade report. The report shall meet the requirements of Mitigation Measure GEO-2.</p> <p>2) The project sponsor shall incorporate all recommendations of the final design-level seismic upgrade report regarding mitigation of potential effects associated with seismic hazards.</p>	<p>Project sponsor</p>	<p>City of Benicia Planning and Building Department to ensure that the design-level seismic upgrade report is independently reviewed by the appropriate professional and that it complies with the requirements of Mitigation Measure GEO-2.</p>	<p>No issuance of an occupancy permit for redeveloped buildings in the Specific Plan Area.</p>	<p>A design-level seismic upgrade report that meets the requirements of Mitigation Measure GEO-2.</p>	<p>Prior to approval of an occupancy permit for redeveloped buildings in the Specific Plan Area.</p>

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
GEO-3 (All Zones): Damage to structures or property related to shrink-swell potential of project soils and/or settlements of non-engineered fill could occur.	GEO-3a (All Zones): Prior to the issuance of a site-specific grading permit or the construction of new roadways, sidewalks, and utility lines, a design-level geotechnical investigation shall be prepared by licensed professionals and approved by the City of Benicia Planning and Building Department. The design-level geotechnical investigation shall include measures to ensure potential damages related to expansive soils and differential settlement are minimized. Mitigation options for expansive soils may range from removal of the problematic soils and replacement, as needed, with properly conditioned and compacted fill, to design and construction of improvements to withstand the forces exerted during the expected shrink-swell cycles and settlements. Recommendations for specific foundation designs which minimize the potential for damage related to settlement shall be presented in the report.	1) Individual project sponsors shall retain a licensed professional to prepare a final design-level geotechnical investigation for individual projects proposed in the Specific Plan Area. The report shall meet the requirements of Mitigation Measure GEO-3a. 2) The project sponsor shall incorporate all recommendations of the final geotechnical report regarding mitigation of potential effects associated with expansive soils and differential settlement.	Project sponsor	City of Benicia Planning and Building Department to: 1) Ensure that the design-level geotechnical investigation complies with the requirements of Mitigation Measure GEO-3a. 2) Ensure that final design plans incorporate the recommendations of the final geotechnical report regarding mitigation of potential effects associated with expansive soils and differential settlement.	No issuance of a site-specific grading permit or construction of new roadways, sidewalks, and utility lines.	A design-level geotechnical investigation that meets the requirements of Mitigation Measure GEO-3a.	Prior to the issuance of a site-specific grading permit or the construction of new roadways, sidewalks, and utility lines.
GEO-3b (All Zones): Designs of all open space and park areas shall be reviewed and approved by the City of Benicia Planning and Building Department. The designs of all open space and park areas shall incorporate low water-need plantings to minimize the potential for damage to pavements, utilities, and structures from expansive soils. The use of similar landscaping shall be encouraged at private development parcels by providing information to new tenants regarding the relationship between irrigation and subsequent property damage. A document which describes the potential for damage from expansive soils from over-irrigation and includes solutions such as drought-tolerant plant material and drip irrigation systems shall be prepared by the applicant and provided to all occupants of the Plan Area.	GEO-3b (All Zones): Designs of all open space and park areas shall be reviewed and approved by the City of Benicia Planning and Building Department. The designs of all open space and park areas shall incorporate low water-need plantings to minimize the potential for damage to pavements, utilities, and structures from expansive soils. The use of similar landscaping shall be encouraged at private development parcels by providing information to new tenants regarding the relationship between irrigation and subsequent property damage. A document which describes the potential for damage from expansive soils from over-irrigation and includes solutions such as drought-tolerant plant material and drip irrigation systems shall be prepared by the applicant and provided to all occupants of the Plan Area.	1) Individual project sponsors shall submit design plans for open spaces and park areas to the City. These design plans shall meet the requirements of Mitigation Measure GEO-3b. 2) The project sponsor shall prepare a document that meets the requirements of Mitigation Measure GEO-3b and provide this to all occupants of the Plan Area.	Project sponsor	City of Benicia Planning and Building Department to: 1) Ensure that the final design of open space and park areas complies with the requirements of Mitigation Measure GEO-3b. 2) Ensure that new tenants and occupants of the Plan Area are provided with the information required by Mitigation Measure GEO-3b.	No approval of final design plans for open space and park areas.	Open space and park design plans that incorporate low water-need plantings.	Prior to approval of final design plans for open space and park areas.

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
<p>GEO-4 (Adams Street Zone, Grant Street Zone, and South of Grant Street Zone): Damage to structures or property related to liquefaction, ground displacement, and ground failure could occur.</p>	<p>GEO-4 (Adams Street Zone, Grant Street Zone, and South of Grant Street Zone): Prior to the issuance of a site-specific grading permit or the construction of new roadways, sidewalks, and utility lines, a design-level geotechnical investigation shall be prepared by licensed professionals and approved by the City of Benicia Planning and Building Department. The design-level geotechnical investigation shall include measures to ensure potential damages related to liquefaction, ground displacement, and ground failure are minimized.</p>	<p>1) Individual project sponsors shall retain a licensed professional to prepare a final design-level geotechnical investigation for individual projects proposed in the Adams Street, Grants Street, and South of Grant Street Zones. The report shall meet the requirements of Mitigation Measure GEO-4. 2) The project sponsor shall incorporate all recommendations of the final design-level geotechnical report regarding mitigation of potential effects associated with liquefaction, ground displacement, and ground failure.</p>	<p>Project sponsor</p>	<p>City of Benicia Planning and Building Department to: 1) Ensure that the design-level geotechnical investigation complies with the requirements of Mitigation Measure GEO-4. 2) Ensure that final design plans incorporate the recommendations of the final geotechnical report regarding mitigation of potential effects associated with liquefaction, ground displacement, and ground failure.</p>	<p>No issuance of a site-specific grading permit or construction of new roadways, sidewalks, and utility lines within the Adams Street, Grant Street, or South of Grant Street Zones.</p>	<p>A design-level geotechnical investigation that meets the requirements of Mitigation Measure GEO-4.</p>	<p>Prior to issuance of a site-specific grading permit or the construction of new roadways, sidewalks, and utility lines within the Adams Street, Grant Street, and South of Grant Street Zones.</p>

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
GEO-3 (Jefferson Ridge Zone): Damage to structures or property could occur at the Jefferson Ridge Zone due to existing or induced slope instability resulting in landsliding.	GEO-3a (Jefferson Ridge Zone): Prior to the issuance of any site-specific grading or building permit, a design-level geotechnical investigation report shall be prepared and submitted to the City of Benicia Planning and Building Department for review and confirmation that the proposed project fully complies with the California Building Code (Seismic Zone 4). The applicant shall incorporate all recommendations of the final geotechnical investigation report regarding mitigation of slope instability into the project design.	1) Individual project sponsors shall retain a licensed professional to prepare a final design-level geotechnical investigation for individual projects proposed in the Jefferson Ridge Zone. The report shall meet the requirements of Mitigation Measure GEO-5a. 2) The project sponsor shall incorporate all recommendations of the final design-level geotechnical report regarding mitigation of potential effects associated with slope instability.	Project sponsor	City of Benicia Planning and Building Department to: 1) Ensure that the design-level geotechnical investigation complies with the requirements of Mitigation Measure GEO-5a. 2) Ensure that final design plans incorporate the recommendations of the final geotechnical report regarding mitigation of potential effects associated with slope instability.	No issuance of site-specific grading or building permits for development in the Jefferson Ridge Zone.	A design-level geotechnical investigation that meets the requirements of Mitigation Measure GEO-3a.	Prior to the issuance of a site-specific grading or building permit in the Jefferson Ridge Zone.
GEO-5b (Jefferson Ridge Zone): All grading plans, cut and fill slopes, compaction procedures, and retaining structures shall be designed by a licensed professional engineer and inspected during construction by a licensed professional engineer (or representative). All designs shall be submitted to, and approved by, the City of Benicia prior to implementation.	GEO-5b (Jefferson Ridge Zone): All grading plans, cut and fill slopes, compaction procedures, and retaining structures shall be designed by a licensed professional engineer and inspected during construction by a licensed professional engineer (or representative). All designs shall be submitted to, and approved by, the City of Benicia prior to implementation.	1) Individual project sponsors shall retain a licensed professional to design all grading plans, cut and fill slopes, compaction procedures, and retaining structures for development in the Jefferson Ridge Zone. 2) Individual project sponsors shall retain a licensed professional to inspect grading activities for compliance with approved grading and design plans.	Project sponsor	City of Benicia Planning and Building Department to: 1) Review and approve all grading plans, cut and fill slopes, compaction procedures, and retaining structures for development in the Jefferson Ridge Zone. 2) Ensure that grading activities occurring within the Jefferson Ridge zone comply with approved design plans.	No approval of final design plans for development in the Jefferson Ridge Zone.	Final design plans that meet the requirements of Mitigation Measure GEO-5b.	1) Prior to the issuance of a site-specific grading or building permit in the Jefferson Ridge Zone. 2) Inspections to occur during the construction period.

**D. HYDROLOGY AND WATER QUALITY**

There are no significant *Hydrology and Water Quality* impacts.

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
<p><b>E. HAZARDS AND HAZARDOUS MATERIALS</b> HAZ-1: Site development would occur in areas with documented and/or partly characterized environmental releases associated with historical site uses.</p>	<p><b>HAZ-1:</b> Existing contamination shall be remediated, or engineering controls (engineered caps, vapor barriers, or other appropriate technologies) and administrative controls (withholding of building permits) shall be implemented, to ensure that potential future occupants of the Plan Area are not exposed to site-related contamination that exceeds acceptable health standards. The parties responsible for implementing site clean-up actions may include the USACE, other historical owners/operators of properties within the Plan Area, current owners of properties within the Plan Area, future developers of the properties within the Plan Area, or the City of Benicia. Acceptable health standards for the purpose of site clean-up shall mean an incremental lifetime cancer risk within the U.S. EPA's risk management range of one in ten thousand to one in a million (<math>10^{-4}</math> to <math>10^{-6}</math>) or less and a non-cancer health hazard index of less than one based on the results of site-specific multimedia human health risk assessment(s). Groundwater health standards shall meet CalEPA requirements for the designated beneficial use(s) of groundwater in the Plan Area. CalEPA and the City shall certify that these requirements have been met before the City issues a Certificate of Occupancy for buildings constructed as part of redevelopment projects within the Plan Area. The nature and extent of contamination at the site is not fully characterized. In accordance with the requirements of the DTSC's</p>	<p>The appropriate parties shall characterize soil and groundwater contamination in accordance with the DTSC's Preliminary Assessment process or other acceptable regulatory guidance. Collected environmental data shall be used to conduct a human health risk assessment to determine whether additional remediation is required.</p>	<p>Owners of properties within the Plan Area, future developers of the properties within the Plan Area, and/or the City of Benicia.</p>	<p>The City of Benicia Planning and Building Department, in conjunction with the appropriate oversight agency to ensure that future occupants of Specific Plan Area are not exposed to contamination that exceeds acceptable health standards and that the measures listed in Mitigation Measure HAZ-1 are implemented.</p>	<p>No issuance of occupancy permits.</p>	<p>Verification that applicable health standards are met.</p>	<p>Prior to issuance of occupancy permits.</p>

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
HAZ-1 Continued	<p>Preliminary Endangerment Assessment process or other acceptable EPA or CalEPA regulatory guidance for site investigations, soil and groundwater samples shall be collected and analyzed in areas with inadequate historical information to determine whether chemicals in the soil and groundwater are present at concentrations that exceed acceptable health standards. To ensure that future site occupants are not exposed to site-related contamination that exceeds acceptable health standards the following shall activities shall be conducted:</p> <ul style="list-style-type: none"> <li>The nature and extent of chemicals in soil and groundwater shall be investigated and described for each parcel or group of parcels to be redeveloped, with oversight by the appropriate regulatory agency, such as the DTSC, RWQCB, or SCEHS.</li> <li>The environmental data collected as part of the site investigation shall be used as input for human health risk assessment(s) to determine whether any chemicals in soil or groundwater will present an unacceptable risk to site occupants (i.e., exceed acceptable health standards as described above) given the site uses proposed in the Specific Plan and any subsequent redevelopment plans proposed for the parcel(s).</li> </ul>						

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
HAZ-1 Continued	<ul style="list-style-type: none"> <li>The results of the human health risk assessment shall be used to determine whether no further action is required prior to redevelopment or that remediation of contamination or implementation of engineering or administrative controls is required to ensure that potential future occupants of the Plan Area are not exposed to site-related contamination that exceeds acceptable health standards.</li> <li>If remediation, engineering controls, or administrative controls are required to ensure that human health risk does not exceed acceptable health standards, these actions shall be completed before the site is occupied.</li> </ul> <p>Monitoring and compliance shall consist of the following:</p> <ul style="list-style-type: none"> <li>Before the City issues building permits for a site within the Plan Area, it shall confirm that: a finding of No Further Action has been made by the overseeing regulatory agency with regard to site contamination and clean-up, or that a Remedial Action Plan or equivalent and a site health and safety plan are complete and incorporated as part of the redevelopment construction plans for the site; and that engineering controls are in place and functioning or included in the project design plans, and/or that land use covenants are in place for the property that will ensure future occupants of the site are not exposed to contamination that exceeds acceptable health standards.</li> </ul>						

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
<p>HAZ-2: Construction activities may unexpectedly encounter hazardous materials or hazardous waste in soil and groundwater.</p>	<p>HAZ-2a: If soil, groundwater or other environmental media with suspected contamination (e.g., identified by odor or visual staining) is encountered unexpectedly during construction activities for individual development projects or if any underground storage tanks, abandoned drums or other hazardous materials or wastes are encountered, the applicant shall cease work in the vicinity of the suspect material, the area shall be secured as necessary, and the applicant shall take all appropriate measures to protect human health and the environment. Appropriate measures shall include notifying the SCEHS and implementing actions to determine the nature and extent of any observed contamination. An environmental professional shall oversee the subsequent assessment of the site (including the collection, analysis and interpretation of any samples of soil, groundwater or other environmental media) in accordance with local, State and Federal hazardous materials and hazardous waste laws and regulations. The professional shall provide recommendations, as applicable, regarding soil/waste management, worker health and safety training, and regulatory agency notifications. General construction work shall not resume in the area(s) affected until the recommendations have been implemented under the oversight of the SCEHS or other regulatory agency, as appropriate.</p>	<p>1) The project sponsor shall ensure that the construction contractor implements the measures listed in Mitigation Measure HAZ-2a in the event that contaminated materials are encountered. 2) The project sponsor shall notify the SCEHS and retain a qualified environmental professional to oversee assessment of the site 3) Recommendations of the SCEHS and environmental professional shall be implemented.</p>	<p>Project sponsor</p>	<p>The City of Benicia Planning and Building Department and Solano County Environmental Health Services to ensure that the measures listed in Mitigation Measure HAZ-2a are implemented, as applicable.</p>	<p>Non-compliance sanctions which may include citations or revocation of permits.</p>	<p>Adherence to the recommendations of SCEHS or other regulatory agency.</p>	<p>In the event that hazardous materials are encountered during the construction period.</p>

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
HAZ-2. Continued	HAZ-2b: The contractor involved in site grading and site development activities for an individual development project shall ensure that underground pipelines or other underground or aboveground utilities within the project site are identified and clearly marked prior to earthworking activities to avoid unexpected contact with these utilities. Emergency procedures shall be developed by the contractor that can be implemented in the event utilities are ruptured; these procedures shall be reviewed and approved by the City of Benicia Planning and Building Department, prior to the issuance of a grading or building permit. On-site workers shall be trained in how to implement these procedures.	The project sponsor shall ensure that the construction contractor identifies underground pipelines or other underground or aboveground utilities and implements appropriate emergency procedures in the event that utilities are ruptured.	Project sponsor	The City of Benicia Planning and Building Department shall review and approve the construction contractor's procedures for avoiding utility lines.	No issuance of any site-specific tree, grading, or building permits.	Appropriate procedures for prevention of and response to potential rupture of underground and aboveground utilities.	Prior to issuance of a site-specific tree, grading or building permit.
F. BIOLOGICAL RESOURCES	BIO-1: Mature trees that are protected under the City's Tree Ordinance may be removed as part of the development on the project site.  BIO-1: Prior to development of individual projects, a tree report shall be prepared by an arborist or biologist to identify the location, size, and health of trees on the site, and to map and identify the trees that would be preserved and removed during construction of the project. The report shall also specify measures to protect all preserved trees during construction, including creation of Tree Protection Zones. The project sponsor shall apply for a Tree Permit for the removal of all protected trees.  As part of the Tree Permit, an arborist or biologist shall develop a tree replacement program in accordance with the City's tree ordinance. Two 15-gallon trees are generally required for the replacement of each mature tree that is removed. In some cases, one or two 24-inch box trees, or a mature tree shall be required for the replacement of one mature tree.	1) The project sponsor shall retain an arborist or biologist to prepare a Tree Report and a Tree Replacement Program in accordance with the requirements of Mitigation Measure BIO-1. 2) The project sponsor shall apply for a Tree Permit for the removal of protected trees.	Project sponsor	The City of Benicia Planning and Building Department to review the Tree Report, Tree Replacement Program, and Tree Permit application for adequacy.	No issuance of any site-specific tree, grading, or building permits.	Tree Report and Tree Replacement Program in accordance with the requirements of Mitigation Measure BIO-1.	Prior to issuance of a site-specific tree, grading or building permit.

