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Members, City Council  
City of Benicia  
250 East L Street  
Benicia, CA 94510

November 16, 2008

Dear Council Members:

This letter addresses the item on the November 18, 2008 City Council agenda for the review of the Benicia Business Park project. I have reviewed the agenda material. This letter has comments on the idea of a proposed workshop that would be held to identify remaining project issues and determine whether they can be resolved with the project as currently designed.

My view is that resolution of the remaining project issues can only occur if the City ends its current process for review of this project. The City's current review process has failed its residents. The current application needs to be denied and the applicant should be invited to submit a new application for the City's consideration.

The following is a chronology of events describing how this review process has failed to adequately protect the health, safety and welfare of Benicians. Text in *italics* is text taken directly from the minutes of meetings or the environmental document, unless otherwise specified. It's a long, twisted process, so a summary is provided at the end of this letter.

#### **July 6, 2005: CITY ISSUES NOTICE OF PREPARATION (NOP) FOR AN ENVIRONMENTAL IMPACT REPORT (EIR)**

When the Draft EIR was released it indicated this EIR would be used for all required permits and approvals, including design review, approval of improvement plans, grading plans and building permits (Draft EIR, p. 1). After the Draft EIR was released, the following statement appeared in numerous responses to comments.

*"The project as currently proposed is a conceptual development plan that does not contain many of the site-specific development details that would typically accompany a development project.... The environmental analysis in the Draft EIR, including the identification of impacts and mitigation measures, was undertaken based on the level of detail on the proposed project that was provided by the project sponsor."*

These statements clearly indicate that the City did not have enough information in the development application to provide a complete and adequate review of the project for all project approvals. The EIR was handicapped from its inception.

### **May 1, 2007: COUNCIL HEARING ON THE ADEQUACY OF THE DRAFT EIR**

Initially, the City received 115 comments. Responses to these comments were not available prior to the hearing, but an opportunity was available at the hearing to comment on what the Draft EIR disclosed about the proposed project. Many of the project issues that are currently unresolved were not disclosed in the Draft EIR but were raised through comments from the public. Some commenter advocated for completion of the EIR, others advocated for stopping further work on the EIR and denying the project.

All Council Members discussed their views. *Council Member Patterson stated that....*

- *Every time the applicant is allowed to move forward, the advantage is on their side. They would be less responsive, and that has already been demonstrated.*
- *It was a considerable major mistake to accept the application. She does not want to compound that mistake which was done by beginning the environmental document when we did not have all the information needed. Why would Council want to make a third mistake by finishing the document?*
- *It puts the City in a very poor bargaining position. It would be ill advised to say to finish the document.*

*Mr. Erickson stated that proceeding would not put the City at a disadvantage. The City still has the discretionary decision of certifying the EIR, accepting or not accepting a project. The City has the leverage.*

*Council Member Patterson stated that:*

- *The City would not have all the leverage...*
- *She referenced Seeno's project 'Crystal Ranch [in Concord].' The project did not meet what the city wanted, but they finally got worn down, which is what the strategy was, and the project was developed with some modest changes.*
- *This is not what the community wants.*
- *The City would be weakened if it takes that route of moving forward. History would show that was a mistake.*

All Council members, except Mayor Messina, asked the developer to come back with a new project because the Draft EIR showed their proposal was poorly planned. *Mr. Erickson stated that the applicant has indicated that they would like Council to proceed with the [EIR] process. The applicant is saying that they were willing to work with the City on some sort of alternative plan. He suggested working with the applicant until it is determined that an alternative project couldn't be done. His concern was that the opportunity would be jeopardized.* The hearing was continued.

Be aware that the City's review process played out in a manner similar to that stated by then Council Member Patterson. No "alternative plan" was submitted by the developer until March 20, 2008, and only after the City certified the EIR and declared that the proposed project in the EIR could not be approved due to numerous conflicts with general plan policies.

### **August 7, 2007: COUNCIL HEARING ON THE ADEQUACY OF THE DRAFT EIR**

The developer gave a 30-minute presentation that provided more detail on the project that was evaluated in the Draft EIR. Contrary to what was proposed by City staff on May 1<sup>st</sup>, no changes or alternative plan was proposed by the developer.

Staff recommended that the Council find the Draft EIR in compliance with the City's guidelines and find that the project evaluated in the EIR could not be approved due to numerous conflicts with the General Plan.

Mayor Messina said the finding that the project could not be approved as proposed was not necessary. He removed that finding from the resolution and called for a vote. On a 3-2 vote the Council found the Draft EIR complied with the City's guidelines.

Be aware that eventually (as described below) the City Council had to force the developer to submit an alternative plan by finding that the project evaluated in the EIR could not be approved due to numerous conflicts with the General Plan.

### **January 15, 2008: CITY COUNCIL MEETING – CLOSED SESSION FOR POTENTIAL LITIGATION**

*Under Public Comment, Kristina Lawson of Miller, Starr, Regalia Law Firm – On behalf of her client, Discovery Builders, Ms. Lawson requested Council schedule a hearing for certification of the EIR that was prepared for the Benicia Business Park project. Discovery Builders' presence tonight to request a hearing was not a waiver of their right to challenge the closed session that Council was holding.*

*Ms. McLaughlin [City Attorney] reminded Council that the City had at least two threats of litigation by the attorneys for Discovery Builders if the City does not schedule a hearing for the certification of the EIR soon.*

Even though the City later certified the EIR, concerns still exist that the developer would sue the City if the project is denied.