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
<p><b>BIO-2 (Jefferson Ridge/Officers' Row Zone):</b> Development in the Jefferson Ridge/Officers' Row Zone (including the Clocktower Area) may result in the fill of jurisdictional wetlands that are subject to jurisdiction as waters of the United States under Section 404 of the Clean Water Act and/or are waters of the State subject to jurisdiction under the Porter-Cologne Act.</p>	<p><b>BIO-2a (Jefferson Street/Officers' Row Zone):</b> Prior to approving any development project in the Jefferson Ridge/Officers' Row Zone, a formal wetland delineation will be conducted to determine the extent of jurisdictional waters of the United States and waters of the State on the site. Potential impacts to jurisdictional waters will be avoided where feasible, and unavoidable impacts shall be minimized to the extent that is feasible.</p>	<p>1) The project sponsor shall retain a qualified professional to conduct a formal wetland delineation for projects in the Jefferson Street Zone. 2) The project sponsor shall avoid impacts to jurisdictional waters where feasible, and unavoidable impacts shall be minimized to the extent feasible.</p>	<p>Project sponsor</p>	<p>The City of Benicia Planning and Building Department to review the wetland delineation and verify that impacts to jurisdictional waters are avoided to the extent feasible.</p>	<p>No approval of final development plans within the Jefferson Street Zone.</p>	<p>Jurisdictional wetland delineation in accordance with standards of U.S. Core of Engineers and State natural resources agencies.</p>	<p>Prior to approval of final development plans for the Jefferson Street Zone.</p>
<p><b>BIO-2b (Jefferson Street/Officers' Row Zone):</b> Applicants for individual development projects on the site of any delineated wetlands shall obtain the appropriate federal and State permits authorizing the fill of jurisdictional wetlands and other waters, including waters of the State. The applicant shall provide proof to the City of Benicia Planning and Building Department of compliance with the terms and conditions of the permits prior to issuance of the grading permit. All work in jurisdictional areas shall be in compliance with the terms and conditions of the federal and State permits.</p>	<p><b>BIO-2c (Jefferson Street/Officers' Row Zone):</b> All waters of the United States or waters of the State that are filled as a result of project development will be mitigated at a minimum 1:1 ratio or the higher of the ratios stipulated in the federal or state permit authorizing fill of the wetlands or non-wetland waters. Mitigation for impacts to wetlands or other waters may be accomplished by 1) on-site creation of wetlands or non-wetland waters at an appropriate mitigation site, or 2) by purchasing credit at an approved off-site mitigation bank.</p>	<p>1) The project sponsor shall obtain all appropriate federal and State permits for the fill of wetlands and waters of the United States. 2) The project sponsor shall ensure that the construction contractor undertakes work on the site in compliance with the permits.</p>	<p>Project sponsor</p>	<p>The City of Benicia Planning and Building Department to: 1) Verify that the project sponsor has obtained any necessary permits. 2) Visit the site periodically to ensure that site development is being undertaken in accordance with the permits.</p>	<p>No issuance of any site-specific grading or building permits.</p>	<p>Appropriate federal and State permits authorizing fill of wetlands or jurisdictional waters.</p>	<p>Prior to issuance of any site-specific grading or building permit, and periodically during the project construction period, at the discretion of the Planning and Building Department.</p>
<p><b>BIO-2c (Jefferson Street/Officers' Row Zone):</b> All waters of the United States or waters of the State that are filled as a result of project development will be mitigated at a minimum 1:1 ratio or the higher of the ratios stipulated in the federal or state permit authorizing fill of the wetlands or non-wetland waters. Mitigation for impacts to wetlands or other waters may be accomplished by 1) on-site creation of wetlands or non-wetland waters at an appropriate mitigation site, or 2) by purchasing credit at an approved off-site mitigation bank.</p>	<p><b>BIO-2c (Jefferson Street/Officers' Row Zone):</b> All waters of the United States or waters of the State that are filled as a result of project development will be mitigated at a minimum 1:1 ratio or the higher of the ratios stipulated in the federal or state permit authorizing fill of the wetlands or non-wetland waters. Mitigation for impacts to wetlands or other waters may be accomplished by 1) on-site creation of wetlands or non-wetland waters at an appropriate mitigation site, or 2) by purchasing credit at an approved off-site mitigation bank.</p>	<p>A project sponsor that will fill waters of the U.S. or waters of the State in the Jefferson Street Zone shall mitigate those impacts as specified in Mitigation Measure BIO-2c.</p>	<p>Project sponsor</p>	<p>The City of Benicia Planning and Building Department to verify that wetland mitigation is adequate.</p>	<p>No issuance of any site-specific grading or building permits in the Jefferson Street Zone.</p>	<p>Mitigation for the fill of waters of the U.S. or waters of the State in accordance with Mitigation Measure BIO-2c.</p>	<p>Prior to issuance of any site-specific grading or building permits in the Jefferson Street Zone.</p>

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
BIO-2 Continued	BIO-2d (Jefferson Street/Officers' Row Zone): The project sponsor will implement a wetland mitigation and monitoring plan as mitigation for impacts to jurisdictional wetlands and waters. The plan will detail the mitigation design, wetland planting design, maintenance and monitoring requirements, reporting requirements, and success criteria. The mitigation wetlands shall be monitored for a minimum of 5 years. This plan shall be approved by the Corps and the City prior to implementation.	1) A project sponsor shall retain a qualified professional to develop and implement a wetland mitigation and monitoring plan to mitigate impacts to jurisdictional wetlands and waters, as specified in Mitigation Measure BIO-2d. 2) The project sponsor shall monitor mitigation wetlands for a minimum of 5 years.	Project sponsor	The City of Benicia Planning and Building Department and U.S. Army Corps of Engineers to: 1) Review the wetland mitigation and monitoring plan to ensure consistency with Mitigation Measure BIO-2d. 2) Perform annual reviews of mitigation wetlands for 5 years, adhering to the protocol outlined in the monitoring reports.	No issuance of any site-specific grading or building permits in the Jefferson Street Zone.	Implementation of a wetland mitigation and monitoring plan for impacts to jurisdictional waters.	1) Prior to issuance of any site-specific building or grading permits in the Jefferson Street Zone. 2) Annually for 5 years.
	BIO-2a (Jefferson Street/Officers' Row Zone): During construction of individual development projects, no material shall be allowed to enter or be stored in any wetlands that are to be preserved. Project-related dirt and other material shall be kept sufficiently far away from preserved wetlands and drainages to prevent material from entering these features. If earthmoving activities or material stockpiling occurs upslope from a preserved wetland or drainage, silt-fencing	The project sponsor shall ensure that the construction contractor implements the wetland protection provisions of Mitigation Measure BIO-2e.	Project sponsor	City of Benicia Planning and Building Department to visit the site to ensure that no material is being allowed to enter wetlands, and that adequate protection (e.g., silt fencing) exists around wetlands.	Non-compliance sanctions imposed by City agencies may include citations or revocation of permits.	Implementation of wetland protection provisions of Mitigation Measure BIO-2e.	Periodically throughout the development phase of the project, at the discretion of the Planning and Building Department.

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
BIO-2 Continued	<p>shall be installed around the preserved feature to prevent soil from entering the wetland or drainage. Silt fencing shall be installed at the least 5 feet from the edges of preserved wetlands and drainages. Silt fencing shall also be installed around preserved features whenever earthmoving activities or material stockpiling occurs within 20 feet of a preserved feature. All equipment washing shall occur down slope from preserved wetlands to prevent the runoff from entering the preserved wetlands. Berms or other barriers shall be constructed outside of preserved wetlands or drainages to prevent wash water runoff from entering the preserved wetlands.</p>	<p>The project sponsor shall place a development restriction on areas containing existing and/or created wetlands to ensure that wetlands will be preserved in perpetuity.</p>	Project sponsor	City of Benicia Office of the Attorney to review project title documents to ensure that wetlands will be preserved in perpetuity.	No issuance of any site-specific grading or building permit.	Development restriction on created or existing wetlands.	Prior to issuance of any site-specific grading or building permit.
	<p><u>BIO-2g (Jefferson Street/Officers' Row Zone):</u> Applicants for individual development projects on the site of any delineated wetlands shall provide financial assurances of a type (i.e., bond, letter of credit) and amount to be determined by the Corps and the City to ensure successful implementation of the wetland mitigation and monitoring plan. The project sponsor shall also provide a long-term funding mechanism for the maintenance of the mitigation wetlands in the conservation easements in perpetuity.</p>	<p>The project sponsor shall provide financial assurances to ensure successful implementation of the wetland mitigation and monitoring plan.</p>	Project sponsor	City of Benicia Planning and Building Department to verify that adequate financial assurances for wetland protection and restoration have been provided (particularly that financial assurances meet Corps requirements).	No issuance of any site-specific grading or building permit.	Financial payment to ensure the implementation of the wetland mitigation and monitoring plan.	Prior to issuance of any site-specific grading or building permit.

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
<p>BIO-3: Development on the project site may impact special-status plants.</p>	<p>BIO-3a: Prior to construction of the project, a rare plant survey according to CNPS, CDFG, and USFWS protocols will be conducted in all potential habitat areas of the site. The survey should be conducted by a qualified botanist familiar with the flora of the Benicia area and with expertise in the identification of the special-status species potentially occurring onsite. Surveys will be conducted as appropriate throughout the growing season to ensure that all target species are observed.</p>	<p>The project sponsor shall retain a qualified botanist to conduct a rare plant survey in any potential habitat areas.</p>	<p>Project sponsor</p>	<p>City of Benicia Planning and Building Department to ensure that rare plant surveys are conducted according to appropriate protocol (including that of the California Native Plant Society, California Department of Fish and Game, and U.S. Fish and Wildlife Service).</p>	<p>No issuance of any site-specific grading or building permit.</p>	<p>Rare plant surveys for potential habitat areas.</p>	<p>Prior to issuance of any site-specific grading or building permit.</p>
<p>BIO-3b: If no special-status plant populations are identified, the botanist shall prepare and submit a report to the City documenting the negative findings of the survey. At a minimum, the report shall include a list of the target species for which surveys were conducted, dates of surveys, names of surveyors, and a list of all plants observed. No additional mitigation shall be required if special-status plants are not found during the protocol-level surveys.</p>	<p>BIO-3b: If no special-status plant populations are identified, the botanist shall prepare and submit a report to the City documenting the negative findings of the survey. At a minimum, the report shall include a list of the target species for which surveys were conducted, dates of surveys, names of surveyors, and a list of all plants observed. No additional mitigation shall be required if special-status plants are not found during the protocol-level surveys.</p>	<p>If special-status plant populations are not identified, the project sponsor's qualified botanist shall document the negative findings in accordance with Mitigation Measure BIO-3b.</p>	<p>Project sponsor</p>	<p>City of Benicia Planning and Building Department to verify that negative rare plant survey findings are appropriately documented.</p>	<p>No issuance of any site-specific grading or building permit.</p>	<p>Documentation of negative findings for rare plant surveys.</p>	<p>Prior to issuance of any site-specific grading or building permit.</p>
<p>BIO-3c: If special-status plant populations are observed, a mitigation and monitoring plan shall be developed by the applicant of individual development projects to avoid and/or compensate for the loss of special-status plant populations. Plants designated as endangered, threatened, candidate, or rare under the federal or State Endangered Species Acts, or listed on the CNPS List 1B or CNPS List 2 shall be mitigated either by avoidance or through compensatory mitigation. The mitigation monitoring and reporting plan shall be prepared in accordance with the following guidelines:</p>	<p>BIO-3c: If special-status plant populations are observed, a mitigation and monitoring plan shall be developed by the applicant of individual development projects to avoid and/or compensate for the loss of special-status plant populations. Plants designated as endangered, threatened, candidate, or rare under the federal or State Endangered Species Acts, or listed on the CNPS List 1B or CNPS List 2 shall be mitigated either by avoidance or through compensatory mitigation. The mitigation monitoring and reporting plan shall be prepared in accordance with the following guidelines:</p>	<p>The project sponsor shall work with the botanist to develop and implement a mitigation and monitoring plan for special-status plant populations observed within the development site, as specified in Mitigation Measure BIO-3c.</p>	<p>Project sponsor</p>	<p>City of Benicia Planning and Building Department to review and approve the mitigation monitoring and reporting plan for impacts to special-status plant species.</p>	<p>No issuance of any site-specific grading or building permit.</p>	<p>Mitigation and monitoring plan for impacts to special-status plant species.</p>	<p>Prior to issuance of any site-specific grading or building permit.</p>

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
BIO-3 Continued	<ul style="list-style-type: none"> <li>• Whenever feasible, special-status plant populations should be avoided and the populations protected in place. Avoidance measures may include fencing the existing plants with Environmentally Sensitive Area (ESA) fencing prior to construction, establishing a buffer zone of at least 20 feet around rare plant populations, and implementing a training program for construction personnel to ensure avoidance of the preserved plant populations.</li> <li>• If impacts to special-status plant populations are unavoidable, the project sponsor shall mitigate for the impact by preserving existing plant populations of the same species at an offsite mitigation site at a minimum 2:1 ratio (2 acres of occupied habitat preserved for each acre of occupied habitat impacted).</li> <li>• The project sponsor shall develop a mitigation and monitoring plan for the plants that are impacted and submit the plan to the City and the appropriate resource agency (CDFG, USFWS) for approval.</li> <li>• A conservation easement shall be established over the mitigation site to preserve it in perpetuity as rare plant habitat. The City of Benicia or other public resource agency shall hold the easement to ensure retention of this land in perpetuity.</li> <li>• The project sponsor shall provide financial assurances of a type (i.e., bond, letter of credit) and amount to be determined by the City and CDFG to ensure successful implementation of the rare plant mitigation plan. The project sponsor shall also provide a long-term funding mechanism for the maintenance of the mitigation site in the conservation easements in perpetuity.</li> </ul>						

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
<p>BIO-4: Development on the project site may result in the loss of nesting habitat for breeding birds, and may result in direct take of special-status bird species through injury or mortality.</p>	<p>BIO-4g: Prior to tree pruning, tree removal, ground disturbing activities, or construction activities associated with individual development projects, a qualified biologist shall conduct raptor and passerine nest surveys to locate any active nests on or immediately adjacent to the site. Preconstruction surveys shall be conducted no more than 14 days prior to the start of pruning, construction, or ground disturbing activities if the activities occur during the nesting season (February 1 and August 31). Preconstruction surveys shall be repeated at 30-day intervals until construction has been initiated in the area. Locations of active nests shall be described and protective measures implemented. Protective measures shall include establishment of clearly delineated areas around each nest site that are a minimum of 300 feet from the dripline of the nest tree or nest for raptors and 50 feet for passerines. The active nest sites within an exclusion zone shall be monitored on a weekly basis throughout the nesting season to identify any signs of disturbance. These protection measures shall remain in effect until the young have left the nest and are foraging independently or the nest is no longer active. A report shall be submitted to the City at the end of the construction season documenting the observations made during monitoring.</p>	<p>1) The project sponsor shall retain a qualified biologist to conduct raptor and passerine nest surveys prior to tree disturbance activities, in accordance with Mitigation Measure BIO-4a. 2) The project sponsor shall ensure that the construction contractor implements nest protection measures, including the establishment of exclusion zones, and shall retain a wildlife biologist to monitor nests during construction.</p>	<p>Project sponsor</p>	<p>City of Benicia Planning and Building Department to: 1) Review and approve the raptor and passerine nest surveys. 2) Visit the site to ensure that nest protection measures have been established. 3) Review and approve the nest monitoring report.</p>	<p>1) No issuance of any site-specific grading or building permit 2) Non-compliance sanctions imposed by City agencies may include citations or revocation of permits.</p>	<p>Raptor and passerine nest surveys and protection measures in accordance with Mitigation Measure BIO-4a, as applicable.</p>	<p>1) Prior to issuance of any site-specific grading or building permit. 2) Periodically during the construction period, at the discretion of the Planning and Building Department. 3) After report is submitted.</p>

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
BIO-4 Continued	<p>BIO-4b: A preconstruction survey shall be conducted no more than 30 days prior to modification, demolition, or removal of buildings. If no owls are observed, then demolition or removal may proceed. If owls are observed during the preconstruction survey, a determination shall be made on whether birds are roosting or nesting. If a single owl is roosting, demolition or removal of the structure can proceed after the owl has been persuaded to move from the roost area. Non-invasive techniques include light shining into the roost space for one or two nights and days. If barn owls (or other owls species) are found to be actively nesting in the barn, work on or demolition of the structure shall be postponed until one of the following conditions have been met: 1) a qualified biologist monitoring the nest determines that the owls have abandoned the nest without any outside interference or 2) a qualified biologist monitoring the nest has determined that the young have fledged and are capable of relocating and using another roost site. Under either scenario, the monitor shall ensure that all owls have left the building prior to construction or demolition activities. Once the young have fledged, non-invasive techniques may be used to encourage the owls to leave the barn. The barn owl nesting period is typically between February 15 and July 15. Buildings being used by nesting owls shall be fenced and designated off-limits to prevent entry into the buildings.</p>	<p>1) The project sponsor shall retain a wildlife biologist to conduct a pre-construction survey no more than 30 days prior to the modification, demolition, or removal of buildings and to make a determination on whether owls present are roosting or nesting. 2) If owls are observed, the project sponsor shall ensure the biologist persuades the owls to leave the barn (as appropriate), or halts all demolition activity until the criteria outlined in Mitigation Measure BIO-4b have been met.</p>	Project sponsor	<p>City of Benicia Planning and Building Department to: 1) Review and approve the pre-construction survey. 2) Verify that all owl protection measures are in place, and that owls leave any occupied buildings prior to demolition.</p>	No issuance of demolition permit.	Owl survey and compliance with Mitigation Measure BIO-4b.	Prior to issuance of demolition permit.

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
<p>BIO-5: Development on the project site may result in the loss of western burrowing owl habitat and direct take of this species through injury or mortality.</p>	<p>BIO-5a: Preconstruction surveys shall be conducted for burrowing owls in all potential habitat areas of the site (i.e., all areas shown as containing seasonal wetlands, ruderal/non-native grasslands, or native and non-native trees on Figure IV.F-1 of the Draft EIR) prior to preparation, grading, and construction of sites for individual development projects. These surveys shall conform to the survey protocol established by the California Burrowing Owl Consortium. Preconstruction surveys shall be conducted no more than 30 days prior to the initiation of construction activities and at 30-day intervals if construction activities have not been initiated in an area. The following measures shall also apply:</p> <p>a) If burrowing owls are found onsite, they shall be avoided to the extent practicable. A clearly defined area (i.e., an area demarcated by orange construction fencing) shall be established around each burrowing owl burrow to be avoided. No disturbance shall occur within 160 feet (50 meters) of occupied burrows during the non-breeding season (September 1 through January 31) or within 250 feet (75 meters) of an occupied burrow during the breeding season (February 1 through August 31).</p> <p>b) If burrowing owls occur at the development site and construction would begin before February or after the end of August, and the burrows cannot be avoided, then passive relocation techniques may be used to relocate owls from the site. These passive relocation techniques would include excavating all potential burrows after excluding owls from the burrow for the required length of time. Passive relocation shall be undertaken according to the current protocol established by the CDFG.</p>	<p>1) The project sponsor shall retain a wildlife biologist to conduct pre-construction surveys for burrowing owls, in all potential habitat areas, that conform to the protocol established by the California Burrowing Owl Consortium.</p> <p>2) If burrowing owls are identified on the site, the project sponsor shall ensure that construction avoids all owls, or that removal/relocation of owls (and associated mitigation) occurs in accordance with Mitigation Measure BIO-5a and the requirements of CDFG.</p>	<p>Project sponsor</p>	<p>City of Benicia Planning and Building Department to:</p> <p>1) Review and approve the burrowing owl surveys.</p> <p>2) Verify that burrowing owls have been treated in compliance with the requirements of CDFG, and/or that mitigation has been provided as required by CDFG.</p>	<p>1) No issuance of any site-specific grading or building permit.</p> <p>2) Non-compliance sanctions imposed by City agencies may include citations or revocation of permits.</p>	<p>Burrowing owl removal/relocation plan in accordance with Mitigation Measure BIO-5a and the requirements of CDFG.</p>	<p>Prior to issuance of any site-specific grading or building permit.</p>

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
BIO-5 Continued	<p>Artificial burrows shall be provided on the mitigation site for each occupied burrow destroyed at the project site at a ratio of 2:1 (two artificial burrows created for each occupied burrow destroyed).</p> <p>c) If western burrowing owl occurs at the development site and construction would begin during the breeding season (February through August), then a buffer of a radius of 250 feet (75 meters) shall be established around any burrows containing owls.</p> <p>d) Removal of burrowing owls at development site shall conform to the requirements of CDFG's <i>Staff Report on Burrowing Owl Mitigation</i>. This shall entail establishing 6.5 acres of suitable habitat for each pair of burrowing owls displaced from the project site. These 6.5 acres shall be adjacent to an area already used by burrowing owls. The replacement mitigation site shall be preserved in perpetuity for use as burrowing owl and wildlife habitat through a conservation easement. The project sponsor shall develop a management plan for the mitigation site and submit the plan to the City and CDFG for approval. An endowment in an amount determined by the City and CDFG for management and monitoring the mitigation site shall also be established by the project sponsor.</p>						

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
BIO-5 Continued	BIO-5b: As an alternative to purchasing land as mitigation for burrowing owls, the project sponsor may purchase credits at a CDFG-approved mitigation bank authorized to sell credits for burrowing owl mitigation. The City of Benicia shall be included in the service area of the mitigation bank. The number of credits to be purchased shall be equivalent to purchasing 6.5 acres per pair or single bird observed on the site. The final mitigation requirement shall be determined following the completion of the protocol-level survey. The sponsor shall provide the City with evidence of completion of the mitigation or purchase of mitigation credits at least 60 days prior to the initiation of construction activities.	The project sponsor shall purchase credits at a CDFG-approved mitigation bank if off-site burrowing owl mitigation is required, but off-site habitat is not purchased and preserved.	Project sponsor	City of Benicia Planning and Building Department to verify that mitigation land or credits at a burrowing owl mitigation bank have been purchased.	No issuance of any site-specific grading or building permit.	Purchase of credits at CDFG-approved mitigation bank.	Prior to issuance of any site-specific grading or building permit and at least 60 days prior to issuance of construction activities.
BIO-6: Development on the project site may result in the loss of foraging and roosting habitat for the pallid bat, Townsend's western big-eared bat, and other bat species, and may result in direct take of these species through injury or mortality.	BIO-6a: Preconstruction surveys for bat roosts shall be conducted in all buildings or trees that will be removed or modified. The survey shall take place no more than 30 days prior to construction/ demolition/removal activities. Preconstruction surveys shall be repeated if demolition or construction activities are delayed more than 30 days.  BIO-6b: If a bat roost is found in a building or tree cavity, the species of bat using the roost shall be identified and methods to encourage the bats to leave the roost or to prevent them from returning to the roost shall be implemented prior to roost removal. A mitigation plan shall be developed to specify the methods to be used and the timing of the activities, and this mitigation plan shall be submitted to the City for review and approval.  BIO-6c: Materials from roost sites shall be salvaged, when feasible, to be used in the construction of artificial roosts.	The project sponsor shall retain a qualified wildlife biologist to conduct preconstruction bat roost surveys.  The project sponsor shall develop a mitigation plan to encourage bats to leave roosts or to prevent them from returning to roosts.	Project sponsor	City of Benicia Planning and Building Department to review and approve the bat roost survey.	No issuance of any site-specific grading or building permit.	Bat roost surveys.	Prior to issuance of any site-specific grading or building permit.
			Project sponsor	City of Benicia Planning and Building Department to review removal mitigation plan.	No issuance of any site-specific grading or building permit.	Mitigation plan for bat roosts, if applicable.	Prior to issuance of any site-specific grading or building permit.
			Project sponsor	City of Benicia Planning and Building Department to verify that native roost materials are used to construct artificial roosts.	No issuance of any site-specific grading or building permit.	Artificial roosts, which incorporate materials from roost sites, if applicable.	Prior to issuance of any site-specific grading or building permit.