### **February 19, 2008: COUNCIL HEARING TO CERTIFY THE EIR**

*Mr. Evola stated that City Staff requested the bifurcation of the EIR. If the EIR were approved, Discovery Builders would submit a project within the framework of LSA's EIR. It would be the start that could send Discovery Builders back to the drawing board and make modifications to fit within the framework of the EIR, and then bring it back for approval with 100% complete discretion of the Planning Commission and Council.*

Staff could not recall if the City has ever considered a project's environmental document, separate from its review of the project.

*Council Member Schwartzman made a motion to add the following amendments to the Resolution certifying the Benicia Business Park and further resolving that the proposed project considered by the EIR cannot be approved without significant modification due to numerous conflicts with general plan policies:*

- *directing the applicant and Staff to move forward on a CEQA Initial Study for the Hillside Upland Preservation Alternative,*
- *directing the applicant and Staff to incorporate Leadership in Energy and Environmental Design(LEED) and AB 32 into the review of the Hillside Upland Preservation Alternative, the need for a new mitigation measure for the I-780 impacts, and lastly adding language regarding urban decay and sustainability.*

The above motion was approved by a 4-1 vote.

#### **March 20, 2008: DEVELOPER SUBMITS NEW PROJECT TO CITY**

The developer submits a new project and an addendum to the certified EIR. There is No CEQA Initial Study pursuant to the Council's February 19 direction, because staff argued an Addendum was adequate. The Addendum avoids the need for an Initial Study and maintains state-mandated time limits for action by the Planning Commission and Council on the project. The Council received many comments in subsequent hearings that an Initial Study should be prepared as directed by the Council. The Initial Study would likely find that a Supplemental EIR should be prepared. If a Supplemental EIR was required, the City would have leverage to obtain from the developer a waiver of the state-mandated time limits in order to complete the Supplemental EIR.

#### **April 10, 2008: PLANNING COMMISSION HEARING ON THE PROJECT**

The staff report was received by the Commission six days prior to the meeting. No peer review was available on the Addendum prepared by the developer. This is the first opportunity for the Commission to review the project. The developer declined a request of the Commission for additional time to consider the project.

On a 6-1 vote, the Commission recommended the City Council deny the project because of numerous conflicts with the general plan; and there was inadequate information regarding geological studies, the commercial impact on the downtown, the impact on the public health, and the impact on bicyclists and pedestrians.

Further, the Commission unanimously recommended the City and developer move forward with the best possible project, the City invite the developer to contact staff to establish a comprehensive schedule designed to both address the shortcomings of the plan and get this community fully on board with a project that everyone can get behind and to that use of a development agreement would be advantageous.

### **May 6, 2008: COUNCIL HEARING ON THE PROJECT**

*Jim Erickson, City Manager, set parameters for this portion of the meeting.... Staff continues to work with the developer to discuss the 216 proposed conditions.... This could be a big part of the City's economic well-being...with a potential of 5,000+ jobs, approximately \$500,000 of annual net revenue for the City at full build out, and substantial changes to the environmental conditions in the area.*

At the meeting, the developer requested a revenue sharing agreement.

### **May 20, 2008: CONTINUED HEARING FROM MAY 6**

### **June 3, 2008: CONTINUED HEARING FROM MAY 20**

A revenue sharing agreement was added as a condition of approval to allow the "property owners" to be reimbursed for any construction and maintenance costs for public services that are above their fair share.

Comments were received from the public. Comments on the revenue sharing condition included how the fair share of each property owner would be determined? To what degree will this condition offset the overriding economic reasons for approving the project?

*Council and staff discussed the following concerns:*

- *condition relating to the \$1 million for the Mills Community Center,*
- *the conditions of the project being legally binding,*
- *what would happen if the developer were to appeal some of the conditions after the project was approved,*
- *what would happen if the courts were to overturn some of the conditions,*
- *amending conditions,*
- *the legal possibility of having the applicant waive its right to appeal the conditions as a condition of approval,*
- *economic analysis,*
- *how the park and ride would work,*
- *economic analysis vs. specific plan,*
- *24-hour onsite security personnel for the proposed project,*
- *greenhouse gas reduction,*
- *western commercial area,*
- *conformance of site plan with LEED Neighborhood Development (ND) standards,*
- *campus design,*
- *application for vesting tentative map,*
- *advantage of a development agreement,*
- *what staff would do more of if it had more time – such as getting more detail, making more of nexus, more research on the addendum to beef it up more,*
- *having a draft revenue sharing agreement,*

- *having a citizen committee,*
- *establishing a grading limit, how much of the site could be developed if there was a 20% slope limit, contour grading,*
- *why there is no ability to do a form-based code with the project, and*
- *how Council should handle the comments the City has received as it relates to the addendum and conditions of approval and the desire for a supplemental EIR.*

*Mr. Evola offered a 60-day extension for more time to deliberate with staff and do a traffic study.... Council Member Ioakimedes discussed his displeasure with the developer's offer of an extension. Why didn't they offer the extension earlier?*

On motion of Council Member Hughes, the Council voted 4-1 to accept the developer's extension until the October 7, 2008 Council meeting, have a comprehensive traffic study submitted to Council, limit the public hearing to the traffic study, and opening Council's deliberations to the entire project.

#### **October 7, 2008: HEARING ON THE SUPPLEMENTAL TRAFFIC STUDY AND COUNCIL REVIEW OF THE PROJECT**

*Ms. Kristina Lawson, Miller Starr Regalia, stated...her client agreed to all conditions of approval brought forward by the City. The EIR was certified in February 2008.... The impacts identified in the supplemental traffic analysis are outside of the CEQA process.*

Be aware that the City received comments to evaluate potential traffic impacts of the project on East 2<sup>nd</sup> south of the freeway on 3/10/07 (Draft EIR, Comment C2-20). The City's response then was the transportation modeling showed no project trips would go south of the freeway.