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
BIO-6 Continued	<p>BIO-6d: If special-status bats (i.e., pallid bat, Townsend's western big-eared bat) are found onsite, and the roost would be destroyed during development, an artificial roost shall be provided for the bats. The roost shall be constructed and placed onsite prior to removal of the original roost. A mitigation plan specifying the construction details and siting of the structure shall be prepared and approved by the City and CDFG prior to removal of the existing roost. The project sponsor shall provide a secure source of funding for the monitoring of the artificial roost for a period of at least 5 years. A report documenting the implementation of the plan shall be provided to the City within 1 month of completion of the artificial roost. The plan shall be completed and implemented prior to the issuance of the grading permit.</p> <p>BIO-6e: Removal of maternity roosts for special-status bats shall be coordinated with CDFG prior to removal. Maternity roosts for any species of bat, either common or special-status, shall not be demolished until the young are able to fly independently of their mothers.</p>	<p>1) The project sponsor shall retain a wildlife biologist to prepare a mitigation plan that includes construction details of artificial roosts if special-status bats are present on the project site.</p> <p>2) The project sponsor shall provide a secure source of funding for monitoring the mitigation plan and shall provide a report documenting implementation of the plan.</p> <p>The project sponsor shall coordinate with CDFG regarding removal of maternity roosts for special-status bats.</p>	Project sponsor	City of Benicia Planning and Building Department to review and approve mitigation/implementation plan and verify CDFG approval.	No issuance of any site-specific grading or building permit.	Bat roost mitigation plan that meets the requirements of Mitigation Measure BIO-6d.	Prior to issuance of any site-specific grading or building permit.
			Project sponsor	City of Benicia Planning and Building Department to verify that project sponsor has undertaken and completed coordination with CDFG regarding removal of maternity roosts.	No issuance of any site-specific grading or building permit.	Verification of successful coordination with CDFG.	Prior to issuance of any site-specific grading or building permit.

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
<b>G. TRANSPORTATION AND CIRCULATION</b>							
TRANS-1: Unacceptable LOS at the intersection of East 5th Street / I-780 Westbound Ramps. The effect of project traffic would result in the intersection operating at LOS F with a delay of over 50.0 seconds for both the AM and PM peak hours.	TRANS-1: The project sponsor of an individual development project shall contribute a pro-rata share to the following improvement:  Signalize intersection as it meets the Peak Hour Volume Signal Warrant for the AM and PM peak hours. This intersection operates at unacceptable conditions and meets signal warrants prior to the addition of project-related traffic.  Implementation of the identified improvement would result in this intersection operating at an acceptable LOS B with delays of 11.7 and 12.5 seconds for the AM and PM peak hours, respectively.	The project sponsor shall contribute the pro-rata fair-share for improvements to the East 5th Street/I-780 Westbound Ramps intersection.	Project sponsor	City of Benicia Public Works Department to ensure that the project sponsor has paid the pro-rata fair share for the improvement.	No issuance of an occupancy permit.	Improvements in accordance with Mitigation Measure TRANS-1.	Prior to issuance of an occupancy permit.
TRANS-2: Unacceptable LOS at the intersection of East 5th Street / I-780 Eastbound Ramps. The effect of project traffic would result in the intersection operating at LOS E with a delay of 44.6 seconds during the PM peak hour.	TRANS-2: The project sponsor of an individual development project shall contribute a pro-rata share to the following improvement (sponsors of development associated with buildout of the Draft Specific Plan shall together fund the entirety of this improvement):  Signalize intersection as it meets the Peak Hour Volume Signal Warrant for the PM peak hour.  Implementation of the identified improvement would result in this intersection operating at an acceptable LOS B with 14.5 seconds of delay during the PM peak hour.	The project sponsor shall contribute the pro-rata fair-share for improvements to the East 5th Street/I-780 Eastbound Ramps intersection.	Project sponsor	City of Benicia Public Works Department to ensure that the project sponsor has paid the pro-rata fair share for the improvement.	No issuance of an occupancy permit.	Improvements in accordance with Mitigation Measure TRANS-2.	Prior to issuance of an occupancy permit.

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
TRANS-3: Unacceptable LOS at the intersection of East 5th Street / I-780 Westbound Ramps. The effect of project traffic would result in the intersection operating at LOS F with a delay of over 50.0 seconds for both the AM and PM peak hours.	TRANS-3: The project sponsor of an individual development project shall contribute a pro-rata share to the following improvement:  Signalize intersection as it meets the Peak Hour Volume Signal Warrant for the AM and PM peak hours. This intersection operates at unacceptable conditions and meets signal warrants prior to the addition of project-related traffic.  Implementation of the identified improvement would result in this intersection operating at an acceptable LOS B with delays of 12.1 and 16.6 seconds for the AM and PM peak hours, respectively.	The project sponsor shall contribute the pro-rata fair-share for improvements to the East 5th Street/I-780 Westbound Ramps intersection.	Project sponsor	City of Benicia Public Works Department to ensure that the project sponsor has paid the pro-rata fair share for the improvement.	No issuance of an occupancy permit.	Improvements in accordance with Mitigation Measure TRANS-3.	Prior to issuance of an occupancy permit.
TRANS-4: Unacceptable LOS at the intersection of East 5th Street / I-780 Eastbound Ramps. The effect of project traffic would result in the intersection operating at LOS F with a delay of over 50.0 seconds for both the AM and PM peak hours.	TRANS-4: The project sponsor of an individual development project shall contribute a pro-rata share to the following improvement:  Signalize intersection as it meets the Peak Hour Volume Signal Warrant for the AM and PM peak hours. Reconfigure the northbound approach to provide one left-turn lane, one through lane, and one right-turn lane.  Implementation of the identified improvement would result in this intersection operating at an acceptable LOS B with delays of 15.5 and 14.9 seconds for the AM and PM peak hours, respectively.	The project sponsor shall contribute the pro-rata fair-share for improvements to the East 5th Street/I-780 Eastbound Ramps intersection.	Project sponsor	City of Benicia Public Works Department to ensure that the project sponsor has paid the pro-rata fair share for the improvement.	No issuance of an occupancy permit.	Improvements in accordance with Mitigation Measure TRANS-4.	Prior to issuance of an occupancy permit.
TRANS-5: Unacceptable LOS at the intersection of East 2nd Street / Military East. The effect of project traffic would result in the intersection operating at LOS E with a delay of 57.1 seconds during the PM peak hour.	TRANS-5: The project sponsor of an individual development project shall contribute a pro-rata share to the following improvement:  Overlap the southbound right turn with the eastbound left turn phase, and re-time the signal.  Implementation of the identified improvement would result in this intersection operating at an acceptable LOS D with 42.5 seconds of delay during the PM peak hour.	The project sponsor shall contribute the pro-rata fair-share for improvements to the East 2nd Street/Military East intersection.	Project sponsor	City of Benicia Public Works Department to ensure that the project sponsor has paid the pro-rata fair share for the improvement.	No issuance of an occupancy permit.	Improvements in accordance with Mitigation Measure TRANS-5.	Prior to issuance of an occupancy permit.

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
<p>TRANS-6: Unacceptable LOS at the intersection of Park Road / Industrial Way. The effect of project traffic would result in the intersection operating at LOS B with delays of 41.3 and 43.6 seconds during the AM and PM peak hours, respectively.</p>	<p>TRANS-6: The project sponsor of an individual development project shall contribute a pro-rata share to the following improvement: Signalize intersection as it meets the Peak Hour Volume Signal Warrant for the AM and PM peak hours. Implementation of the identified improvement would result in this intersection operating at an acceptable LOS B with delays of 14.5 and 13.8 seconds for the AM and PM peak hours, respectively.</p>	<p>The project sponsor shall contribute the pro-rata fair-share for improvements to the Park Road/Industrial Way intersection.</p>	<p>Project sponsor</p>	<p>City of Benicia Public Works Department to ensure that the project sponsor has paid the pro-rata fair share for the improvement.</p>	<p>No issuance of an occupancy permit.</p>	<p>Improvements in accordance with Mitigation Measure TRANS-6.</p>	<p>Prior to issuance of an occupancy permit.</p>
<p>TRANS-7: Unacceptable LOS at the intersection of Park Road / Bayshore Road. The effect of project traffic would result in the intersection operating at LOS F with delays of over 50.0 seconds during both the AM and PM peak hours.</p>	<p>TRANS-7: The project sponsor of an individual development project shall contribute a pro-rata share to the following improvement: Reconfigure the southbound approach to provide two exclusive left-turn lanes, and one shared through-right lane. Reconfigure the westbound approach to provide one shared through-left lane, and two exclusive right-turn lanes. Implementation of the identified improvement would result in this intersection operating at an acceptable LOS B and LOS C with delays of 14.5 and 17.6 seconds for the AM and PM peak hours, respectively.</p>	<p>The project sponsor shall contribute the pro-rata fair-share for improvements to the Park Road/Bayshore Road intersection.</p>	<p>Project sponsor</p>	<p>City of Benicia Public Works Department to ensure that the project sponsor has paid the pro-rata fair share for the improvement.</p>	<p>No issuance of an occupancy permit.</p>	<p>Improvements in accordance with Mitigation Measure TRANS-7.</p>	<p>Prior to issuance of an occupancy permit.</p>

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
<p>TRANS-8: Temporary transportation impacts would result from truck movements and construction worker vehicles traveling to and from the project site.</p>	<p>TRANS-8: Prior to the issuance of each building permit, the project sponsor of an individual development project and construction contractor shall meet with the Benicia Public Works Department and other appropriate City of Benicia agencies to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction of the project. The project sponsor shall develop a construction management plan for review and approval by the City Public Works Department. The plan shall include at least the following items and requirements:</p> <ul style="list-style-type: none"> <li>• A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, provisions for truck queuing, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes.</li> <li>• Identification of any transit stop relocations.</li> <li>• Provisions for parking management and spaces for all construction workers to ensure that construction workers do not park in on-street spaces.</li> <li>• Identification of parking space removal and any relocation of parking for employees, and public parking during construction.</li> <li>• Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours, and lane closures will occur.</li> </ul>	<p>The project sponsor and construction contractor shall meet with the City of Benicia Public Works Department and other City agencies prior to the issuance of building or grading permits for individual development projects to prepare traffic management strategies which incorporate the performance standards listed in Mitigation Measure TRANS-8.</p>	<p>Project sponsor</p>	<p>City of Benicia Public Works Department to ensure that traffic management measures are established and that construction personnel are in compliance with these measures.</p>	<p>No issuance of any site-specific grading or building permit.</p>	<p>Traffic management strategies which comply with the requirements of Mitigation Measure TRANS-8.</p>	<p>Prior to issuance of a site-specific grading or building permit.</p>

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
<p>TRANS-3 Continued</p>	<ul style="list-style-type: none"> <li>Provisions for accommodation of pedestrian flow.</li> <li>No construction traffic shall be allowed on East 5th Street south of Military East.</li> <li>Location of construction staging areas for materials, equipment, and vehicles.</li> <li>Identification of haul routes for movement of construction vehicles that would minimize impacts on vehicular and pedestrian traffic, circulation and safety; and provisions for monitoring surface streets used for haul routes so that any damage and debris attributable to the haul trucks can be identified and corrected by the project sponsor.</li> <li>A process for responding to, and tracking, complaints pertaining to construction activity, including identification of an onsite complaint manager.</li> </ul>						
<p>TRANS-2: High volumes of heavily laden trucks have an incremental impact on the condition of streets and highways.</p>	<p>TRANS-9: The project sponsor of an individual development project shall prepare an overall construction traffic management plan to limit the effects of trucks and other construction traffic on surface conditions of area roads and intersections. This plan shall be prepared in coordination with the City of Benicia, and shall include the following provisions:</p>	<p>1) The project sponsor, working with City staff, shall prepare a construction traffic management plan and an existing conditions report of truck access route roadways.</p> <p>2) The project sponsor shall make improvements to area roadways damaged by construction-related traffic throughout the construction phase of the project.</p>	<p>Project sponsor</p>	<p>City of Benicia Public Works Department to:</p> <p>1) Review and approve the construction traffic management plan and truck route existing conditions report.</p> <p>2) Examine roadways around the project site to assess damage to the street surface pavement incidental to the construction activities.</p>	<p>1) No issuance of any site-specific grading or building permit.</p> <p>2) Non-compliance sanctions which may include citations or revocation of occupancy permits.</p>	<p>Construction traffic management plan and improvements in accordance with Mitigation Measure TRANS-9.</p>	<p>1) Prior to issuance of any site-specific grading or building permit.</p> <p>2) Periodically throughout the project construction period.</p> <p>3) Following the end of the construction period.</p>

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
<p>TRANS-9 Continued</p> <ul style="list-style-type: none"> <li>• Prior to implementation of the proposed project, the project sponsor shall survey the condition of truck access route roadways and prepare an existing conditions report to document roadway baseline conditions.</li> <li>• During the construction of the project, or periodically throughout the project's construction period, the project sponsor shall make periodic improvements to area roadways to maintain minimum standards, including clean-up of construction debris (e.g., sand and gravel) and spot repaving of potholes or other severe pavement section damage.</li> <li>• Upon completion of all or most project construction activities, the project sponsor shall identify any impacts to roadway conditions. The project sponsor will install improvements and/or pay an impact fee to mitigate any damages to the existing street pavements on Military East and East 5th Street to/from the project site caused by heavy construction traffic accessing the project site.</li> </ul>	<p>3) Upon completion of project construction the project sponsor shall repair or pay mitigation fees for any damage to existing street surfaces caused by construction equipment or vehicles during the construction phase of the project.</p>			<p>3) Provide a cost estimate for roadway damages to the project sponsor, and ensure that the project sponsor installs or funds needed repairs.</p>	<p>3) Non-compliance sanctions which may include citations or revocation of occupancy permits.</p>		

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
<p><b>H. AIR QUALITY</b></p> <p>AIR-1: Demolition and construction period activities could generate significant dust, exhaust, and organic emissions.</p>	<p>AIR-1: Consistent with guidance from the BAAQMD, the following actions shall be required of construction contracts and specifications for individual development projects:</p> <p><i>Demolition.</i> The following controls shall be implemented during demolition:</p> <ol style="list-style-type: none"> <li>1) Water during demolition of structures and break-up of pavement to control dust generation;</li> <li>2) Cover all trucks hauling demolition debris from the site; and</li> <li>3) Use dust-proof chutes to load debris into trucks whenever feasible.</li> </ol> <p><i>Construction.</i> The following controls shall be implemented at all construction sites:</p> <ol style="list-style-type: none"> <li>1) Water all active construction areas at least twice daily and more often during windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers to control dust;</li> <li>2) Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard;</li> <li>3) Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites;</li> <li>4) Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality.</li> </ol>	<p>The project sponsor shall ensure that the construction contractor fully implements all air quality dust control measures as required by the BAAQMD and Mitigation Measure AIR-1.</p>	<p>Project sponsor</p>	<p>City of Benicia Planning and Building Department to conduct regular site inspections throughout the construction period to ensure that construction control measures are being implemented on the site.</p>	<p>Non-compliance sanctions which may include citations or revocation of permits.</p>	<p>Construction period air pollution controls.</p>	<p>Regularly throughout the construction period at the discretion of the Planning and Building Department.</p>

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
AIR-1 Continued	<p>5) Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets;</p> <p>6) Apply non-toxic soil stabilizers to inactive construction areas;</p> <p>7) Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.);</p> <p>8) Limit traffic speeds on unpaved roads to 15 mph;</p> <p>9) Install sandbags or other erosion control measures to prevent silt runoff to public roadways;</p> <p>10) Replant vegetation in disturbed areas as quickly as possible.</p> <p>11) Install base rock at entryways for all exiting trucks, and wash off the tires or tracks of all trucks and equipment in designated areas before leaving the site; and</p> <p>12) Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph.</p> <p>13) Implementation of this mitigation measure would reduce construction period air quality impacts to a less-than-significant level.</p>						

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
<p>AIR-2: The proposed project could expose future residents within the Lower Arsenal Specific Plan to potentially high cancer risks from exposure to diesel emissions from the adjacent port operations.</p>	<p>AIR-2: To determine if a specific development proposal would expose sensitive receptors to toxic air contaminants in excess of the BAAQMD significance criteria, the project proponent of a residential project shall coordinate with the BAAQMD to prepare a health risk assessment specific to the development parcel proposed for residential use. The assessment shall incorporate emissions sources from activities associated with the Port of Benicia. Residential sites that are determined to exceed a probability of contracting cancer for the Maximally Exposed Individual (MEI) of 10 in 1 million or have ground-level concentrations of non-carcinogenic toxic air contaminants that would result in a Hazard Index greater than 1 for the MEI shall incorporate interior air filtration systems that would reduce the cancer risk or hazard index to below the BAAQMD significance criteria.</p>	<p>1) Project sponsors for residential projects shall coordinate with the BAAQMD to prepare a health risk assessment in accordance with Mitigation Measure AIR-2. 2) The recommendations of the health risk assessment shall be implemented for sites that exceed the residential threshold for cancer risk.</p>	<p>Project sponsor</p>	<p>The City of Benicia Planning and Building Department to verify completion and implementation of the recommendations of a health risk assessment for residential sites.</p>	<p>No issuance of a grading or building permit.</p>	<p>Health risk assessment for residential sites.</p>	<p>Prior to issuance of a grading or building permit.</p>
<p>I. NOISE NOI-1: Construction period activities could create significant short-term noise impacts on adjacent residential properties and on buildings that are currently or would become occupied within the Plan Area before completion of Specific Plan buildout.</p>	<p>NOI-1a: During all on-site excavation and grading, the project contractors for individual development projects shall equip all construction equipment, fixed or mobile, with properly operating and maintained mufflers consistent with manufacturers' standards. All heavy construction equipment used on project sites within the Plan Area shall be maintained in good operating condition, with all internal combustion, engine-driven equipment equipped with intake and exhaust mufflers that are in good condition. "Quiet" models of air compressors and other stationary noise sources shall be utilized where such technology exists.</p>	<p>The project sponsor shall ensure that the construction contractor's equipment is equipped with functional mufflers and maintained in good operating condition in accordance with Mitigation Measure NOI-1a.</p>	<p>Project sponsor</p>	<p>City of Benicia Planning and Building Department to verify that all construction equipment is equipped with adequate mufflers and maintained in good operating condition</p>	<p>Non-compliance sanctions which may include citations or revocation of permits.</p>	<p>Functional mufflers and other "quiet" measures for all contractor equipment.</p>	<p>Ongoing throughout the construction period.</p>

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
NOI-1 Continued	NOI-1b: The project contractors for individual development projects shall place all stationary construction equipment so that emitted noise is directed away from sensitive receptors nearest the construction site.	The project sponsor shall ensure that the construction contractor places all stationary construction equipment so that emitted noise is directed away from sensitive receptors nearest the project site.	Project sponsor	City of Benicia Planning and Building Department to verify that all construction equipment is appropriately sited.	Non-compliance sanctions which may include citations or revocation of permits.	Verification that all construction equipment is directed away from sensitive receptors.	Ongoing throughout the construction period.
	NOI-1c: The construction contractors for individual development projects shall locate equipment staging in areas that will create the greatest possible distance between construction-related noise sources and noise-sensitive receptors nearest the construction site during all project construction. The construction contractors shall post signs prohibiting unnecessary idling of internal combustion engines.	The project sponsor shall ensure that the construction contractor locates equipment staging in areas such that emitted noise is directed away from sensitive receptors nearest the construction site, and posts signs prohibiting the unnecessary idling of engines.	Project sponsor	City of Benicia Planning and Building Department to verify that all equipment staging is appropriately sited and that appropriate signs are posted.	Non-compliance sanctions which may include citations or revocation of permits.	Verification that all equipment staging is appropriately sited and appropriate signs are posted.	Ongoing throughout the construction period.
	NOI-1d: The contractors for individual development projects shall further designate a "noise disturbance coordinator" who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g. beginning work too early, bad muffler) and institute reasonable measures warranted to correct the problem. A telephone number for the disturbance coordinator shall be conspicuously posted at all construction sites within the Plan Area.	The project sponsor shall ensure that the construction contractor designates a "noise disturbance coordinator" in accordance with Mitigation Measure NOI-1d.	Project sponsor	City of Benicia Planning and Building Department to verify designation of a noise disturbance coordinator.	Non-compliance sanctions which may include citations or revocation of permits.	Verification of a designated noise disturbance coordinator.	Ongoing throughout the construction period.