The supplemental traffic study identified impacts at four intersections along East 2<sup>nd</sup> Street (both north and south of the freeway) not previously identified in the EIR. Mitigations were proposed at some of these locations.

Be aware that on 3/10/07 the City received comments on the Draft EIR regarding potential traffic impacts at Seaview/East 2<sup>nd</sup> and at East Tennys/East 2<sup>nd</sup> (Comment C2-9) and again on 2/13/08 during review of the proposed Final EIR (Supplemental Response to Comments E7-3). The Final EIR made largely unsubstantiated claims that there was no impact from the project at this intersection – a conclusion that the supplemental traffic study refutes.

The supplemental traffic study, even though it substantiated impacts to nine intersections along East 2<sup>nd</sup> Street, from Military to Seaview, continues to ignore comments made on 3/17/07 on the Draft EIR to evaluate storage capacity for the approach lanes at intersections along East 2<sup>nd</sup> Street (Comment C2-16), or comments to evaluate the East Tennys intersection (Comment C2-9).

On a motion by Council Member Campbell, the Council votes 2-3 on approval of the Addendum for the project and related actions, resulting in denial of the approval. Be aware, however, that Council Members Hughes and Schwartzman believed that review of the project's environmental impact was complete and adequate.

To help understand the next step in the process, it is important to review the transcript of the Council meeting following this vote:

McLaughlin: Alright, so since you didn't approve ...

Patterson: So we give direction to staff to prepare a Resolution of Denial for the, APPROVING A VESTING TENTATIVE MAP, MASTER PLAN OVERLAY, AND REZONING FOR THE BENICIA BUSINESS PARK PROJECT, WITH CONDITIONS

McLaughlin: Yes, that works.

Patterson: Thank you. Anything else on our agenda?

Schwartzman: I don't think so.

Patterson: Without objection, we are adjourned.

#### **October 20, 2008: COUNCIL CONSIDERS STAFF RECOMMENDATION ON THE PROJECT**

City staff report includes alternative recommendations, ranging from denying the project to continuing the matter for reconsideration.

Staff recommendations include reconsideration of a project decision which is a breach of the City's rules and procedures. Adopted Council procedures stipulate for "reconsideration" that, *"Providing that no intervening rights shall be prejudiced, any Council Member who voted with the majority on a question may move the reconsideration of that question at the same meeting in which the original decision was made or at the next following meeting."*

*"After a motion for reconsideration has been acted upon, no other similar motion shall be made without unanimous consent."* (Rules of Procedure, V(C)(3).)

The transcript of the October 7 Council meeting shows no Council Member who voted with the majority moving for reconsideration.

When, if ever, is it appropriate for staff to seek reconsideration of a Council vote that may be contrary to its recommendation? The Benicia Herald quotes staff on this point: *"What they voted on October 7th was a motion to approve the final environmental documentation," he said. "Technically, no action has been taken. There's really no opportunity for staff to presume what they want to do."*

On a motion by Council Member Schwartzman, with a 4-0 vote the Council agreed to continue the matter to November 18, 2008 following staff recommendation for a

facilitated discussion with the developer to reach a final conclusion that will make the bulk of the community comfortable.

**November 18 2008: CONTINUATION OF THE ITEM FROM OCTOBER 21, 2008.**

The staff report includes a six page Health Risk Assessment for students and staff at Robert Semple Elementary School that was prepared by LSA Associates for discussion at a facilitated workshop. Please be aware that there is no request in the record by Council to staff to prepare such an assessment. There is no discussion in the Draft EIR, the Addendum, or the CEQA findings of the potential need for a health risk assessment for students and staff at Semple School.

In March 2007, the City received at least 3 comments on the Draft EIR requesting an evaluation of localized air pollution generated by the project on the risk to sensitive populations for cancer, asthma, and heart disease (Comments A7-1, A7-4, C2-29). LSA responded at that time that the future traffic volumes in the area are below the thresholds set by the state for locating schools near busy roadways, therefore the project would not be expected to expose sensitive populations to hazardous levels of vehicle emissions (DEIR Comment A7-1). Why then, is staff addressing this issue now after completion of their environmental disclosure documents?

The Health Risk Assessment serves only to confuse issues, not to clarify them. No technical supporting data or peer review is provided. The potential conflict of interest in having the author of the EIR (which found no potential for health impacts), also prepare the subsequent Health Risk Assessment is obvious. No explanation is provided on why the projected freeway traffic volumes used in the assessment conflict with similar data the City received on 2/13/08 during review of the Final EIR. The assessment ignores the unique setting of the school site, ignores air emissions of the neighboring use (e.g. refinery) and ignores stated concerns about the project's potential to increase exposure of sensitive populations to respiratory disease. The Health Risk Assessment as presented further damages the credibility of the City's review process for this project.

**HOW CAN A WORKSHOP HELP THE CITY?**

It has been over 1,300 days since the City initiated the process for review of the developer's application for the Benicia Business Park. With this passage of time, the following substantive issues remain unresolved:

- Enabling the Planning Commission to review the project;
- Creating jobs that meet the needs of Benicia residents;
- Avoiding conditions of blight for the neighborhoods along East 2<sup>nd</sup> Street and for downtown;
- Protecting the health and safety of school children at Semple School;
- Avoiding congestion and unsafe conditions for motorists, bicyclists and pedestrians along the East 2<sup>nd</sup> Street corridor between Military and East Tennys;

- Enabling significant reductions in greenhouse gas emissions for future generations;
- Ensuring the project will develop as intended by the City; and
- Ensuring the project will pay its way and provide additional long-term City revenue for discretionary projects and services.