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
NOI-1 Continued	NOI-1e: The construction contractor shall ensure that all noise producing construction-related activities within 500 feet of any residential land uses shall be restricted to the hours of 7:00 a.m. to 10:00 p.m.; all excavating, grading, and filling activity, including, but not limited to, warning of equipment motors, shall be restricted to the hours of 7:00 a.m. to 6:00 p.m. Monday through Saturday. NOI-2: A project-specific acoustical analysis report shall be completed which shall include measures that would reduce traffic noise impacts to below the maximum allowable noise exposure standard of 60 dBA CNEL. These measures shall be incorporated into the project. This analysis shall be performed for all proposed noise sensitive land use development projects in the following areas: <ul style="list-style-type: none"> <li>• Within 60 feet of the centerline of Adams Street;</li> <li>• Within 55 feet of the centerline of Grant Street; and</li> <li>• Within 53 feet of the centerline of Park Road.</li> </ul>	The project sponsor shall ensure that the construction contractor restricts construction-period activities to the hours specified in Mitigation Measure NOI-1c.	Project sponsor	City of Benicia Planning and Building Department to verify that construction activities are occurring only during permitted hours.	Non-compliance sanctions which may include citations or revocation of permits.	Construction activities occur during permitted hours.	Ongoing throughout the construction period.
NOI-2: Implementation of the proposed Specific Plan would increase traffic noise levels within the Plan Area and in surrounding areas.	NOI-2a: Project-specific acoustical studies shall be performed for all proposed noise-sensitive development within the Plan Area. The acoustical studies shall describe how the City's exterior and interior performance standards (shown in Table 4-4 [see Table IV.1-8 above] of the Noise Element of the General Plan) for proposed noise sensitive land uses which may be affected by stationary noise sources will be achieved. These acoustical studies must satisfy the requirements set forth in Title 24, Part 2, of the California Administrative Code, Noise Insulation Standards, for multiple-family attached residential units, hotels and motels.	The project sponsor shall complete acoustical studies for noise-sensitive land uses within the Plan Area in accordance with Mitigation Measure NOI-3a.	Project sponsor	City of Benicia Planning and Building Department to verify completion of acoustical studies for noise-sensitive land uses in accordance with Mitigation Measure NOI-3a.	No issuance of a grading or building permit.	Project-specific acoustical analysis.	Prior to issuance of a grading or building permit.
NOI-3: Implementation of the proposed Specific Plan would expose sensitive land uses to significant operational noise impacts.	NOI-3a: Project-specific acoustical studies shall be performed for all proposed noise-sensitive development within the Plan Area. The acoustical studies shall describe how the City's exterior and interior performance standards (shown in Table 4-4 [see Table IV.1-8 above] of the Noise Element of the General Plan) for proposed noise sensitive land uses which may be affected by stationary noise sources will be achieved. These acoustical studies must satisfy the requirements set forth in Title 24, Part 2, of the California Administrative Code, Noise Insulation Standards, for multiple-family attached residential units, hotels and motels.	The project sponsor shall complete acoustical studies for noise-sensitive land uses within the Plan Area in accordance with Mitigation Measure NOI-3a.	Project sponsor	City of Benicia Planning and Building Department to verify completion of acoustical studies for noise-sensitive land uses in accordance with Mitigation Measure NOI-3a.	No issuance of a grading or building permit.	Project-specific acoustical studies for noise-sensitive uses.	Prior to issuance of a grading or building permit.

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
NOI-3 Continued	NOI-3b: Project-specific acoustical studies shall be performed for all proposed projects within the Plan Area located adjacent to noise sensitive land uses, and that would include the operation of any machinery, equipment, pump, fan, air conditioning apparatus, or similar mechanical device that would generate noise levels in excess of the City's exterior noise standards. These studies shall include mitigation that would reduce these stationary noise impacts to comply with the City's standards set forth in the City's Municipal Code section 8.20.140.	The project sponsor shall complete acoustical studies for all projects that would include noise generating uses located adjacent to noise sensitive land uses in accordance with Mitigation Measure NOI-3b.	Project sponsor	City of Benicia Planning and Building Department to verify completion of acoustical studies for noise generating uses adjacent to noise-sensitive land uses in accordance with Mitigation Measure NOI-3b.	No issuance of a grading or building permit.	Project-specific acoustical studies for noise-generating uses adjacent to noise-sensitive uses.	Prior to issuance of a grading or building permit.
<b>J. VISUAL RESOURCES</b> VIS-1: Development projects built as part of the Draft Specific Plan could block scenic views.	VIS-1: The following changes shall be made to Action 4.5.2 of the Draft Specific Plan: Action 4.5.2. Require visual impact studies, such as computer simulation, photo montage, on-site story poles, and rear streetscape frontage perspectives of all proposed development projects that are located within view corridors as identified on the "Historic Guidelines Overlay Plan" figure in the Draft Specific Plan. These studies shall document the impacts of proposed development or alteration of existing structures on views or view corridors. If these studies show that new development would diminish view corridors, the project design shall be altered so that views are not diminished.	The City shall revise the language of Action 4.5.2 in the Final Lower Arsenal Mixed Use Specific Plan.	City of Benicia	City of Benicia Planning and Building Department to ensure that the text of Action 4.5.2 is revised.	No approval of the Final Lower Arsenal Mixed Use Specific Plan.	Revised text of Action 1.5.3 that meets the requirements of Mitigation Measure VIS-1.	Prior to approval of the Final Lower Arsenal Mixed Use Specific Plan.

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
<p><b>K. CULTURAL AND PALAEONTOLOGICAL RESOURCES</b></p> <p>CULT-1: Ground disturbance in the form of building construction parking lot construction, street construction, street tree planting, building demolition, the redevelopment of open spaces, or other ground disturbance may result in a significant impact to unrecorded cultural resources, including human remains.</p>	<p><b>Mitigation Measures</b></p> <p>CULT-1a: Prior to implementation of individual development projects, a qualified archaeologist shall: (1) assess the potential for subsurface archaeological remains that may meet the definition of historical or archaeological resources and may be adversely affected by project activities; and (2) make project-specific recommendations, as warranted, about the treatment of such resources such that the eligibility of significant resources is maintained, or, if this is not feasible, the resource's loss of eligibility is offset by appropriate mitigation (e.g., data recovery excavation). The City shall ensure that the treatment recommendations of the consulting archaeologist are implemented prior to project construction, or any actions that could adversely affect the resource in question. A report of the results of this archaeological assessment shall be submitted to the project proponent, the City and the Northwest Information Center (NWIC).</p>	<p>The project sponsor shall retain a qualified archaeologist to:</p> <ol style="list-style-type: none"> <li>1) Assess the potential for subsurface archaeological remains.</li> <li>2) Make project-specific recommendations, as warranted.</li> <li>3) Prepare a report of the results and submit to the City and the NWIC.</li> </ol>	<p>Project sponsor</p>	<p>City of Benicia Planning and Building Department to ensure that the treatment recommendations of the consulting archaeologist are implemented.</p>	<p>No issuance of a grading or building permit.</p>	<p>Identification of and recommendations for the treatment of subsurface archaeological deposits.</p>	<p>Prior to issuance of a grading or building permit.</p>

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
<p>CUL-T-1 <i>Continued</i></p>	<p>CUL-T-1b: If unidentified archaeological deposits are discovered during construction activities associated with individual development projects, all work within 25 feet of the find shall be redirected. A qualified archaeologist shall: 1) evaluate the finds to determine if they meet the definition of a historical or archaeological resource; and 2) make recommendations regarding the treatment of such finds. If the finds do not meet the definition of a historical or archaeological resource, then no further study or protection is necessary prior to project implementation. If the finds do meet the definition of a historical or archaeological resource, then they shall be avoided by project activities. If avoidance is not feasible, impacts to such resources shall be mitigated in accordance with the recommendations of the evaluating archaeologist. The City shall ensure that the treatment recommendations of the consulting archaeologist are implemented prior to project construction or actions that could adversely affect the resource in question.</p> <p>Project personnel shall not collect or move any cultural material. Fill soils that may be used for construction purposes shall not contain archaeological materials. Upon completion of the archaeological evaluation, a report documenting the methods, results, and recommendations of the archaeologist shall be prepared and submitted to the project proponent, the City and the NWIC.</p>	<p>1) In the event that unidentified archaeological deposits are discovered during construction activities the project sponsor shall ensure that the construction contractor halts all activity within 25 feet of the discovery.</p> <p>2) The project sponsor shall retain a qualified archeologist to evaluate the finds and make recommendations.</p> <p>3) The qualified archeologist shall complete a report documenting the methods, results, and recommendations, and submit this report to the City and NWIC.</p>	<p>Project sponsor</p>	<p>The City of Benicia Planning and Building Department to:</p> <ol style="list-style-type: none"> <li>1) Verify that, in the event an unidentified archaeological deposit is discovered, all work within 25 feet of the find is redirected.</li> <li>2) Verify that an archeologist is retained to evaluate the materials.</li> <li>3) Review and approve the archaeological report as adequate.</li> </ol>	<p>Non-compliance sanctions which may include citations or revocation of permits.</p>	<p>Archaeological report and appropriate treatment of archeological resources, if applicable.</p>	<p>During the construction period.</p>

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
<p><b>CULT-1 Continued</b></p>	<p><b>CULT-1a:</b> If human remains are encountered by project activities, construction activities shall be halted and the County Coroner shall be notified immediately. If the remains are of Native American origin, the Coroner shall notify the NAHC within 24 hours of this identification, and a qualified archaeologist shall be contacted to assess the situation. The NAHC shall identify a Native American Most Likely Descendent (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and associated grave goods. The City shall ensure that the treatment recommendations of the consulting archaeologist and MLD are implemented prior to project construction or actions that could adversely affect the remains in question.</p> <p>Upon completion of the assessment, the archaeologist shall prepare a report documenting the methods and results, and provide recommendations regarding the treatment of the human remains and any associated cultural materials, as appropriate and in coordination with the recommendations of the MLD. This report shall be submitted to the project proponent, the City, and the NWIC.</p>	<p>1) If human remains are encountered by project activities the project sponsor shall ensure that the construction contractor notifies the City of Benicia and the County Coroner promptly.</p> <p>2) The project sponsor shall retain a qualified professional archaeologist to recover scientifically valuable data if the remains are of Native American origin. If the remains are of Native American origin, the Coroner shall notify the NAHC promptly.</p>	<p>Project sponsor</p>	<p>City of Benicia Planning and Building Department to:</p> <p>1) Verify that, in the event human remains are discovered, the appropriate agencies are contacted, and an archaeologist is retained to evaluate the materials.</p> <p>2) Review and approve the archaeological report as adequate.</p>	<p>Non-compliance sanctions which may include citations or revocation of permits.</p>	<p>Archaeological report and appropriate treatment of human remains, if applicable.</p>	<p>During the construction period.</p>
<p><b>CULT-2:</b> The construction of new buildings and roads could adversely affect the setting of Historic District C.</p>	<p><b>CULT-2a:</b> The Draft Specific Plan contains several policies and design approaches that would avoid or lessen the severity of impact.</p> <p><b>CULT-2:</b> The form, materials, and massing of new construction shall be designed to complement the architectural style and setting of the zone, as well as provide sight lines and view corridors to retain the visual character of the Arsenal as a whole. The City shall ensure that the guidance provided in the Draft Specific Plan is followed with respect to new construction. Once formal plans for the new buildings proposed at the southern and northern boundaries of Officers' Square are prepared, these shall be reviewed by a qualified architectural historian or</p>	<p>1) The project sponsor shall retain a qualified architectural historian or preservation architect to ensure that design plans for new construction are in accordance with Mitigation Measure CULT-2a.</p> <p>2) The architectural historian or preservation architect shall prepare a report documenting</p>	<p>Project sponsor</p>	<p>The City of Benicia Planning and Building Department and the Benicia Historic Preservation Review Commission to review and approve the report and final design plans for compliance with Mitigation Measure CULT-2a.</p>	<p>No approval of final design plans</p>	<p>New building design to comply with Draft Specific Plan and recommendations of the qualified architectural historian as specified in Mitigation Measure CULT-2a.</p>	<p>Prior to approval of final design plans.</p>

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
CULT-2 Continued	<p>preservation architect to ensure that the designs do not result in a "substantial adverse change" to the historical resources of the Jefferson Ridge/Officers' Row Zone and the Benicia Arsenal Historic District. The architectural historian or preservation architect shall prepare a report that includes recommendations, as warranted, for design changes to the new buildings so as to avoid or mitigate impacts to historical resources. The report recommendations shall be incorporated in the final design of the new buildings, which must be approved by the Benicia Historic Preservation Review Commission prior to construction.</p> <p>In addition, the pre-project conditions of the new construction locations shall be documented through landscape photography to document the setting prior to alteration. A report shall also be prepared that documents the history and setting of Jefferson Ridge prior to alteration. The photographs may vary in format and perspective, but shall at a minimum document important sight lines and visual axes that may be impaired by the introduction of new buildings. The photographic documentation shall be prepared in accordance with the <i>HAAS/HAER Photographs: Specifications and Guidelines</i> (2001) and shall supplement the existing Historic American Building Survey documentation of the Arsenal, and shall be included in the report and in an update of the DPR 523 record of National Register District C. A copy of the report and photodocumentation shall be submitted to the City, the Benicia Museum, the Benicia Public Library, and the Northwest Information Center.</p>	<p>recommendations.</p> <p>3) Findings of the report shall be incorporated into the final design of new buildings.</p> <p>4) Pre-project conditions shall be documented in accordance with Mitigation Measure CULT-2a.</p>					

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
CULT-2 Continued	CULT-2b: Historical photographs and/or maps, accompanied by text, shall be presented as part of an interpretive display describing the original configuration of Jefferson Ridge as well as the area's historical significance. This interpretive display shall be developed in consultation with the Benicia Historical Museum and the Benicia Historical Society.	The City of Benicia, in consultation with the Benicia Historical Museum and the Benicia Historical Society shall develop an interpretive display in accordance with Mitigation Measure CULT-2b.	City of Benicia	The Benicia Historical Museum and the Benicia Historical Society to review the interpretive display.	No approval of final design plans.	Interpretive display for Jefferson Ridge.	Prior to approval of final design plans.
CULT-3: The creation of open spaces such as the Clocktower Green and Cork Oak Ridge Park could result in significant impacts to cultural resources.	CULT-3: Implement Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.
CULT-4: The creation of new roads and the extension of existing roads could result in a significant impact to cultural resources.	CULT-4: Implement Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.
CULT-5: The development of the Adams Street Zone could adversely affect cultural resources.	CULT-5: Implement Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.
CULT-6: The development of the Grant Street Zone could disturb intact archaeological deposits.	CULT-6: Implement Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
CULT-7: The construction of new buildings could adversely affect the setting of Historic District D.	CULT-7a: The Draft Specific Plan contains several policies and design approaches that would avoid or lessen the severity of impact CULT-7. The form, materials, and massing of new construction shall be designed to complement the architectural style and setting of the zone, as well as maintain sight lines and view corridors identified in the Conservation Plan to retain the visual character of the Arsenal as a whole. The City shall ensure that the guidance provided in the Draft Specific Plan is followed with respect to new construction. Once formal plans for new buildings proposed for the South of Grant Street Zone are prepared, these shall be reviewed by a qualified architectural historian or preservation architect to ensure that the designs do not result in a "substantial adverse change" to the historical resources of District D and the Benicia Arsenal Historic District. The architectural historian or preservation architect shall prepare a report that includes recommendations, as warranted, for design changes to the new buildings so as to avoid or mitigate impacts to historical resources. The report recommendations shall be incorporated in the final design of the new buildings, which must be approved by the Benicia Historic Preservation Review Commission prior to construction.	1) The project sponsor shall retain a qualified architectural historian or preservation architect to ensure that design plans for new construction are in accordance with Mitigation Measure CULT-7a. 2) The architectural historian or preservation architect shall prepare a report documenting recommendations. 3) Findings of the report shall be incorporated into the final design of new buildings. 4) Pre-project conditions shall be documented in accordance with Mitigation Measure CULT-7a.	Project sponsor	The City of Benicia Planning and Building Department and the Benicia Historic Preservation Review Commission to review and approve the report and final design plans for compliance with Mitigation Measure CULT-7a.	No approval of final design plans	New building design to comply with Draft Specific Plan and recommendations of the qualified architectural historian as specified in Mitigation Measure CULT-7a.	Prior to approval of final design plans.
CULT-8: The development of the South of Grant Street Regulatory Zone could disturb intact archaeological deposits.	CULT-7b: Historical photographs and/or maps, accompanied by text, shall be presented as part of an interpretive display describing the configuration of historical buildings in District D as well as their historical significance. This interpretive display shall be developed in consultation with the Benicia Historical Museum and the Benicia Historical Society. CULT-8: Implement Mitigation Measures CULT-1a, -1b, and -1c.	The City of Benicia, in consultation with the Benicia Historical Museum and the Benicia Historical Society shall develop an interpretive display in accordance with Mitigation Measure CULT-7b. Refer to Mitigation Measures CULT-1a, -1b, and -1c.	City of Benicia	The City of Benicia Planning and Building Department to review the interpretive display.	No approval of final design plans.	Interpretive display for District D.	Prior to approval of final design plans.
			Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.	Refer to Mitigation Measures CULT-1a, -1b, and -1c.