How can these issues be resolved by continuing this failed review process? The failings of this process can be summarized as follows:

- The City did not have enough information in the project application to provide a complete and adequate review of the project;
- 32 months after the NOP was issued, the developer conceded that the proposed project could not be approved under the existing general plan;
- The developer ignored the Council's request for a new project for 10 months, until after the Council detached certification of the EIR from review of the project application;
- The Council detached review of the EIR from review of the project application, an unprecedented action in Benicia;
- The developer refused to grant the Planning Commission's request for additional time to review the EIR and project;
- Staff undercut credibility in the review process by: a) failing to prepare an Initial Study on the revised project as directed by Council on 2/19/08; b) preparing an Addendum on the new project rather than an Initial Study, thereby maintaining the state-mandated time limits for Commission and Council action on the revised project; c) evaluating new traffic and air quality impacts without reconsidering the certified EIR or Addendum, and d) breaching Council procedures by recommending reconsideration of the Council's 10/7/08 rejection of the Addendum and related actions; and
- The developer conceded that the Council has *100 percent discretion* over review of the application, yet there is concern the developer will sue the City if the project is denied.

Benicia resident Marilyn Bardet has described this process as a TRAIN WRECK. *The train has gone completely off the tracks and staff is acting as though it's time to serve dinner, when they should be hauling out the bodies.* What is needed is to end this process. Only then would a workshop be appropriate for the purpose of agreeing on a new process that would resolve these outstanding issues. This new process, by definition, would involve a new application and a Supplemental EIR. We would then be on our way to achieving the clean-tech/green tech research and development campus that most of the community wants and the general plan calls for.

Sincerely,

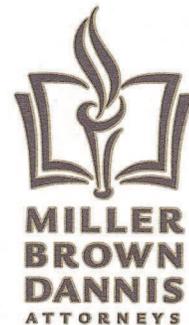


Steven L. Goetz

Cc: C. Knox, City of Benicia

LAWRENCE M. SCHOENKE  
ATTORNEY AT LAW  
lschoenke@mbdlaw.com

SAN FRANCISCO



November 17, 2008

**E-MAIL AND MAIL**

Elizabeth Patterson, Mayor  
Members of the City Council  
City of Benicia  
250 L Street  
Benicia, CA 94510

Re: Benicia Business Park  
Council meeting of November 18, 2008  
Our file: 1375.10308

Dear Mayor and City Council Members:

We once again send this letter on behalf of the Board of Trustees of the Benicia Unified School District ("District") to encourage the City Council to conclusively reject the proposal for the Benicia Business Park ("BBP"). The District has previously provided communication on the impact of the BBP on the District on two separate occasions and in particular on the students and staff at Robert Semple Elementary School, located at 2015 East Third Street ("Semple School"). We reiterate those comments and add the following comments.

- 1. City Council rejected the Addendum; the Project as presently configured should be denied.** The District believes that the October 7, 2008, vote rejecting the Addendum requires rejecting the BBP project as it is currently proposed. The Mayor gave instruction to staff to prepare the required resolutions rejecting the project; however, it appears that staff is approaching the matter in a way that may be read as allowing a reconsideration of the vote rejecting the Addendum. Unless significant changes are made in the BBP project configuration, the District urges the City Council to act to reject the BBP project at this November 18 meeting.
- 2. Negotiation with Discovery Builders.** The District received a letter from Salvatore Evola on October 31, 2008 stating that Discovery would fund certain mitigation measures as identified at the October 7, 2008 City Council meeting. The District responded that these were inadequate and sent a list and preliminary

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construction budget for actions that are necessary to mitigate to a less than significant level the traffic, noise, and air pollution effects that will occur if BBP is allowed to proceed. We have heard nothing back from Discovery Builders, but we are informed that Discovery had shared our counteroffer with City staff without our knowledge or permission. We believe the latter action is a breach of the negotiation process and is not appropriate.

3. **Health Risk Assessment (HRA) November 2008.** The District received on November 12, 2008 a document that purports to assess the "health related impacts" on students and teachers at Semple School. Initially, the District objects to the lateness of this assessment, especially since the District raised the air pollution and health issues in March 2007 and it is not possible to have an in-depth assessment reviewed by a professional in order to respond to the technical content. (We have contacted two consultants, both of whom did cursory reviews. Some comments are incorporated below.) Next, it is noteworthy that the writer focuses on "emissions from traffic" based on the studies that were previously done. As stated in our previous communications, these studies are flawed because truck traffic data is not spelled out because the Environmental Impact Report (EIR) and the Addendum are not specific enough to determine the level of truck traffic arising from the Project. Finally, while there is much discussion on cancer risk and risk of "chronic" impacts (which are not defined) based on the Bay Area Air Quality Management District (BAAQMD) thresholds, the use of the current data in the EIR and Addendum undermines any risk calculation in that bad data produces unreliable conclusions.

As Valerie Geier of Geier & Geier Consulting from Berkeley, California notes:

A. The California Air Resources Board's (CARB) *Land Use Handbook* (April, 2005) indicates that freeways and high traffic roads (urban roads with freeways with 100,000 vehicles per day and rural roads with 50,000 vehicles per day) typically pose cancer risks in the range of 300 to 1,700 cancer cases in one million, depending on distance to the freeway but within 1,000 feet of a freeway. Since the school is located approximately 275 to 850 feet from the I-780 freeway, LSA's estimate of 0.02 cancer cases in one million in 2030 (with project) for students and teachers at the Robert Semple Elementary School, seems low.

LSA's HRA indicates future traffic volumes of 97,000 vehicles per day (13,095 vehicles per day due to the project), which is commensurate with the range of 100,000 vehicles per day identified in the CARB Handbook.

B. With respect to freeway traffic volumes, trucks are the main source of diesel particulate matter, a known carcinogen. LSA's HRA does not identify the percentage of diesel trucks assumed in both project as well as I-780 traffic volumes. The CARB Handbook notes that distance from a roadway as well as truck traffic densities are key factors in the association of adverse health effects with traffic volumes. The concern is that there is already a high baseline for diesel particulates due to the proximity of the freeway. Therefore, this project contributes incrementally to this existing impaired condition, which could be considered *cumulatively considerable*.

Another consultant of the District, Benson Lee, based on his cursory review states:

If the current document [the HRA] does have serious errors that must be addressed and lead to different conclusions, it is likely that it would be construed as "significant new information" [and] that then leads to a mandatory 45-day recirculation to the public for comment under [Title 14 CCR] Section 15088.5 of CEQA.

Even if the current document [the HRA] conclusions are correct, I would question if this isn't new information in the sense that the topic was never really analyzed. As such, the effort to hurry it through as an addendum may not be even be adequate.

As one can see this eleventh hour attempt to somehow say that the pollution caused by a large increase of traffic in front of Semple School is not a health hazard raises more questions than it answers.

- 4. Conclusion.** As stated in the District's previous communications, we urge the City to reject the BBP as presented. In the alternative, the District remains committed to negotiations with Discovery Builders, should Discovery Builders be amenable to negotiations in good faith, to attempt to reach a conclusion that construction of the BBP project will provide for the economic growth that the City desires while protecting the health and safety of District students and employees.

Elizabeth Patterson, Mayor  
Members of the City Council  
City of Benicia  
November 17, 2008  
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Very truly yours,

MILLER BROWN & DANNIS

A handwritten signature in blue ink that reads "Lawrence M. Schoenke". The signature is fluid and cursive, with the first name being the most prominent.

Lawrence M. Schoenke for  
Mark W. Kelley

cc: Board of Trustees, Benicia Unified School District  
James Erickson, City Manager, City of Benicia

**From:** Anne Cardwell  
**To:** Jayne York  
**Date:** 11/18/2008 7:00:57 AM  
**Subject:** Fwd: My comments, on Health Risk Assessment for Semple School

Please print the email and attachments for the meeting...

>>> Marilyn Bardet <mjbardet@sbcglobal.net> 11/17/2008 10:51 PM >>>  
Dear Mayor and Councilmembers,

I have assembled a set of comments I'm calling "Main Messages" pertinent to review of the current Health Risk Assessment and its relevance to the CEQA process and the Addendum. Tomorrow, I will send a shorter version of "highlights" in bullet form, to demonstrate problems with the HRA, page-by-page.

It is virtually impossible to expect the community to address the HRA in such short order, given the seriousness of the topic.

Further, it is my estimation that no future "facilitated workshop" could resolve all the outstanding problems related to Cumulative Air Quality impacts, traffic congestion, and thus, potential health and safety risks to Semple School and surrounding neighborhoods.

The ONLY respectable solution is to REQUIRE a Supplemental EIR, after further confirming the vote to deny the current Addendum, to which the HRA is but a last minute addition that is woefully misleading and presumptuous in its conclusions. An HRA should have been produced as a result of the scoping session for the Draft EIR. It's simply too little, too cheap, too late.

Please do your best to ensure that we have peer review of the HRA by independent experts. It would be highly irresponsible to allow any firm conclusions to be made from such a document that would be relevant to any further action with regard Semple School or to approval of the current Revised Project. I must trust and count on your leadership and sense of justice on this.

Respectfully,

Marilyn B.

**CC:** D Simpkins; Heather McLaughlin

**Facts from the Benicia First Forum**

# **Air Quality & Children's Health**

**Sept. 18, 2008**

**From:**

**Dr Ira Tager, Md., Epidemiologist, Professor, Director, UC Berkeley School of Public Health  
Prevention Research Center**

**“Lung sacs develop fully in the first 20 weeks of life.”**

**“Lung function is a better indicator of mortality—better than blood pressure.”**

**“The Southern California Children's Health Study was conducted for 10+ years, between 1993 and 2001, and followed 5,500 children for chronic exposures to air pollution. Marker pollutants were diesel PM [particulate matter at 10 and 2.5 microns] and NOX<sub>2</sub>. A sub-set of this study, conducted for 8 years involved 1,500 children. The main concern was traffic exposure's affect on lung function and residential distance to freeways. . . For this study, the “zone of influence” that would characterize effects of traffic pollution was 500 meters from a freeway.”**

**“Hazards of traffic pollution include tire and brake fragments, tailpipe toxics (NOX, CO, Hydrocarbons and PM [particulate matter]. Allergins and other biological agents add to cumulative effects of roadway pollution.”**

**About health effects in children and adolescents:**

**“An 89% increase in asthma risk is associated to living close to a freeway.”**

**Facts from the Benicia First Forum**

# **Air Quality & Children's Health**

**Sept. 18, 2008**

**From:**

**Dr. Paul Roberts, Phd., Exec Vice Pres. & Chief Scientific Officer, Sonoma Technologies Inc.**

**Dr. Roberts recently completed the “Mobile Source Air Toxics Study” in Las Vegas, Nevada, which was conducted for one year, monitoring air quality at three schools that are located adjacent to Highway 95. The research was funded by a U.S. 95 Settlement Agreement between the Sierra Club and the Nevada Dept. of Transportation and FHWA [Federal Highway Administration].**