Table 1 Continued

Identified Impact	Mitigation Measures	Implementation Procedure	Implementing Entity	Monitoring and Reporting Action	Non-Compliance Sanction	Effectiveness Criteria	Timing
PALEO-1: Project ground disturbance could result in significant impacts to paleontological resources.	PALEO-1: If paleontological resources are discovered during activities associated with individual development projects, all work within 25 feet of the discovery shall be redirected and a qualified paleontologist contacted to assess the finds. The paleontologist shall make recommendations regarding the treatment of the discovery. Project personnel shall not collect or move any paleontological resources. It is recommended that adverse impacts to such paleontological resources be avoided by project activities. If such resources cannot be avoided, they shall be assessed to determine their paleontological significance. If the paleontological resources are not significant, then avoidance is not necessary. If the paleontological resources are significant, they shall be avoided or adverse impacts shall be mitigated. Upon completion of the assessment, the paleontologist shall prepare a report documenting the methods and results, and provide recommendations for the treatment of the paleontological resources. The City shall ensure that the recommendations of the consulting paleontologist are implemented prior to actions that could adversely affect the resource in question.	1) In the event that unidentified paleontological deposits are discovered during construction activities the project sponsor shall ensure that the construction contractor halts all activity within 25 feet of the discovery. 2) The project sponsor shall retain a qualified paleontologist to evaluate the finds and make recommendations. 3) The qualified paleontologist shall complete a report documenting the methods, results, and recommendations, and shall submit the report to the City.	Project sponsor	The City of Benicia Planning and Building Department to: 1) Verify that, in the event unidentified paleontological deposits are discovered, all work within 25 feet of the find is redirected. 2) Verify that a paleontologist is retained to evaluate the materials. 3) Review and approve the paleontological report as adequate.	Non-compliance sanctions which may include citations or revocation of permits.	Paleontological report and appropriate treatment of paleontological resources, if applicable.	During the construction period.
<b>L. PUBLIC SERVICES</b>							
There are no significant <i>Public Services</i> impacts.							
<b>M. UTILITIES AND INFRASTRUCTURE</b>							
There are no significant <i>Utilities and Infrastructure</i> impacts.							
<b>N. SUSTAINABILITY AND ENERGY</b>							
There are no significant <i>Sustainability and Energy</i> impacts.							



**AGENDA ITEM**  
**PLANNING COMMISSION MEETING: JUNE 10, 2010**  
**NEW BUSINESS**

**DATE** : May 19, 2010  
**TO** : Planning Commission  
**FROM** : City Attorney  
**SUBJECT** : **RECOMMEND AN ORDINANCE AMENDING THE BENICIA INCLUSIONARY HOUSING ORDINANCE BASED ON RECENT CALIFORNIA COURT OF APPEAL CASE**

**RECOMMENDATION:**

Recommend City Council adopt an ordinance to modify and update the existing city inclusionary housing ordinance.

**EXECUTIVE SUMMARY:**

A recent court case requires an amendment to the city's inclusionary housing ordinance in regard to its application to rental developments.

**GENERAL PLAN:**

Relevant General Plan Goals and Policies include:

- Goal #1: Improve the institutional framework and remove governmental constraints for providing affordable housing, to the extent feasible and with the city's control.
  - Policy 1.03: Continue to review and revise, as necessary, regulatory standards applicable to compliance with State housing law to remove significant governmental constraints.
- Goal #2: Promote the development of an adequate supply and mix of housing to meet existing and future housing needs.
  - Policy 2.01: Require affordable housing in residential developments under an "inclusionary" housing program and disperse affordable housing throughout the City to avoid concentration in any one part of the City.
  - Policy 2.03: Seek appropriate private, local, state, and federal funding to implement housing programs for very low-, low- and moderate-income households.
- Goal #5: Ensure equal housing opportunities for all persons in Benicia regardless of race, religion, sex, marital status, ancestry, national origin, color, disability, family status, sexual orientation, or source income.
  - Policy 5.02: Administer zoning and land use policies to facilitate the provision of

housing without regard to race, religion, sex, marital status, ancestry, national origin, color, disability, family status, sexual orientation, or source of income.

## **STRATEGIC PLAN:**

Relevant Strategic Plan Issues include:

- Strategic Issue #5: Maintain and Enhance High Quality of Life by facilitating construction of affordable housing.

## **BUDGET INFORMATION:**

There is no budget impact.

## **BACKGROUND INFORMATION:**

The City of Benicia to provide affordable housing in the community adopted an Inclusionary Housing Ordinance in 2000 requiring that any new residential development of ten (10) or more units include 10% of the total number of market rate dwelling units in the development as units affordable to very low and low income households. This ordinance applied to development of for sale and rental housing units. The California Court of Appeal in *Palmer/Sixth Street Properties L.P. v. City of Los Angeles* (“*Palmer*”) held that inclusionary requirements applied to rental housing violate the Costa-Hawkins Act, the state law governing rent control. The case only applies to rental housing. The key impacts of *Palmer* include:

- A requirement for affordable rental housing in newly created rental developments receiving no assistance from the local government is no longer permitted;
- Rents may be limited if the developer/builder receives either a financing contribution or a type of assistance specified in density bonus law (i.e., including regulatory relief) and agrees by contract to restrict the rents; and
- Affordable housing requirements imposed on for-sale housing are not affected by *Palmer*.

Communities cannot, therefore, impose affordable housing requirements on rental housing in the wake of *Palmer*. More specifically communities cannot impose such requirements on a developer/builder who does not receive any financial assistance or regulatory incentive of the type included in density bonus law. Developers/builders receiving financial assistance can still be required to provide affordable rental housing.

The existing Benicia inclusionary housing ordinance needs to be updated to reflect the *Palmer* case. The ordinance has been modified to reflect the provisions of *Palmer* as it pertains to rental and for sale units.

Attachments:

- Ordinance Redline Version
- Proposed Ordinance

**ORDINANCE  
REDLINE VERSION**

CITY OF BENICIA

ORDINANCE NO. 10-\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SUBSECTIONS C. (DEFINITIONS), D. (GENERAL REQUIREMENTS FOR NEW RESIDENTIAL DEVELOPMENTS) AND E. (INCLUSIONARY UNIT REQUIREMENTS FOR NEW RESIDENTIAL DEVELOPMENTS) OF SECTION 17.70.320 (INCLUSIONARY HOUSING) OF CHAPTER 17.70 (SITE REGULATIONS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE TO AMEND THE APPLICATION OF THE REQUIREMENTS TO CERTAIN PROJECTS

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN as follows:

**Section 1.**

Subsections C. (Definitions) of Section 17.70.320 (Inclusionary Housing) of Chapter 17.70 (Site Regulations) of Title 17 (Zoning) of the Benicia Municipal Code is amended to add a new definition to read as follows:

17.70.320 Inclusionary housing.

C.. Definitions.

“For sale unit development” means a development project where units are sold to a buyer who takes title to the unit via a mortgage instrument.

**Section 2.**

Subsections D.1. and D 2. (General requirements for new residential developments) and E. (Inclusionary unit requirements for rental developments) of Section 17.70.320 (Inclusionary Housing) of Chapter 17.70 (Site Regulations) of Title 17 (Zoning) of the Benicia Municipal Code are amended to amend the application of the requirements to certain projects to read as follows:

D. General requirements for new residential development.

1. Any residential development of for sale units where there are 10 or more units shall include 10 percent of the total number of market rate dwelling units within the development as units affordable to, and occupied, very-low- and low-income households, for a minimum of 30 years from the recordation of each resale control agreement or affordable rental restriction agreement, as the case may be, for the units. One-half of the total number of inclusionary units within the development shall be designated as units affordable to, and occupied by, very-low-income households and one-half of the total number of inclusionary units within the development shall be designated as units affordable to, and occupied by, either very-low or low-income households. When the number of

inclusionary units to be provided is an odd number (i.e., 10 percent of 10 units is one), the odd-numbered unit shall be provided at a level affordable to a household with an income of not more than 60 percent of area median income. The city council may approve an alternative of equivalent value to satisfy all of part of the inclusionary requirement, including payment of in-lieu housing fees, dedication of developable land, or an alternative in-lieu contribution package.

2. For residential development of for sale units of 10 or more units, building permits shall only be issued subsequent to the execution of a written agreement between the city and the developer or its designee which will assure compliance with the provisions of this section. Such agreement shall specify the timing of the construction of the inclusionary units and/or the provisions of the in-lieu alternative (payment of an in-lieu fee, dedication of developable land, or an alternative in-lieu contribution package acceptable to the city council), the number of inclusionary units at appropriate price or rent levels, the term of affordability, provision for the city's income certification and screening of potential purchasers and/or renters of inclusionary units, a resale control agreement and/or affordable rental restriction agreement, if applicable, and such reasonable information as shall be required by the city for the purpose of determining the developer's compliance with this section.

All inclusionary units in a for sale unit development and/or phases or a development shall be constructed concurrently with or prior to the construction of market rate units, unless the city council determines an alternative phasing schedule to facilitate affordable housing development and the developer enters into a written agreement setting forth terms for satisfaction of the inclusionary housing requirements. Each phase of a development shall include the same or greater proportion of inclusionary units as are required for the total development.

### **Section 3.**

Subsection E. (Inclusionary unit requirements for rental developments) of Section 17.70.320 (Inclusionary Housing) of Chapter 17.70 (Site Regulations) of Title 17 (Zoning) of the Benicia Municipal Code is amended by adding E.4. to amend the application of the requirements to certain projects to read as follows:

E. Inclusionary unit requirements for rental developments.

4. For residential development of for rental units where there is no financial assistance from the city or a type of assistance specified in the city's density bonus law, the provisions cited in sections D.1-7 and E.1-3 shall not apply.

For residential development of for rental units where the developer receives financial assistance from the city, or a density bonus or other regulatory relief and or the developer voluntarily agrees by contract to restrict rents as affordable according to the provisions found herein, sections D. and E. shall apply.

**Section 4.**

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clauses thereof irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared unconstitutional on their face or as applied.

\* \* \* \* \*

On motion of Council Member \_\_\_\_\_,  
seconded by Council Member \_\_\_\_\_, the  
foregoing Ordinance was introduced at a regular meeting of the City Council on  
the \_\_\_\_\_ day of \_\_\_\_\_, 2010, and adopted at a regular meeting of the Council held  
on the \_\_\_\_\_ day of \_\_\_\_\_ 2010, by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

# **PROPOSED ORDINANCE**

**CITY OF BENICIA**

**ORDINANCE NO. 10-\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SUBSECTIONS C. (DEFINITIONS), D. (GENERAL REQUIREMENTS FOR NEW RESIDENTIAL DEVELOPMENTS) AND E. (INCLUSIONARY UNIT REQUIREMENTS FOR NEW RESIDENTIAL DEVELOPMENTS) OF SECTION 17.70.320 (INCLUSIONARY HOUSING) OF CHAPTER 17.70 (SITE REGULATIONS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE TO AMEND THE APPLICATION OF THE REQUIREMENTS TO CERTAIN PROJECTS**

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN** as follows:

**Section 1.**

Subsections C. (Definitions) of Section 17.70.320 (Inclusionary Housing) of Chapter 17.70 (Site Regulations) of Title 17 (Zoning) of the Benicia Municipal Code is amended to add a new definition to read as follows:

17.70.320    Inclusionary housing.

C..    Definitions.

“For sale unit development” means a development project where units are sold to a buyer who takes title to the unit via a mortgage instrument.

**Section 2.**

Subsections D.1. and D 2. (General requirements for new residential developments) and E. (Inclusionary unit requirements for rental developments) of Section 17.70.320 (Inclusionary Housing) of Chapter 17.70 (Site Regulations) of Title 17 (Zoning) of the Benicia Municipal Code are amended to amend the application of the requirements to certain projects to read as follows:

D.    General requirements for new residential development.

1.    Any residential development of for sale units where there are 10 or more units shall include 10 percent of the total number of market rate dwelling units within the development as units affordable to, and occupied, very-low- and low-income households, for a minimum of 30 years from the recordation of each resale control agreement or affordable rental restriction agreement, as the case may be, for the units. One-half of the total number of inclusionary units within the development shall be designated as units affordable to, and occupied by, very-low-income households and one-half of the total number of inclusionary units within the development shall be designated as units affordable to, and occupied by, either very-low or low-income households. When the number of

inclusionary units to be provided is an odd number (i.e., 10 percent of 10 units is one), the odd-numbered unit shall be provided at a level affordable to a household with an income of not more than 60 percent of area median income. The city council may approve an alternative of equivalent value to satisfy all of part of the inclusionary requirement, including payment of in-lieu housing fees, dedication of developable land, or an alternative in-lieu contribution package.

2. For residential development of for sale units of 10 or more units, building permits shall only be issued subsequent to the execution of a written agreement between the city and the developer or its designee which will assure compliance with the provisions of this section. Such agreement shall specify the timing of the construction of the inclusionary units and/or the provisions of the in-lieu alternative (payment of an in-lieu) fee, dedication of developable land, or an alternative in-lieu contribution package acceptable to the city council), the number of inclusionary units at appropriate price or rent levels, the term of affordability, provision for the city's income certification and screening of potential purchasers and/or renters of inclusionary units, a resale control agreement and/or affordable rental restriction agreement, if applicable, and such reasonable information as shall be required by the city for the purpose of determining the developer's compliance with this section.

All inclusionary units in a for sale unit development and/or phases or a

development to facilitate affordable housing development and the developer enters a written agreement setting forth terms for satisfaction of the inclusionary unit requirements. Each phase of a development shall include the same or a proportion of inclusionary units as are required for the total development.

### Section 3.

Section E. (Inclusionary unit requirements for rental developments) of Section 17.70 (Inclusionary Housing) of Chapter 17.70 (Site Regulations) of Title 17 (Zoning) of the Benicia Municipal Code is amended by adding E.4. to amend the inclusionary unit requirements to certain projects to read as follows:

E. Inclusionary unit requirements for rental developments.

4. For residential development of for rental units where there is no financial assistance from the city or a type of assistance specified in the city's density bonus law, the provisions cited in sections D.1-7 and E.1-3 shall not apply.

For residential development of for rental units where the developer receives financial assistance from the city, or a density bonus or other regulatory relief and or the developer voluntarily agrees by contract to restrict rents as affordable according to the provisions found herein, sections D. and E. shall apply.

screened into a housing greater

### Section

Subsection 17.70 (Zoning) applicable

no financial density apply.

receive relief affordable apply.

**Section 4.**

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clauses thereof irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared unconstitutional on their face or as applied.

\* \* \* \* \*

On motion of Council Member \_\_\_\_\_,  
seconded by Council Member \_\_\_\_\_, the  
foregoing Ordinance was introduced at a regular meeting of the City Council on  
the \_\_\_\_\_ day of \_\_\_\_\_, 2010, and adopted at a regular meeting of the Council held  
on the \_\_\_\_\_ day of \_\_\_\_\_ 2010, by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

**AGENDA ITEM**  
**PLANNING COMMISSION MEETING: JULY 8, 2010**  
**REGULAR AGENDA ITEMS**

**DATE** : June 23, 2010

**TO** : Planning Commission

**FROM** : Kat Wellman, Contract Attorney

**SUBJECT** : **AMENDMENT OF THE DEVELOPMENT AGREEMENT  
ORDINANCE**

**RECOMMENDATION:**

Review and consider proposed revisions to the development agreement ordinance with a recommendation to the City Council regarding potential changes.

**EXECUTIVE SUMMARY:**

Mayor Patterson has requested that the City Council consider revising the development agreement ordinance to require that complex projects and projects of more than 40 acres be subject to a development agreement with the City. On November 12, 2009, the Planning Commission reviewed proposed revisions to the City's Development Agreement Ordinance that would require any applicant for a vesting tentative map, master plan and/or rezoning for property of 40 acres or more to enter into a development agreement. The revisions also included changes to the information required in a development agreement application. The Planning Commission made some comments and suggestions which staff has incorporated in the attached revisions. The Planning Commission now has another opportunity to review and make any additional suggested modifications to the proposed revisions to the Development Agreement Ordinance which will be forwarded with a recommendation for approval to the City Council.

**GENERAL PLAN:**

Relevant General Plan Goals and Policies include:

- Goal 2.1: Preserve Benicia as a small-sized city.
  - Policy 2.1.1: Ensure that new development is compatible with adjacent existing development and does not detract from Benicia's small town qualities and historic heritage, (and to the extent possible, contributes to the applicable quality of life factors noted above).
  - Program 2.1.A: Adopt development guidelines that retain the scale and character of the city, preserve public view corridors, and reflect the subdivision and development patterns within existing neighborhoods.

## **STRATEGIC PLAN:**

Relevant Strategic Plan Issues and Strategies:

- Strategic Issue #2: Protect and enhance the environment
  - Strategy #3: Pursue and adopt sustainable practices
- Strategic Issue #3: Strengthen economic and fiscal conditions
  - Strategy #5: Increase economic viability of industrial park and other commercial areas, while preserving existing economic strengths and historic resources
- Strategic Issue #4: Preserving and enhancing infrastructure
- Strategic Issue #5: Maintain and enhance a high quality of life

## **BUDGET INFORMATION:**

There are no additional costs to draft/revise this ordinance if the work is done in-house.

## **BACKGROUND:**

The legislature enacted Government Code Section Sections 65864 – 65869.5, which allow cities and developers, or persons with an equitable interest in real property, to enter into development agreements, to encourage comprehensive planning and provide assurances to both parties. Development agreements provide developers with assurance that they will be able to build large/long term projects once they get the necessary approvals; they provide assurance to cities that agreed upon public benefits will be implemented. The legislature felt that such agreements provide the “maximum efficient utilization of resources at the least economic cost to the public.” (See Government Code Section 65864(a)).

In November, the Planning Commission had the opportunity to review selected sections from the development agreement ordinances of other cities, which are attached again for the Planning Commission’s convenience. In addition, there is new sample language from the City of Livermore which requires a development agreement whenever a public benefit is required to “justify” allowing requested deviations from the City’s conventional regulations for certain projects such as residential or industrial planned developments. A similar requirement has been added to the proposed modifications to Benicia’s Development Agreement ordinance. The proposed revisions also require additional information that must be included in an application for a development agreement.

The key in trying to implement a requirement for a development agreement is to ensure that the City has flexibility in determining when a development agreement is needed and can be required.

## **SUMMARY:**

Staff is looking to the Planning Commission to review and consider these revisions and make a recommendation to the City Council for adoption.

Attachments:

- Proposed Changes to the Development Agreement Ordinance (underline & strikeout)
- Minutes from Planning Commission meeting on November 12, 2009

**PROPOSED CHANGES TO THE  
DEVELOPMENT AGREEMENT ORDINANCE**

CITY OF BENICIA

ORDINANCE NO. 10-\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 17.116.020 (APPLICATION REQUIREMENTS) OF CHAPTER 17.116 (DEVELOPMENT AGREEMENTS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE TO REQUIRE CERTAIN PROJECTS OF 40 ACRES OR MORE IN SIZE TO BE SUBJECT TO A DEVELOPMENT AGREEMENT

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN as follows:

Section 1:

Section 17.116.020 (Application requirements) of Chapter 17.116 (Development agreements) of Title 17 (Zoning) of the Benicia Municipal Code is amended by adding Subsection B. to read as follows:

A. An applicant may propose that the city consider entering into a development agreement pursuant to Article 2.5, Chapter 4, Title 7 of the California Government Code commencing with Section 65864, by filing an application with the planning Public Works and Community Development Department.

B. The City may require an applicant for a vesting tentative map, master plan and/or rezoning for all, or any part of, contiguously owned property of 40 acres or more in size, to enter into a development agreement with the City to provide for comprehensive planning for complex projects that require phased development, special zoning approval, or to assure the implementation of special design features that benefit the public.

C. The application shall be accompanied by the following:

1. A proposed agreement, which shall contain the following:
  - a. A legal description of the property sought to be covered by the agreement,
  - b. A complete list of legal property owners.
  - c. A statement of concurrence in the application by the owner if the applicant is not the fee owner,
  - d. A complete list of proposed parties to the agreement,
  - e. A description of the proposed development project including a description of the proposed uses, height and size of building(s), density or intensity of use, phasing of the development, provision for reservation or dedication of land for public purposes, and such other information as is relevant to any other project approvals required for the development such as site and building plans, elevations, relationships to adjacent properties, and operational

data. Where appropriate, the description may distinguish between elements of the project that are proposed to be fixed under the agreement and those that may vary.

f. Identification of all other city planning, zoning or other approvals and of any required approvals from other governmental agencies.

g. All proposed conditions, terms, restrictions, and requirements for subsequent city discretionary actions,

h. Any proposed public facilities financing plan.

i. The proposed time when construction would be commenced and completed for the entire project and any proposed phases, and

j. The termination date for the agreement.

2. A completed initial study form;

3. A statement documenting that the project is consistent with the general plan and all applicable specific plans;

4. Such other information as the planning department or city attorney may require by policy or to satisfy other requirements of law; and

5. The required fee.

## **Section 2.**

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clauses thereof irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared unconstitutional on their face or as applied.

\* \* \* \* \*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the foregoing Ordinance was introduced at a regular meeting of the City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_ 2010, by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

**PLANNING COMMISSION MINUTES  
NOVEMBER 12, 2009**



## BENICIA PLANNING COMMISSION

### CITY COUNCIL CHAMBERS

### REGULAR MEETING MINUTES

Thursday, November 12, 2009

7:00 P.M.

#### I. OPENING OF MEETING

- A. Pledge of Allegiance
- B. Roll Call of Commissioners
- C. Reference to Fundamental Rights of Public - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

#### II. AGENDA CHANGES AND DISCUSSION

Damon Golubics advised that there will be a change to the Agenda item V(B). Chevron, or the permittee has requested a continuance of the matter.

#### III. OPPORTUNITY FOR PUBLIC COMMENT

- A. WRITTEN  
None.

#### B. PUBLIC COMMENT

George Whitney- 540 Military East: States that he lives two doors down from 7-11 and has similar issues as neighbors living near the Chevron Gas Station. He advised that trash from the business blows down the street. He feels that the property is not maintained well by the business owner. He states that he has worked with City of Benicia Community Preservation Officer Roger Core on this issue and it has improved with trash currently being picked up. He states, however, that 7-11 has been an ongoing problem. He requests an ordinance be adopted addressing the issue of trash generating businesses that sell items that produce debris from paper wrappers, receipts, etc that end up flying around the neighborhood. He stated that not all of the trash is from 7-11 as a business and may be trash that blows out of patron's vehicles while opening and closing their doors in the

parking lot. Feels it is a community wide problem for residents that live near all convenience stores and gas stations within the city.

**IV. CONSENT CALENDAR**

On motion of Commissioner Thomas, seconded by Commissioner Ernst, the Consent Calendar was approved by the following vote with the minutes of October 22, 2009 being pulled due to correspondence being received correcting several pages of the minutes to be amended by the Commission Secretary. Minutes will be continued to the next meeting.

Ayes: Commissioners Bortolazzo, Dean, Ernst, Sherry, Syracuse, Thomas and Chair Healy

Noes: None

Absent: None

Abstain: None

A. Approval of Agenda

B. Approval of Minutes of October 8, 2009

C. Approval of Minutes of October 22, 2009 Joint Meeting with the Historic Preservation Review Commission

**V. REGULAR AGENDA ITEMS**

A. USE PERMIT - 1100 SOUTHAMPTON ROAD (APN: 086-151-190), VERIZON WIRELESS COMMUNICATION FACILITY (Continued Public Hearing Item from October 8, 2009)

09PLN-37 Use Permit

1100 Southampton Road, APN: 086-151-190

**PROPOSAL:**

The applicant requests approval of a use permit to install three additional wireless communication antennas on top of an existing pole located on the athletic field of Benicia Middle School at 1100 Southampton Road. All associated equipment would be located within the existing equipment shelter along the fence line.

**Recommendation:** Approve a Use Permit to add three additional antennas to an existing wireless communications facility located on the athletic field of Benicia Middle School at 1100 Southampton Road, based on the Findings and Conditions of Approval set forth in the proposed Resolution.

Sharon Williams gave a presentation on the Verizon Wireless Communication Facility.

Al Fink- Applicant- Stated that Sharon Williams did a great job on this project. He advised the Commission that this project is just an upgrade for 4G coverage.

Commissioner Ernst had questions regarding the use of microwave or radiowave technology, radio megahertz frequency, proximity to the Benicia Middle School playground and concerns about children being so close to the antennas.

The applicant responded that Verizon has purchased a different system that is 700 megahertz, which complies with FCC standards. He advised that most of the antennas are 100 watts, similar to a radio with an amplifier under 200 watts. Regarding health concerns for children playing in the area, the EMF report shows compliance with safety standards.

Damon Golubics advised that it is not in the Commission's purview to discuss this.

Chair Healy asked if the issues have been resolved that warranted a continuance of the item from last month's meeting. Damon Golubics stated that the issue of the possible increase in the lease payment has been resolved. It was determined by the City Parks and Community Services Department that due to language in the original lease agreement, the payment amount could not be increased.

Commissioner Dean requested that the language in the resolution be more specific as it pertains to CEQA section 15301 as 15301(B) under categorical exemptions.

Commissioner Syracuse asked the applicant if there would be landscaping and what would be seen from the freeway. The applicant stated that the view would be grass and a ball field. Damon Golubics advised landscaping was not proposed per the Parks Department.

Commissioner Ernst feels that 4G technology will be a good thing due to his frustration with dropped cellular phone calls. He suggested gray or beige walls for the exterior and galvanized poles for the antennas. He requested several changes made to the resolution, which were noted by staff. Referring to page 3, Commissioner Ernst asked how we are to be sure the antennas are not a nuisance or are detrimental to the health and safety of citizens of the community. Damon Golubics advised commissioners that the issue of health affects have already been addressed and have been found to under the acceptable level allowed by the FCC guidelines He expressed concern that we may be "grandfathering" this in because the poles are already in place and fears setting a precedence. Kat Wellman stated that The Telecommunications Act of 1996 preempts this and sets standards for what can and cannot be reviewed when an application is submitted for approval. Concerns about health standards set by the FCC cannot be used as a reason to deny an application. An application could be turned down due to aesthetics or the number of poles. Each application is looked at individually and is not precedent setting. It also meets the goals of the General Plan.

Commissioner Thomas asked who would tear down the poles when the time comes. Kat Wellman stated that the lease agreement covers that issue.

**RESOLUTION NO. 09-03 (PC) - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA APPROVING A USE PERMIT (09PLN-37) FOR INSTALLATION OF THREE ANTENNAS AND ASSOCIATED EQUIPMENT AT 1100 SOUTHAMPTON ROAD**

On a motion of Commissioner Sherry, seconded by Commissioner Thomas, the above Resolution was adopted by the Planning Commission of the City of Benicia at the regular meeting of said Commission held on the 12th day of November, 2009, and adopted by the following vote:

Ayes: Commissioners Bortolazzo, Dean, Ernst, Sherry, Syracuse, Thomas, and  
Chair Healy  
Noes: None  
Absent: None  
Abstain: None

**B. REVIEW OF A PREVIOUSLY APPROVED 2001 USE PERMIT (CONDITIONS OF APPROVAL) FOR THE CHEVRON GAS STATION AND CONVENIENCE MARKET AT 10 SOLANO SQUARE**

PLN 2000-1 Use Permit

10 Solano Square, APN: 087-200-100

**PROPOSAL:**

The Planning Commission will review and consider previously imposed conditions of approval for Use Permit PLN 2000-1, Chevron Gas Station and Convenience Market. Based on Benicia Municipal Code Section 17.128, the Community Development Director shall determine if there are reasonable grounds for reconsideration of a Use Permit and whether the Planning Commission shall take appropriate action to remedy any documented violation of the use permit conditions of approval. Evidence shall be presented by staff at the public hearing suggesting one condition of approval is not being followed or implemented by the permittee.

**Recommendation:** The Planning Commission should take public testimony, and determine whether there are violations of the original conditions of approval for the Chevron Gas Station and Convenience Market located at 20 Solano Square and consider the proposed amendments to the conditions of approval to remedy any such violation.

Damon Golubics gave a presentation as a discussion item only not presented for a vote by Commissioners at this meeting to be continued to the meeting of December 10, 2009. He suggested encouraging the property owner to enter into a property maintenance agreement prior to approval. Stated that there is a need to find a solution to the matter involving all parties.

Commissioner Sherry asked why a landscaping agreement might be necessary. Damon Golubics advised that this has been an issue since 2003. The volume of complaints has been a continuing issue. He offered this as an option to consider as a possible solution.

Public comment:

George Whitney- 540 Military East-Feels that dealing with Chevron alone will not resolve a citywide issue. Even if the issues at Chevron are resolved, complaints will continue regarding other businesses. Believes a solid ordinance would establish guidelines to be able to monitor trash from convenience stores. Mr. Whitney asked for an

ordinance to be adopted to require such businesses to police the surrounding block near their stores.

Chair Healy made a suggestion to Mr. Whitney to attend sustainability meetings to address these issues.

Mr. Whitney asked for an ordinance to be adopted to police the surrounding block near convenience stores.

Jon Van Landschoot- Stated that the small town feeling of Benicia has two components. Citizens will feel good about the town if they have a good feeling about their neighborhoods. He remembers the deal that was made when the businesses opened, to keep things cleaned up and maintained and that has not happened. He stated "it's the law" and W Second Street needs to be cleaned up. He remembers at least 25-30 complaints over the last few years and feels the issue should be resolved by the Planning Commission.

Commissioner Ernst asked Damon Golubics if there actually have been 25-30 complaints. Damon Golubics advised that there have. Commissioner Ernst asked if there is a need to negotiate and come up with a solution. Damon Golubics said yes that is what is needed. Commissioner Ernst asked if litter laws could be enforced through a City Council ordinance. Damon Golubics stated the larger problem needs to be looked into.

Commissioner Bortolazzo had questions about whether or not all convenience stores and gas stations operate under Use Permit Conditions of approval. Damon Golubics said that we need to research conditions of approval for each station and that conditions of approval may be different for each gas station or convenience market. Commissioner Bortolazzo stated that 7-11 is a mess and that the landscaping is consistently not watered. He suggested that before we address just one station, we need to address each business in a uniform manner.

Chair Healy expressed a preference to work things out with staff as an alternative.

Damon Golubics advised he will take a personal interest in this citywide issue. He stated that the only real issue with Chevron is on the W Second Street side of the site and in general, is well maintained.

On a motion of Commissioner Ernst, seconded by Commissioner Thomas the item was continued to the meeting of December 10, 2009 by the following vote:

Ayes:	Commissioners Bortolazzo, Dean, Ernst, Sherry, Syracuse, Thomas and Chair Healy
Noes:	None
Absent:	None
Abstain:	None

C. **AMENDMENT OF THE DEVELOPMENT AGREEMENT ORDINANCE**

Zoning Text Amendment

City Wide

**PROPOSAL:**

The zoning text amendment would update and amend Title 17 (Zoning), specifically Section 17.116.020 establishing new application requirements for any development agreement the City may enter into with a developer, applicant or permittee.

**Recommendation:** Review and consider proposed revisions to the development agreement ordinance with a recommendation to the City Council regarding potential changes.

Damon Golubics gave a presentation.

Commissioner Dean asked if the agreement applies to parcels that are 40 acres or more and asked how many parcels in town are that large. Damon Golubics stated that it basically applies to the Discovery Builders Benicia Business Park proposal.

Commissioner Sherry asked if we looked at any other properties or is this just directed toward the Benicia Business Park. Damon Golubics advised that there are not many properties that are 40 acres or larger.

Commissioner Bortolazzo stated that Amports is larger than 40 acres and wanted to know what would happen if they divided the property into smaller parcels. Damon Golubics clarified that if they do that it could possibly be a 5 phase project. Commissioner Bortolazzo suggested if the property is more than 40 acres, if they divide it into piece meal projects we should address it.

Commissioner Ernst asked if samples from other cities were considered when writing other city ordinances. Damon Golubics said that everything was considered and the best of all were incorporated the City's Draft Ordinance. The Commission may address these issues if they so choose. He stated that other cities have conducted pre-application workshops or meetings to get a developers vision. He suggested community involvement be part of the process. He asked if this should be included in the Development Agreement. In reference to Item 17.16.040 MC, feels the language (upon receipt of complete application) is unclear.

Commissioner Dean asked if there are advantages to applicants to have a development agreement with the city. Damon Golubics stated that the City Council wants to see a better development agreement ordinance. Commissioner Dean asked if a development agreement would provide another level of certainty for enforcement.

Kat Wellman advised the Commission that the agreement allows for more negotiation for infrastructure and compliance that would provide assurances on both sides.

Commissioner Thomas expressed the feeling that we are walking a fine line regarding things being mandatory or not mandatory. He feels legal research of the ordinance should be done. Damon Golubics advised Commissioners that Benicia is trying to do something different by making it mandatory. He stated that City/County Government can merge parcels. If parcels are required to be merged, if they are smaller than 40 acres, it may be one way to trigger the agreement to apply to smaller areas. He agrees that language in section B is too loose.

Commissioners suggested changes to some of the wording in the agreement. Damon Golubics advised that the changes would be incorporated and forwarded to Council.

Damon Golubics advised that this issue may be breaking new legal ground.

Commissioners had questions about whether or not a development agreement would not be necessary if two smaller parcels exist side by side. Suggestions were made to investigate and discuss the matter further. Questions were raised about whether or not the city could require property owners to enter into a development agreement if parcels are divided into smaller parcels that add up to a total of 40 acres.

Public Comment opened.

Dana Dean- 835 First Street- Asked what the intention of the agreement is and is an ordinance going to be crafted. She suggested that it leans toward being really hard to interpret. In regard to 17.116, feels some of the "loose" language needs to be examined and gave a number of examples of language she feels should be changed. 17.116.020 (C)1e the words "where appropriate" are too open. She requests specificity on any proposed agreement between the city and a developer. Could it possibly be available at the application level?

Jon Van Landschoot- Agrees with Commissioner Bortolazzo's statements. His reason for showing up at the meeting is concern for segmented projects. He asked if this would have an affect on the current Seeno project. Damon Golubics stated that the existing Benicia Business Park application is still valid and has been continued due to economic reasons and will not apply to Seeno. They will determine if they are going to go through with the project in January of 2010. Jon Van Landschoot stated that he doesn't like making a condition mandatory but asking for an agreement doesn't always work either. He asked if there are 2 years left on the Seeno application. He was advised by Damon Golubics that there is a 2 year limit from the time of project approval. The conditions are crafted for each particular phase. Five phases could be spread over 10 years.

Chair Healy asked if the Planning Commission is still free to ask for an agreement of certain conditions. He stated that as the political tide changes, it could affect developers. He feels the agreement provides certainty and enforceability. He feels the City of

Vallejo's example is very broad and may be an effective ordinance and is an interesting alternative way to deal with the issue. He suggested some changes to the language. He states that the process not be so burdensome that it would discourage developers. Suggested it may be addressed in phases. Regarding section C, this may need to include a timetable for mediation or binding arbitration. He feels that the language regarding periodic review in the Rohnert Park example is good. He stated that passing an ordinance with language stating the City can think about it doesn't help. Prevents game playing. He doesn't believe that there needs to be a limit of 40 acres.

Commissioner Dean felt that provisions allowing for more creativity may be incorporated in section 3. He feels that additional entities may need to enter into the process other than just the Planning Department and the City Attorney's Office. He stated that the Rohnert Park example contains nice language in paragraph B.

Commissioner Ernst questioned if the acreage limit is lowered from 20-40 acres, would City Council have the option to waive the requirement. He doesn't want to deter developers from coming to town. He stated there are 50 acres near W Channel Road and is concerned about development of separate smaller parcels.

Commissioner Sherry asked what the process would be for Development Agreements? How it would begin? Would an applicant meet with staff to discuss and negotiate issues? Damon Golubics advised that he believes that would be the procedure. Commissioner Sherry asked if each division would weigh in on specific conditions. Kat Wellman stated that by the time the agreement gets to the Planning Commission, the details would already be ironed out. She doesn't see why it would be a bad thing as it is not making the process difficult or costing the developer money.

Damon Golubics stated that the ordinance needs to be re-crafted and staff will make revisions per the Planning Commission's suggestions. The item will then be presented to the City Council.

## **VI. COMMUNICATIONS FROM STAFF**

### **A. MODEL WATER EFFICIENT LANDSCAPE ORDINANCE – Commission Discussion**

Staff will briefly discuss the Water Conservation Act of 2006 (Assembly Bill 1881) that requires cities and counties to adopt landscape water conservation ordinances by January 1, 2010. Local jurisdictions have a choice to either adopt their own modified version of the Department of Water Resources (DWR) landscape water conservation ordinance or a local agency (cities, counties, cities and counties, charter cities and charter counties) can administer the state-prepared Model Water Efficient Landscape Ordinance (MWELo) which will automatically apply within the jurisdiction of that local agency as of January 1, 2010.

Damon Golubics gave a presentation to Commissioners.

Commissioner Bortolazzo stated that it seems like a massive project and questioned how we, the City of Benicia, will deal with this on such a large scale. Damon Golubics advised that it is necessary to comply with the ordinance.

Commissioner Sherry asked if there are any City staff members that are certified to put the plan together. Damon Golubics stated that he is unaware of anyone on staff that is certified but we will be able to consult outside experts and find someone who is certified to help City Staff out. Commissioner Sherry also asked who will cover the costs. Damon Golubics said that the City will absorb the fees in the short run for a certified expert to review landscape plans.

Commissioner Dean asked if recycled water would be used in connection with the Wastewater Treatment Plant. Damon Golubics advised that the Climate Action Plan may address those issues.

Chair Healy asked if it is possible to adopt a form-based code to opt out if conditions are met. Damon Golubics felt that it is a great idea.

Commissioner Ernst asked what the timing of this would be to simplify the ordinance. Damon Golubics stated that the ordinance goes into affect on January 1, 2010. City Staff will be using the standard model ordinance recommended by the State.

**VII. COMMUNICATIONS FROM COMMISSIONERS**

None.

Kat Wellman advised that she will not be at the next meeting because she and her husband will be on a trip to India.

**VIII. ADJOURNMENT**

Meeting adjourned at 8:55 pm.

**PLANNING COMMISSION MEETING: JUNE 10, 2010  
STAFF COMMUNICATIONS**

**DATE** : June 30, 2010  
**TO** : Planning Commission  
**FROM** : Lisa Porras, AICP, Planning Commission Secretary  
**SUBJECT** : **SIGN ORDINANCE – ELECTRONIC BILLBOARDS**

On June 8, 2010 Commissioner Syracuse requested that staff bring back any regulations that address electronic billboards. Attached is a complete copy of Benicia's Sign Ordinance as outlined in Chapter 18 of the Benicia Municipal Code (BMC).

Areas in the Code generally related to electronic billboards include:

BMC 18.12.010 – Definitions  
BMC 18.12.010 – Design Criteria  
BMC 18.24.030 – Exempt Signs in Industrial or Commercial Districts  
BMC 18.24.040 – Billboard/Nonaccessory Signs

Attachment: City of Benicia Sign Ordinance BMC Chapter 18 Signs

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**Chapter 18.04  
GENERAL PROVISIONS**

Sections:

- 18.04.010 Purpose.
- 18.04.020 Definitions.
- 18.04.030 Applicability.
- 18.04.040 Compliance.
- 18.04.050 Findings.

**18.04.010 Purpose.**

The purpose of this title is to promote and protect the public health, welfare and safety by advancing the goals, policies and strategies of the General Plan to protect, preserve and enhance the vistas, scenic corridors and highways of the city, as well as the aesthetics, traffic safety and environmental values of the city's residential communities and commercial/industrial districts by restricting and regulating signs in the city. This title provides regulations regarding the size, height, design, quality of materials, construction, location, elimination and maintenance of permitted signs and sign structures within the city. (Ord. 07-25 § 1; Ord. 77-12 N.S. § 1, 1977; prior code § 8-901).