**The required components of the study were:**

- monitoring at the three school sites**
- Filtration added to HVAC systems at schools**
- Bus retrofit program**
- Bus idling education**
- FHWA gradient study (with EPA, ongoing research)**

**“At all three school sites, high black carbon concentrations are seen at low wind speeds regardless of direction.”**

**“Morning concentrations dominate indoor and outdoor exposure (summer); overnight and morning concentrations dominate in winter.”**

**“Low wind speeds often allow high pollutant concentrations on both sides of the roadway (with sound wall).”**

**“Wind conditions and time-of-day have a significant influence on near-roadway exposure.”**

**Facts from the Benicia First Forum**

## **Air Quality & Children's Health**

**Sept. 18, 2008**

**From:**

**Jenny Bard, Director of Regional Air Quality Programs, American Lung Association of California**

**“Lungs have 300 million avoli—[if laid out] enough to fill a tennis court.”**

**“Livermore has the highest ozone level in the Bay Area.”**

**[Benicia also shows high levels of ozone, as monitored at the Tennys Drive monitoring station.]**

**“Ozone is made up of nitrogen oxides + volatile organic compounds (VOC's) especially when temperatures are high. With global warming, we can expect more smog, more days of excedences of federal levels for ozone containment.”**

**“Wood burning is the greatest cause of particulate emissions (PM) in the Bay Area. Diesel emissions, including PM, are the most harmful emissions in the Bay Area.”**

**“Black soot on windowsills is likely diesel soot.” [black carbon].**

**“The smallest particles, PM 2.5 microns, are so tiny they by-pass airway defenses and are absorbed into the bloodstream.”**

**“We need to protect public health with adequate margin of safety.”**

**“The Lung Assoc. in California is supporting AB32, for getting greenhouse gas reductions associated to traffic. The secondary benefit to reducing traffic is the reduction of health risks posed by traffic emissions.”**

MARILYN BARDET  
333 East K St. Benicia, CA 94510  
(707) 745-9094 mjbardet@sbcglobal.net

November 17, 2008

Mayor Elizabeth Patterson,  
Vice Mayor Tom Campbell  
Councilmembers Mark Hughes, Alan Schwartzman and Mike Ioakimedes

**Subject: Comments on the “Health Risk Assessment for Semple School” (“HRA”) produced by LSA, Fresno, Nov. 2008**

Dear Mayor Patterson and Councilmembers,

In the interests of the public record and for the public’s right to know, I will list below my “MAIN MESSAGES” about why the public and Council should NOT accept the “Health Risk Assessment for Semple School” recently produced and dated November 2008, by LSA Fresno. The assessment’s limited investigative scope, its basic assumptions, the methodology employed, the focus on assessing cancer risk, and too easy and rather glib conclusion are cause for its outright rejection as any supplement to the Addendum or for any other public review purposes.

**I conclude that, based on the HRA’s development — its omissions, limitations and flaws — it cannot support any conclusions pertinent to evaluating health risks posed to children at Semple School or surrounding neighborhoods, from estimates of air quality impacts presented in the Draft EIR, Addendum or HRA owing to the Benicia Business Park’s Revised Project. A Supplemental EIR MUST be required, since new and additional information is obviously called for that is unavailable in this HRA, which conclusion I am certain would be verified by professional peer review of the HRA as presented.** I incorporate here by reference, a letter to be sent by Don Gamiles, of Argos Scientific, who has specialized knowledge of air-monitoring procedures, costs and time required to produce reliable data. I have known and worked with Don since 2003, when he was involved in reviewing the Valero VIP EIR and Title V permit for the Good Neighbor Steering Committee. He is currently working with Valero and the Valero CAP on the prospect of establishing a permanent community air monitoring program. He generously offered to read the HRA, which I’d sent to him by pdf, and he promised to return a letter to the City as soon as possible before tomorrow’s council meeting. In case you do not receive his letter on time, he has told me that he recommends that the City hire Sonoma Technologies to peer review the HRA to better ascertain what would be required to get accurate data for the Semple School site.

I will further submit a page by page commentary by bullet points, to highlight the HRA’s myriad problems and omissions, for tomorrow’s Council meeting (Nov. 18). I will further comment, *if* the public hearing is to be continued, and/or, the HRA is to be presented at a “facilitated public workshop” sometime in the future. Considering the latter possibility, I can see no plausible way that the outstanding issues posed by the

Addendum, the Supplemental Transportation Assessment and the “Health Risk Assessment for Semple School” can be resolved. To think otherwise is beyond reasoning and beyond any informed and committed respect for what constitutes rigorous scientific evaluation that would intend to protect public health and safety.