**18.04.020 Definitions.**

For the purposes of this title, the following terms shall be defined as follows:

1. "A-board" means a portable sign capable of standing without support or attachment.
2. "Billboard or nonaccessory sign" means a sign which advertises or provides information about a business organization or event, goods, products, services or uses, not directly concerning the use on the property upon which the sign is located, and does not include community directional signs or open house signs.
3. "Community directional sign" means a nonaccessory sign indicating the location of a community service organization, public facility, church, hospital, school or charitable institution.
4. "Construction sign" means a sign identifying an architect, engineer or contractor directly connected with a construction project and which is placed upon the premises where construction, repair or renovation is in progress.
5. "Direction sign" means a sign which directs the eye to places or services, but does not advertise or identify a product or firm.
6. "Directory sign" means a sign displaying the name of each occupant of a building who is engaged in a business, profession or occupation.
7. "Freestanding sign" means a sign which is self-supporting in a fixed location and not attached to a building or structure, and which has no exposed, connecting or supporting wires.

8. "Flashing sign" means an illuminated sign in which the artificial or reflected light is not intended to be maintained at a stationary or constant intensity.
9. "Frontage of property" means the longest single, lineal dimension of a single taxable unit of property abutting on a public or private street.
10. "Frontage of premises" means the longest horizontal straight line dimension of a frontal elevation of the premises which faces either a public street or other public open place. If a premises is so located that more than one side comes within this definition of frontage, each frontage shall be considered separately and no part of a frontage may be used to authorize sign display area on another frontage.
11. "Identification sign" or "accessory sign" means a sign which identifies the business or organization located on the premises, or advertises or informs about business, products or services sold or rendered on the premises.
12. "Mobile sign" means a sign mounted on any type of device which is movable or capable of being moved by a vehicle, but does not include lettering or illustration which is attached to or painted on, and does not extend more than one-fourth inch from the surface of such vehicle.
13. "Moving sign" means a sign which has an actual or apparent moving, revolving or rotating part actuated by electrical, mechanical or other device or by wind current. A moving sign includes, but is not limited to, a banner, pennant, flag (other than a reasonable number of United States or California flags), a balloon, a sign constructed of or faced with scotch light or similar material, a sign which changes or appears to change color, and a sign in which the intensity of light changes or appears to change. The term "moving sign" does not include a time or temperature recording device, nor a motor vehicle.
14. "Nonaccessory sign or billboard" means a sign which advertises or provides information about a business organization or event, goods, products, services or uses, not directly concerning the use on the property upon which the sign is located, and does not include community directional signs or open house signs.
15. "Political sign" means a temporary sign designed for the purpose of soliciting or advertising support of, or opposition to, a political party or candidate, or proposition at a public election.
16. "Portable sign" means a sign which is not attached to the ground or a structure.
17. "Premises" means the building or portion of a building for which a permit for a sign is being sought.
18. "Projecting sign" means a sign other than a wall sign which is suspended from or supported by a building or wall which projects out from the building or wall.
19. "Public open space" is not restricted to areas owned by or dedicated to the public but includes an unenclosed area, square or courtyard open to pedestrian or vehicular traffic, or both.

20. "Reader board" means a permanent structure upon which is displayed advertising material or copy of a temporary or changeable nature.
21. "Shopping center" means an integrated shopping complex comprised of five or more retail stores occupying a developed area of at least two acres.
22. "Shopping center sign" means a freestanding sign which denotes or identifies a shopping center.
23. "Sign" means any structure, natural object or surface, or a device or arrangement attached to or painted or represented upon a structure or natural surface, which attracts or is intended to attract attention to an object, product, place, activity, person, institution, organization or business, or which displays or includes a letter, word, bill, poster, picture, display board, lithograph, map, balloon, banner, "A" frame, "sandwich" board, barber pole, street clock, model, figure, symbol, banner, flag (other than United States or California flags), fluttering object, pennant, insignia, device, or representation used as, or which is in the nature of, an announcement, direction, advertisement, declaration or illumination. Functional architectural features of buildings are not normally signs.
24. "Street setback line" means an official line for planned future street widening adopted by the city council pursuant to applicable state law.
25. "Subdivision" means the area covered by the tentative or final subdivision map filed by a subdivider.
26. "Taxable unit of property" means a parcel of property shown upon the county assessment roll.
27. "Under-marquee sign" means a sign suspended under a marquee, porch, canopy, walkway covering or similar covering structure.
28. "Use" means a purpose or activity for which the land or building is designed, arranged, intended, or for which it is occupied or maintained to function as a separate unit.
29. "Wall sign" means a sign attached parallel to or flat against the exterior wall which faces the frontage of a premises. It includes a sign on a canopy other than an instructional sign.
30. "Window sign" means a sign maintained in or painted upon a window, which is intended to be viewed from outside the window. It does not include merchandise offered for sale on such premises. (Ord. 07-25 § 2; Ord. 77-12 N.S. Appendix I, 1977).

#### **18.04.030 Applicability.**

The sign ordinance applies to each local agency performing governmental or proprietary functions, as well as all commercial and private properties within the city. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-902).

**18.04.040 Compliance.**

Each sign in the city shall comply with the standards and limitations prescribed in Chapter 18.16 BMC and BMC 18.08.010 through 18.08.040, 18.08.070, 18.08.080, 18.12.020, 18.12.030, 18.12.050 through 18.12.080, 18.24.010 and 18.24.020. No existing sign may be replaced or a new sign put in place unless said standards and limitations are met. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-904).

**18.04.050 Findings.**

In adopting this title, the city council finds that excessive and inappropriate signage has an adverse impact on the overall visual appearance and character of the city and its highways, affects the appearance and quality of life of the community, and that it can increase the safety risks to traffic and pedestrians. By adopting this title, the city council intends to comply with the goals and policies of the General Plan to preserve the city's vistas and scenic resources along I-780 and I-680 and to protect the city's ability to apply for state scenic highway designation for the portions of Interstate Highways I-780 and I-680 that run through the city. This title is intended to safeguard and preserve the health, property, and public welfare of residents and businesses by prohibiting, regulating, and controlling the type, design, location and maintenance of signs. (Ord. 07-25 § 3).

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**Chapter 18.08  
PERMITS**

## Sections:

- 18.08.010 Required.
- 18.08.020 Application.
- 18.08.030 Fees.
- 18.08.040 Filing – Revision.
- 18.08.050 Building permit – Required.
- 18.08.060 Building permit – Approval.
- 18.08.070 Appeals.
- 18.08.080 Variance.

**18.08.010 Required.**

A person may not erect or maintain a sign without a permit, except that a permit is not required for:

- A. Temporary signs;
- B. Exempt signs;
- C. For sale, for lease or contractor identification signs;
- D. Open house signs;
- E. Political signs; and
- F. Directional signs in manufacturing zones. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-928).

**18.08.020 Application.**

A. The application for a sign permit shall be on a form prepared by the planning department and, among other matters it may reasonably prescribe, shall contain or include a map or plat and drawings showing the location, size, colors, shape, type of illumination, copy, design and manner of installation of the proposed sign and the frontage of the premises, including exempt signs, giving the size and location of each.

B. The application shall specify whether a variance is requested, and if so, shall specify the manner in which the proposed sign does not comply with this chapter and the factual basis for the findings required by BMC 18.08.080.

C. A single application may cover more than one sign, but shall be limited to a single premises. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-930).

**18.08.030 Fees.**

A. The fee for a sign permit without variance is:

1. Five dollars<sup>1</sup> if the application is for a sign less than 10 square feet in area;

2. Ten dollars<sup>1</sup> if the application is for a sign between 10 and 25 square feet in area;

3. Twenty-five dollars<sup>1</sup> if the application is for a sign more than 25 square feet in area.

B. The fee for a sign permit with variance is the amount in subsection (A) of this section plus \$25.00.<sup>1</sup>

C. The fee shall be paid at the time of filing the application and is not refundable.

D. No fee is required where the application is for:

1. Service club sign, BMC 18.16.090;

2. Neighborhood association sign, BMC 18.16.060;

3. Community directional sign, BMC 18.16.030;

4. A sign in lawful use on the day the ordinance codified in this title takes effect. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-929).

#### **18.08.040 Filing – Revision.**

A. The sign application shall be filed with the planning department. The city planner, who shall be guided by the design criteria in BMC 18.12.010, may require that changes be made in the design of the sign as necessary to carry out the purposes of this title.

B. In the case where no variance is requested in the application and the city planner finds that a variance would be required for approval of the permit, or where the commission finds that the sign as proposed should be modified, the planning commission shall deny the application and advise the applicant of the reasons for denial. In this case the applicant may submit a revised application without payment of an additional fee, unless a variance fee is payable, within 90 days following denial. All actions of the city planner may be appealed to the planning commission by an aggrieved applicant within 10 days of the action. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-931).

#### **18.08.050 Building permit – Required.**

This title does not repeal or supersede any provision of law requiring a building permit for the erection of a sign. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-941).

#### **18.08.060 Building permit – Approval.**

No building permit may be issued for a sign until the city planner or the planning commission approves the application, or until its denial of an application has been reversed upon appeal. Each sign shall be constructed and maintained in accordance with the terms and conditions of the approval. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-934).

**18.08.070 Appeals.**

A. A person aggrieved by the action of the city planner may appeal the action to the planning commission for review in accordance with Chapter 1.44 BMC.

B. There is no fee for this appeal.

C. A person appealing the decision of the city planner shall file a written notice of appeal with the secretary to the planning commission 10 days from the date of the decision being appealed.

D. The procedure for taking an appeal, giving notice, holding the hearing, and making the decision which is prescribed in the case of an appeal for a land use matter shall govern the appeal from a decision of the city planner.

E. The planning commission may reverse, modify, or affirm the action of the planner, on appeal. (Ord. 07-71 § 1; Ord. 77-12 N.S. § 1, 1977; prior code § 8-933).

**18.08.080 Variance.**

When practical difficulty, unnecessary hardship or a result which is inconsistent with the purpose and intent of this title occurs from the strict application of this chapter, the planning commission may grant a variance from the strict application of this chapter in the manner prescribed by BMC Title 17. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-932).

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<sup>1</sup> Fee suggested to city council by planning commission.

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**Chapter 18.12  
GENERAL USE REGULATIONS**

Sections:

- 18.12.010 Design criteria.
- 18.12.020 Computation of sign area.
- 18.12.030 Maximum permissible area for wall signs.
- 18.12.040 Maintenance.
- 18.12.050 Projection limits.
- 18.12.060 Height limitation.
- 18.12.070 Restriction near traffic signal or intersection.
- 18.12.080 Clearance from public utility facilities.
- 18.12.090 Obsolete signs.

**18.12.010 Design criteria.**

In its evaluation of quality of design, the city planner and the planning commission shall apply the following criteria among others:

- A. To the extent feasible, signs shall be graphic and nonverbal, with the design emphasis on simplicity, style trademarks, business identification and symbols rather than on extensive wording and advertising messages.
- B. Sign proliferation creates a busy, unpleasant atmosphere and shall be avoided. Good design calls for thoughtful coordination of all signs, in a lesser rather than greater number of locations on the premises.
- C. Signs shall relate to the architectural design of the building. Signs which cover windows, or which spill over natural boundaries or architectural features and obliterate parts of upper floors of buildings are a menace to visual order and shall not be permitted.
- D. The typical plastic-faced sign with white, internally illuminated background shall be discouraged; dark backgrounds with the letters or design lighter to reduce the glare and the resulting bland night-lighting effect are preferred. Sign illumination shall be designed so as to avoid glare and light intrusion onto other signs or premises.
- E. Neon shall be carefully and sparingly used in signs to avoid blatancy and garishness. Neon is usually better used in symbols or design than for lettering..
- F. Good signs can become bad signs by installation on thoughtlessly contrived or overpowering structures. Careful consideration shall be given to minimize and simplify every sign's supporting structure.
- G. The city planner may make design and structure exemptions if the proposed sign attempts to duplicate signs used in certain historical periods: for example, the exposed light bulbs used in the late Victorian period, and the wall-painted sign incorporated into the design facade of the art deco. (Ord. 77-12 N.S. Appendix III, 1977).

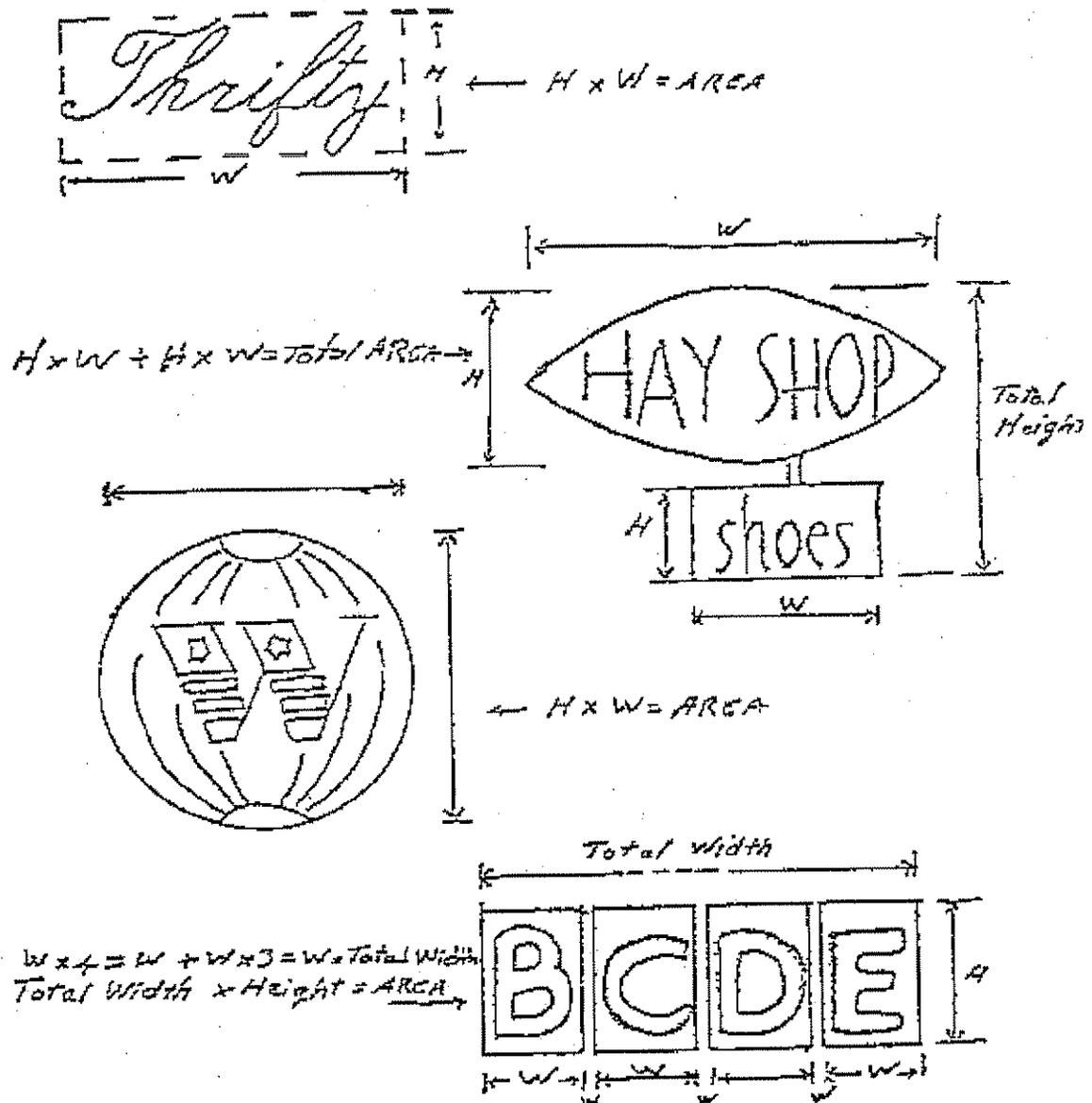
**18.12.020 Computation of sign area.**

A. The sign area is computed by including the maximum single display surface which is visible from a single ground position. The structure supporting a sign is not included in determining the sign area unless the structure is designed in a way as to form part of the display or is an integral background for the display.

B. The area of a sign is determined by computing the area of an encompassing circle or rectangle, whichever is smaller.

C. Where a commercial building is on a corner, the side of the building will be treated as the front in calculating the area allowed for the side sign.

D. The following illustration sets forth the manner for computing facing area:



(Ord. 77-12 § 1, 1977; prior code § 8-913).

**18.12.030 Maximum permissible area for wall signs.**

A. The maximum aggregate area of all wall signs permitted for a frontage of a premises is based upon the frontage of the premises and number of stories of the premises to which the sign will be affixed. This maximum area is set forth in Table I, as follows:

**Table I Maximum Sign Area in Square Feet**

<b>Frontage of Building in Lineal Feet</b>	<b>1-Story or Less Than 15'</b>	<b>2-Story or Less Than 25'</b>	<b>3-Story or Less Than 40'</b>
4	20	20	20
6	20	20	20
8	20	20	20
10	20	20	20
12	20	20	20
14	20	20	29
16	20	20	39
18	20	26	49
20	20	34	57
22	20	42	65
24	20	49	71
26	23	55	78
28	29	61	83
30	34	66	89
32	39	71	94
34	44	76	98
36	49	81	103
38	53	85	107
40	57	89	110
42	61	92	114
44	65	96	118
46	68	99	121
48	71	103	124
50	75	106	127
52	78	109	130
54	81	111	132
56	83	114	135
58	86	117	138
60	89	119	140
62	91	122	142
64	94	124	145
66	96	126	147
68	98	128	149
70	100	130	151

72	103	132	153
74	105	134	155
76	109	136	157
78	110	138	158
80	112	140	160
82	114	142	162
84	116	143	163
86	118	145	165
88	119	147	167
90	121	148	168
92	122	150	169
94	124	151	171
96	125	153	172
98	127	154	174
100	130	156	175
105	134	159	178
110	137	162	181
115	140	165	184
120	143	168	187
125	146	171	190
130	148	173	192
135	151	176	194
140	153	178	197
145	156	181	200
150	160	183	
155	162	185	
160	164	187	
165	166	189	
170	168	191	
175	170	193	
180	172	194	
185	173	196	
190	175	198	
195	177	200	
200	178		
205	180		
210	181		
215	183		
220	184		
225	186		
230	187		
235	188		
240	190		
245	191		
250	192		
255	191		
260	192		

265	193
270	194
275	196
280	197
285	198
290	199
295	200

B. In applying Table I to a building if the frontage of the building is not listed therein, the next larger frontage figure determines the maximum wall sign area.

C. Regardless of the frontage or height of the building, the total permissible aggregate area of all wall signs for a frontage of a building is 200 square feet.

D. The maximum aggregate permissible wall sign area for buildings set forth in this section shall be reduced by the sign area of each freestanding sign and shingle sign on the property, but shall not be reduced by the amount of area used for window signs. However, if the building is set back at least 100 feet from the street line on an official street setback line, if one exists, then the permissible wall sign area is not reduced by the sign area of the freestanding sign. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-905).

#### **18.12.040 Maintenance.**

Each sign shall be maintained in a secure, safe and good condition. If the city building inspector finds that a sign is not secure, safe or in a good state of repair, he shall give written notice in a reasonable manner of this fact to the person responsible for the maintenance of the sign. If the defect in the sign is not corrected within the time permitted by the city, the city planner and/or the planning commission may revoke the permit to maintain the sign and abate it in the manner provided in BMC 18.28.010. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-936).

#### **18.12.050 Projection limits.**

No part of a sign attached to or mounted on a building may project beyond 12 inches from the wall to which it is attached, except as permitted with shingle signs. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-906).

#### **18.12.060 Height limitation.**

No part of a sign affixed to a building may extend above the roof line or ridge line of the building to which it is attached. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-907).

#### **18.12.070 Restriction near traffic signal or intersection.**

No sign may be located in a manner which may obstruct or interfere with the view of a traffic signal. No sign may be located within 100 feet of the intersection of public streets, if it obstructs the vision of a motorist within 100 feet of the intersection. No sign may be located so as to create a hazardous condition to a person using the public right-of-way. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-914).