## ■ MAIN MESSAGES:

■ 1 It appears from the Staff Report for Nov. 18th, that the “HRA for Semple School”, was requested of LSA by Staff to address “outstanding issues” surrounding the Revised Project’s traffic and air quality impacts along the East 2nd St corridor, with regard for serious and persistent public concern, including the School District’s, for the health and safety of Semple School children. I learned that the cost of the HRA was \$6,000. This amount could in no way pay for the kind of accurate, site specific monitoring and analysis required to make any accurate health risk assessment of current or future levels of cumulative air pollution owing to traffic and other local sources for Semple School children and surrounding neighborhoods;

■ 2 Obviously, through this long, highly irregular process, the public has not had “timely access” to any official assessment(s) of potential health risks associated to increased traffic owing to the Project until now — far beyond the review of the Draft EIR in 2007, and beyond review of the Revised Project’s EIR Addendum in 2008, and its Supplemental Transportation Assessment;

■ 3 Neither the Draft EIR, the Addendum, nor the Supplemental Transportation Assessment identify potential human health effects owing to the Revised Project’s contribution to traffic and roadway emissions as they would contribute to cumulative local air quality impacts;

■ 4 Significant increases in traffic would add to cumulative exposures to local air pollution, and thus, would add to risks posed to an already “pollution-burdened” community surrounding East 2nd Street, including neighborhoods of Robert Semple School near the Valero refinery, asphalt plant, gas station and City Corporation Yard, all of which are sources of local air toxics. **Benicia First has consistently stated concern for public health and safety in regard not only to Semple School children, BUT ALSO, to residents in surrounding neighborhoods along the East 2nd corridor + I-780, including children and sensitive populations. This is a CEQA issue of economic and environmental justice.**

■ 5 State legislation passed in 2003 “prohibits school districts from building campuses within 500 feet of a freeway, *unless the district can mitigate the pollution or or determines that space limitations are so severe that there ar no other options.*” [my italics; from L.A. Times article, “Despite hazards, schools keep rising near freeways”, by Evelyn Larrubia, September 24, 2007]. **All means have not been exhausted to reduce commute traffic by RE-DESIGN of the Benicia Business Park Revised Project to protect Robert Semple and surrounding neighborhoods;**

■ 6 Our concern for Air Quality reflects a serious public concern reflected in general city-wide public surveys and in specific public comment on the Seeno project.

■ 7 Benicia First is concerned about vehicle emissions, with respect to AB32, California's "Global Warming Solutions Act", because they contribute to adverse buildup of greenhouse gases that affect global climate; AND because tailpipe carbon emissions (soot), especially particulates smaller than 10 microns are dangerous to public health generally, since they can penetrate lung tissue and enter the bloodstream, carrying other toxic contaminants with them, such as "volatile organic compounds" (toxic gases);

■ 8 Benicia First has demonstrated specific concern for children's pulmonary development, lung function and diseases, such as asthma, wheezing, chronic bronchitis, which are particularly susceptible to aggravation from acute and chronic exposures to increases in air pollution;

■ 9 There are economic and social costs associated to increased traffic and public health risks from air pollution: absences from school cost our School District; increased uses of emergency medical services for respiratory distress increase medical costs for families, businesses and the state;

■ 10 At this time, data from less than a year's worth of ambient air quality monitoring is yet to be compiled and made publicly available - data which has accumulated from the air monitoring experiment conducted at a station set up by the Air District on a hill near the top of Tennys Drive, in cooperation with the City and Valero, as per the Good Neighbor Agreement of 2003. This data is slated to be presented to the public by the District and Valero, at a public Valero CAP workshop to be held sometime in early December. "The Hound", a community-owned UV "real time" air-monitor that is set to screen for refinery associated gases is located at the Tennys Drive site station. **However, the data from the Tennys Drive air-monitoring station was not intended to be used for discreet, conclusive reporting about health risks generally, or for risks to Semple School children in particular. Neither the Tennys Drive station nor the locations of other stations from which data was compiled are mentioned in the HRA.**

■ 11 From several previous conversations with Dr. Paul Roberts, Chief Scientific Officer of Sonoma Technologies Inc., who is a top specialist in air quality monitoring and who presented at the Benicia First Forum, "Air Quality and Children's Health", (held September 18, 2008), it's my understanding that for a health risk assessment to approach a level of accuracy, data would have to be collected "on site", with evaluation of the site's particular geographic characteristics, a seasonally tracked account of meteorological data from a "met tower" located on site to support interpretation of air monitoring data collected, with accounts of daily fluctuations of temperature, wind speed and direction, etc; ANDTHEN, such data would have to be reviewed and interpreted by an independent toxicologist and public health risk assessor particularly knowledgeable about air pollution's effects on respiratory systems and life-long

consequences of lung dysfunction stemming from childhood exposures, etc. In fact, then, site-specific monitoring would be required, *even to determine current baseline ambient air quality for the Semples campus and for nearby neighborhoods*, not only for determining “background” figures, but for assessing future potential additional risks *above* current levels of toxic air pollution that would presumably rise from additional vehicle and roadway emissions projected from cumulative increases in traffic along our central arteries.

■ **12** Dr. Ira Tager, (epidemiologist and specialist in childhood pulmonary disease and Director of UC Berkeley’s School of Public Health Prevention Research Center), emphatically stated at the Benicia First Forum on Sept 18th 2008: **“Lung function is a better indicator of mortality - better than blood pressure”**.