#### **18.12.080 Clearance from public utility facilities.**

The owner of any sign shall maintain legal clearance from communications and electric facilities. A sign may not be constructed, erected, installed, maintained or repaired in

any manner that conflicts with a rule, regulation, or order of the California Public Utilities Commission pertaining to the construction, operation and maintenance of public utilities facilities. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-918).

**18.12.090 Obsolete signs.**

An accessory sign which ceases to advertise a bona fide business conducted or product sold on the premises shall be removed within 90 days after written notification from the building inspector. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-940).

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**Chapter 18.16  
SPECIFIC SIGN REGULATIONS**

**Sections:**

- 18.16.010 A-board signs.
- 18.16.020 Apartment houses and roominghouses.
- 18.16.030 Community directional signs.
- 18.16.040 For sale, lease and contractor identification signs.
- 18.16.050 Freestanding signs.
- 18.16.060 Neighborhood association signs.
- 18.16.070 Open house signs.
- 18.16.080 Price signs for automobile service stations.
- 18.16.090 Service club signs.
- 18.16.100 Shingle signs.
- 18.16.110 Signs for subdivisions and apartment buildings.
- 18.16.120 Temporary signs.
- 18.16.130 Under-marquee signs.

**18.16.010 A-board signs.**

The A-board sign shall be no taller than 45 inches and no wider than 30 inches. The frame shall be of dark wood. Each business at street level will be allowed only one A-board sign. The area of the sign shall not be included within the allowable sign area permitted the business on-site. The sign will only be displayed in front of the business it is advertising. After January 1, 1980, the existing A-board signs must be discontinued in use, and no new A-board signs will be permitted to be erected thereafter. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-912).

**18.16.020 Apartment houses and roominghouses.**

A. The allowable display area for a sign for the identification of an apartment house is computed on the basis of one-half square foot for each dwelling unit.

B. The allowable display area for a sign for the identification of a roominghouse is computed on the basis of one-half square foot for each rentable room.

C. In each case, the maximum display area is 32 square feet. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-923).

**18.16.030 Community directional signs.**

A community directional sign is subject to the following limitations:

A. A community facility may be approved by the city planner;

B. Each sign may not exceed three square feet in area. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-926).

**18.16.040 For sale, lease and contractor identification signs.**

A. A person may, without application for a sign permit, erect one sign on a taxable unit of property for the purpose of advertising construction work on the premises, or of

offering the property for sale or lease. The display area of this sign may not exceed the following limitations:

1. In a land use district designated single-family, four square feet;
2. In any other land use district, 12 square feet per acre of land, not to exceed 40 square feet.

B. The sign shall be removed within 10 days after the sale, lease, or the completion of construction. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-921).

#### **18.16.050 Freestanding signs.**

A. A freestanding sign must meet the design guidelines prescribed in BMC 18.12.010. In addition, the city planner and/or the planning commission may impose reasonable conditions regulating such things as the facing area, duration of the sign, color, structure, material, location and landscaping.

B. A freestanding sign is permitted upon a premises only when the city planner finds that:

1. A freestanding sign is the most feasible means by which the business conducted on the premises can have the same degree of identification to the traveling and shopping public as that available to businesses on neighboring premises without freestanding signs; and
2. The freestanding sign will not give the business on the premises a greater identification to the public than that available to businesses on neighboring premises without freestanding signs, and will not result in an unfair advantage over competitors; and
3. A freestanding sign, if granted, would not adversely affect the preservation of property values in the vicinity;
4. No part of a freestanding sign may extend over 20 feet above the normal contour of the land or surrounding terrain of the business it serves. (Ord. 77-12 N.S. § 1, 1977; prior code §§ 8-908, 8-909).

#### **18.16.060 Neighborhood association signs.**

A. A sign for neighborhood identification is subject to approval by the city planner as to location, size, height, lighting and design. The sign shall be for the sole purpose of identifying the area and may not advertise a dwelling for sale or lease.

B. The city planner shall see that the neighborhood identification signs harmonize with their surroundings. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-925).

#### **18.16.070 Open house signs.**

In addition to the signs authorized by BMC 18.16.040, a person may, without application for a sign permit, erect a nonaccessory or accessory sign, or both, which advertises real estate for sale and open for inspection. The sign may not exceed four square feet in area. Not more than three open house signs may be used in connection

with one taxable unit of property unless approved by the planning commission. The sign may state the name of the selling agent or broker and that the property is open for inspection. The open house sign is permitted only during the hours between 8:00 a.m. and 10:00 p.m. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-922).

**18.16.080 Price signs for automobile service stations.**

On premises where gasoline is dispensed to motor vehicles, a display of a price sign which may be read from a public street is encouraged. In addition to the authorizations and limitations contained elsewhere in this chapter, premises on which gasoline is sold from pumps may have a single sign displaying the prices of such gasoline. The price sign shall not be attached to or mounted on the principal building on the premises, or an under-marquee sign suspended from a canopy. No part of an under-marquee sign, not attached, used as a price sign shall be closer than 20 feet to any street line or official street setback line, if one exists. The price sign shall not exceed eight square feet in size and shall be subject to all applicable provisions of this chapter. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-910).

**18.16.090 Service club signs.**

A sign for identification of a service club is subject to approval by the city planner as to location, size, height, width, lighting and general design. This section does not apply to a membership sign displayed by members of a service club. (Ord. 77-21 N.S. § 1, 1977; prior code § 8-924).

**18.16.100 Shingle signs.**

A. Policy. In general, all forms of projecting signs are discouraged and most are prohibited. However, there is a narrow class of projecting graphic signs, called the shingle sign, which is deemed to be a desirable balance of sign function and high aesthetic standards.

B. Criteria. The use of painted wood or material closely simulating painted wood is preferred for shingle signs. Graphic representation in gold or silver shall be stressed. Letters may be used only to announce the name of the business conducted and the principal classification and brand of goods sold or service offered on the premises.

C. Limitations. A shingle sign is subject to the following limitations:

1. It may not be attached to a structure other than a building;
2. It may not project more than 30 inches from the surface of the building to which it is attached;
3. It may not contain more than a total of five square feet of display area, excluding the supporting structure;
4. It may be only as high as the eave line of the building surface to which it is attached or 11 feet above grade, whichever is lower;
5. It may not be lower than seven and one-half feet;
6. It may not be internally illuminated;

7. It may not be more than four inches or less than one-half inch thick, except as reasonably required in connection with some graphic element of the sign;
8. The total wall sign display area otherwise permitted shall be reduced by the display area, excluding the supporting structure, of the shingle sign approved;
9. Only one shingle sign may be approved for installation on a single frontage of a premises;
10. No shingle sign may be approved for a premises for which a freestanding sign permit is outstanding.

D. Required Findings. An application for a shingle sign may not be approved except upon the following written findings;

1. The sign is reasonably required for and assists in the identification of the premises by persons in motor vehicles or by pedestrians approaching along public streets or open spaces; and
2. The sign will have no garish or obtrusive qualities, and embodies strong elements of quality graphic design; and
3. Neither the supporting structure nor the proposed external lighting will materially detract from the design qualities of the sign or building; and
4. The sign will comply with the specific criteria of subsection (B) of this section and the limitations of subsection (C) of this section. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-911).

#### **18.16.110 Signs for subdivisions and apartment buildings.**

A. A person offering apartments for lease or real estate sale in a recorded subdivision may erect and maintain not more than two temporary signs identifying the subdivision or apartment building.

B. The total maximum display area for each sign is 32 square feet. The sign may not be located within 100 feet of an occupied residence, unless the planning commission finds that the maintenance of such distance is not feasible. The sign may not be illuminated.

C. In those cases where, due to location or size, there is a need of directional signs within the city leading to the subject site, the number, subject matter, design and size of the signs may be approved by the city planner.

D. In addition to all other terms and conditions which the city planner or the planning commission may impose, a person proposing to erect a subdivision sign shall enter into an agreement with the city providing for the following:

1. A deposit, to be determined by the city manager, for each sign guaranteeing maintenance and removal of the sign upon expiration of the permit;

2. Removal of the sign within one year from the date erected, except that the permit may be renewed for additional periods not exceeding one year in the discretion of the planning commission;
3. Permission to the city to remove and dispose of the sign should the sign not be removed by the subdivider; and a covenant to reimburse the city its cost of such removal and disposal if such costs exceed the amount of deposit.

E. A permanent decorative sign, giving the name of an apartment, development, subdivision or any other development, may receive approval at the same time as the planning commission grants architectural, site plan and landscaping approval of the development. If the development does not fall under the review, the community development director may grant the approval. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-920).

#### **18.16.120 Temporary signs.**

A. In addition to other signs permitted by this chapter, a business which sells goods or services to consumers may install and maintain temporary signs on a window of the premises for the purpose of advertising a bona fide special sale or promotion on the premises, subject to the following conditions:

1. No more than 50 percent of the total window space on a wall may be covered by temporary window signs; and
2. Each temporary window sign shall be removed when the sale or promotion advertised ends, or within 30 days following its installation, whichever is sooner; and
3. No sign permit is required in subsections (A)(1) and (2) of this section.

B. Notwithstanding BMC 18.24.020, temporary signs including those involving the use of banners, flyers, pennants, pinwheels, or utilizing two or more light bulbs in a wire string are permitted to advertise or promote a special or seasonal event. However, each such temporary sign shall be removed when the special event ends or within 45 days following installation, whichever is sooner. A sign permit is not required for such temporary signs. Temporary signs allowed in this section may only be used twice a year by any individual business. One period of use may be 30 days and the other period of use may be 45 days, but in no case shall the temporary signs be used more than 75 days in any one year. Seasonal decoration of windows is exempted. (Ord. 77-12 § 1, 1977; prior code § 8-916).

#### **18.16.130 Under-marquee signs.**

Only one under-marquee sign which is no more than three square feet in area is permitted per customer entrance for a retail store. The sign is not included in the computation of the maximum permissible display surface for the premises. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-917).

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## Chapter 18.20 NONCONFORMING SIGNS

### Sections:

- 18.20.010 Existing signs.
- 18.20.020 Removal – Time extension – Application.
- 18.20.030 Time extension – Application – Review.
- 18.20.040 Time extension – Granting.
- 18.20.050 Time extension – Ineligibility.

#### **18.20.010 Existing signs.**

The owner of a sign that is in place at a permanent location on the enactment date of the ordinance codified in this title, which does not comply with this title, is however required to comply with the following procedure. Not later than 24 months following the enactment of the ordinance codified in this title, the owner of a “nonconforming sign,” which is in place at a permanent location on the enactment date, shall take one of the following actions:

- A. Remove the sign;
- B. Apply for an extension of time as provided in BMC 18.20.020;
- C. Apply for a permanent sign permit, subject to modifications of the sign to achieve conformity with the provisions of this title. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-938).

#### **18.20.020 Removal – Time extension – Application.**

An application for an extension of the 12-month period allowed for the removal of nonconforming signs shall be filed with the planning department on a form prescribed by it. The application shall contain the name and address of the sign owner and the landowner, and identification of the property, the type of sign, the date erected, the original cost of the sign including its installation, a color photograph of the sign, a detailed statement of reasons for the extension, and the length of time for which the extension is requested. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-939(a)).

#### **18.20.030 Time extension – Application – Review.**

The application shall be referred to the planning commission for review. The planning commission shall review the application and shall hear arguments for and against the grant of an extension. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-939(b)).

#### **18.20.040 Time extension – Granting.**

The planning commission may grant an extension of time up to 72 months from the effective date of the ordinance codified in this title, provided the sign complied with this title on the date it was installed. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-939(c)).

#### **18.20.050 Time extension – Ineligibility.**

A sign which was erected in violation of applicable sign regulations is not eligible for an extension under this chapter. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-939(d)).

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**Chapter 18.24**  
**PROHIBITIONS AND EXEMPTIONS**

## Sections:

- 18.24.010 Prohibited signs – Generally.
- 18.24.020 Exempt signs – Generally.
- 18.24.030 Exempt signs – In commercial or industrial districts.
- 18.24.040 Billboards/nonaccessory signs.

**18.24.010 Prohibited signs – Generally.**

Unless specifically authorized under other sections of this title, the following types of signs shall not be erected or maintained: a flashing sign; a moving sign; a sign which has banners, flyers, pennants, pinwheels, or utilizes two or more light bulbs in a wire string; a portable sign; a projecting sign; a sign painted directly on the wall of a building or fence; a dilapidated or abandoned sign or a sign in disrepair or dangerous condition; a sign which is affixed to a fence, utility pole or utility structure, or a tree, shrub, rock or other natural object; a mobile sign or a sign attached to a motor vehicle which is parked with the intent to advertise to the public passing by; a sign containing obscene or profane matter; a sign illuminated by exposed light globes, i.e., clear light bulbs not turned away or properly shrouded from the viewer; and a sign created by the arrangement of vegetation, rocks, or other objects, such as hillside, visible to pedestrians and motorists, without application to and approval by the planning commission. (Ord. 07-25 § 4; Ord. 77-12 N.S. § 1, 1977; prior code § 8-915).

**18.24.020 Exempt signs – Generally.**

Except as to the location of signs with reference to street intersections, the following signs are exempt from this chapter:

- A. Memorial tablet having sign area of four square feet or less; and
- B. Sign identifying a mailbox which does not exceed 60 square inches in sign area; and
- C. Sign identifying a residence on nearby private roads not exceeding 120 square inches for each residence; and
- D. Sign having a display area not exceeding two square feet and intended solely for the information, safety, direction or convenience of the public, rather than the advertisement of goods and services, including a sign which indicates days, hours, emergency telephone number, street address, and/or credit card honored; membership in civic, business or professional organizations; or which direct customers where to park, which identify restrooms, or which locate a public telephone or freight entrance. The aggregate display area of all such signs related to a single occupancy which can conveniently be seen from outside the premises may not exceed 10 square feet, unless the planner finds that a greater area is required for the safety or convenience of the public; and
- E. Sign placed by a public utility showing the location of underground facilities; and

F. Sign advertising a community event of general public interest which does not exceed in the aggregate for all events five square feet of sign area per premises; and

G. Theatre marquee sign, which may utilize changeable lettering, which does not exceed in height the roof line or parapet of the building, or 18 feet, whichever is higher; and

H. Sign which is an integral and appropriate part of a window merchandising display; provided, that the sign:

1. Advertises or relates to goods or services offered on the premises,
2. Is not painted on or affixed to an outside window,
3. Does not contain the name of the business on the premises;

I. Temporary sign required to be maintained by law or governmental order, rule or regulation, and for the safety of persons, preservation of property, or the convenience of the public and authorized in accordance with the regulations of the planning commission. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-919).

**18.24.030 Exempt signs – In commercial or industrial districts.**

A. Identification signs within the commercial or industrial districts shall be submitted to the community development director for approval. Directional signs are exempt in this zone. Billboard or nonaccessory signs are prohibited.

B. Any signs within the commercial or industrial zones shall be designed so that the appearance of such signs shall be in keeping with the general surrounding architecture. Special attention shall be directed to those signs visible from freeway entrances to the city. Signs that negatively impact the landscaping, open space requirements, vistas, scenic corridors or general appearance of said freeway structures may be denied. (Ord. 07-25 § 5; Ord. 77-12 N.S. § 1, 1977; prior code § 8-903).

**18.24.040 Billboards/nonaccessory signs.**

The city completely prohibits the construction, erection or use of any billboards or nonaccessory signs other than those which legally exist in the city, or for which a valid permit has been issued and has not expired, as of the date on which this provision is first adopted. No permit shall be issued for any billboard which violates this policy, and the city will take immediate abatement action against any billboard or nonaccessory sign constructed or maintained in violation of this policy. In adopting this provision, the city council affirmatively declares that it would have adopted this billboard/nonaccessory sign policy even if it were the only provision in this chapter. The city council intends for this billboard policy to be severable and separately enforceable even if other provision(s) of this chapter or title may be declared, by a court of competent jurisdiction, to be unconstitutional, invalid or unenforceable. This provision does not prohibit agreements to relocate, remodel or enhance presently existing, legal billboards or nonaccessory signs. (Ord. 07-25 § 6).

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**Chapter 18.28  
ABATEMENT AND REMOVAL**

Sections:

- 18.28.010 Abatement.
- 18.28.020 Removal generally.
- 18.28.030 Violation – Notice.
- 18.28.040 Notice – Hearing.
- 18.28.050 Removal by city.
- 18.28.060 Removal cost.

**18.28.010 Abatement.**

A sign erected or maintained in violation of this title is a public nuisance. The city may take proceedings for the abatement of the nuisance and make the cost of the abatement a special assessment against the premises in accordance with the provisions of Government Code Sections 38773, 38773.5, and those specified in Chapter 8.04 BMC. In addition to all other remedies, the city has a lien upon the sign which it removes and may keep possession of the sign until the owner pays the cost of removal. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-935).

**18.28.020 Removal generally.**

A. Unsafe Signs. A sign which imperils the safety of a person or property may be summarily removed.

B. Removal After Notice and Hearing. A sign which is not removed within the time prescribed in this title, or a sign which is erected in violation of this title is subject to removal in the manner set forth in BMC 18.28.030 through 18.28.060. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-937(a, b)).

**18.28.030 Violation – Notice.**

The building inspector shall give written notice to the owner of the premises as shown in the last equalized assessment roll or as known to him, and to each person other than the owner who is in possession or control of the premises. The notice of violation shall be by certified mail addressed to the premises where the violation exists. The notice shall contain the following:

- A. A general description of the sign which is allegedly in violation;
- B. A copy of the section of this title which is being violated;
- C. An estimate of cost of the sign together with any substantiating information such as a cost estimate in support of the figure stated;
- D. A notice of time and place at which time the owner or the person responsible may appeal and present evidence as to the absence of a violation or the value of the sign or both. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-937(b)(1)).

**18.28.040 Notice – Hearing.**

The building inspector or his designated representative shall hold a hearing at the time and place set forth in this notice. The purpose of the hearing is to establish whether or not a violation of this title has occurred and is continuing to occur and to fix the value of the sign. At the hearing, either the owner or the occupant of the premises, or both, may appear and be heard upon these questions. A person has the right to appear with an attorney. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-937(b)(2)).

**18.28.050 Removal by city.**

If at the conclusion of the hearing the city building inspector or his designated representative finds that a violation of this title is continuing to exist and, that upon previous notice to comply, the owner or occupant of the premises failed to correct the violation and that the fair market value of the sign does not exceed \$500.00, then the building inspector may order the sign to be summarily removed. The building inspector shall give the owner and occupant of the premises notice of the time and place of his intention to remove the sign. The owner or occupant may remove the sign at any time prior thereto. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-937(b)(3)).

**18.28.060 Removal cost.**

Each person who erects a sign which is subject to removal under this chapter is jointly and severally liable for the cost of removal. The city has a lien upon the sign for the cost of removal and may keep possession of the sign until the owner redeems it by paying to the city the cost of removal. The city may dispose of the sign 60 days after removal by giving the owner notice that the owner may redeem the sign by paying the cost of removal or if he fails to do so, the city will dispose of the sign as it sees fit without further liability to the owner for this action. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-937(c)).

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**Chapter 18.32  
FREEWAY ADVERTISING DISPLAYS**

**(Repealed by Ord. 07-25)**

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**Chapter 18.36  
OVERHANGING SIGNS**

Sections:

18.36.010 Generally.

18.36.020 Repealed.

**18.36.010 Generally.**

It is unlawful for any firm, corporation, or person to extend any signs of any nature or kind out over any sidewalk in the city unless the same shall be at least eight feet above the walk. The sign or signs must be wholly supported from the building, and no post or support will be permitted from the street or sidewalk. (Ord. 204 M.C. § 1, 1912).

**18.36.020 Violation – Penalty.**

Repealed by Ord. 03-9. (Ord. 204 M.C. § 2, 1912).

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