■ **13** **CEQA General Guidelines state**, under Section 15003. Policies (b): **“The EIR serves not only to protect the environment, but also to demonstrate to the public that it is being protected.”** (*County of Inyo v. Yorty*, 32 Cal. App 3d 795). In section (d): **“The EIR is to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.”**(*People ex rel. Dept. of Public Works v. Bosio*, 47 Cal. App 3d 495.) **Given my understanding and local experience of air quality monitoring and the purposes and limitations of health risk assessments done for investigations required for development projects I’ve reviewed in Benicia (Braito Landfill; Tourtelot; Arsenal), I believe that a Supplemental EIR is required, at least for the following reasons, but certainly not limited to these:**

(a) **The Draft EIR did not evaluate local, cumulative air quality impacts from all sources and did not consider human health risks associated to chronic and acute exposures to cumulative air quality impacts**, which include increases in traffic on East 2nd and I-780 owing in part to traffic commuting to and from the proposed Project, even as revised; ALSO, the EIR Addendum, which assumed overall reductions in impacts, did not consider potential health impacts from *cumulative, local and regional* air quality impacts contributed to by the Revised Project;

(b) **The HRA was submitted to Council via Staff Report posted on Nov. 12th on the City’s website (pages 85 -94), without any prior notice to the public**, even when Staff knew that such a request to LSA and a compilation of data was in the works. (From conversations with Staff, and Councilmember Mike Ioakimedes), when in fact, the limited public hearing on “traffic impacts” had been finally deemed “closed” on Oct. 21st ;

(c) **On Oct. 21st, at the Council’s continued CEQA hearing on traffic impacts related to the Supplemental Transportation Assessment, public comment**

**related to health effects from tailpipe emissions were not allowed by the City Attorney's interpretation of what was permissible for that hearing;**

**(d) The HRA contains heretofore unavailable data on projected increases in traffic along I-780 by 2030,** (with and without the Project) thus countering incorrect projection for I-780 given in the Draft EIR and Addendum, an error identified in numerous public comments, to no avail; now, the HRA bases its assumptions on 127,889 vehicle trips, e.g., the cumulative number of vehicle trips for 2030, the sum of estimated figures for vehicle trips projected on East 2nd and I-780; but those figures are said to be off-set or likely reduced, according to the HRA's assumption that regulatory agency requirements in the future will become more stringent, and therefore reduce not only tailpipe emissions but also "vehicle miles traveled", *THUS, it would seem, the HRA's conclusion of "no significant impacts" to public health at Semple School, would suggest further erroneous "conclusions" that the Revised Project would itself not have to be redesigned to address what the HRA projects will be further restrictive state regulations that would call for greater reductions in VMT at a later date;*

**(e) the HRA appeals to standards for risk health assessments that do not distinguish between levels of "noncancer risk" posed to adults and those posed to children:** *"The current science of health risk assessments does not distinguish between children and adult acute and chronic noncancer risks, and the risk levels reported are protective of both children and adults."* [page IX-B-91]; **criteria for development of an HRA should follow the intent of SB25, the "Children's Environmental Health Protection Act"**, which sets policy for public agencies to determine ways to protect children from air pollution;

**(f) Summary evaluations and conclusions in the HRA for Semple School are pertinent to questions regarding the sufficiency and adequacy of the EIR Addendum, for which Council approval was rejected by a majority vote on Oct. 7th, 2008;** there was no direct, specific public request made by Council for a health study, with criteria stated either by the School District or the Council, or with provisions for peer review;

**(g) The HRA raises more questions than it answers** and implicit in its significant omissions is the fact that there would be new information likely available from latest research, some of which has been submitted into the public record by Benicia First, including but not limited to research presented at the Benicia First forum held Sept 18, 2008, "Air Quality & Children's Health"; **in fact, the HRA makes no reference to any documents or comments on the subject that were submitted into the**

**record by Benicia First members;**

**(h) The highly limited scope of the HRA's analysis does not fairly or adequately address the full object of public concern** with regard to protecting public health, for Semple School children AND residents of surrounding neighborhoods; nor does the analysis provided qualify as adequate or determinant, from a scientific prospective, considering especially the vague references to data collection methods, and, for example, obvious lack of "on site" air monitoring, use of averaged data, apparent limited time-frame of study, and focus on cancer risk; AND especially **lack of peer review by experts in the field of air quality monitoring and also public health with expertise in pulmonary diseases, with risk assessed for increased exposure over time**, as related to existing respiratory disease and pulmonary function in children and other sensitive populations within the area of concern;

**(i) Benicia First has pointed out, from a public health and safety perspective, that it's essential to address all foreseeable projected traffic congestion impacts AND future cumulative local air quality impacts - e.g. the public needs to know the potential *added burden of risk* to local residents of increased traffic congestion and its attendant emissions ABOVE the current baseline, yet to be determined by site-specific air monitoring;** thus, EXISTING air quality impacts from East 2nd St. I-780, the Valero refinery and asphalt plant, the Valero gas station and city corporation yard must be factored into a cumulative analysis of potential future local air quality impacts, to try to estimate the CUMULATIVE BURDEN OF RISK posed to Semple children and nearby residents by the Revised Project's contribution to air pollution in the future;

**(j) Benicia First has repeatedly asked that future impacts from development in the lower Arsenal be reckoned with data compiled for the Benicia Business Park Draft EIR and Addendum, as well as the Supplemental Transportation Assessment;** LSA has produced two Draft EIRS that do not analyze or cross-reference the two projects' contributions to cumulative local air quality impacts. **We must add to this that there has been no CEQA review to date of the plans for a "community center" at Mills Elementary campus**, for which two parking lots have been proposed, supporting 60+ cars. Since the community center plan has been brought to the Parks and Rec Commission for review, it would seem that evaluation is called for, to account for potential increased congestion at the intersection of East Military and East 2nd and nearby feeder streets from additional vehicle trips posed by the community center, as part of the Benicia Business Park CEQA review.

**(k) Any suggestion by Discovery Builders or the City, that the Revised Project's "outstanding air quality impacts" could be resolved by re-opening Mills Elementary and closing Robert Semple must be seriously questioned, since surrounding East 2nd Street neighborhoods are no less potentially impacted by increased air pollution owing to doubling of vehicle trips on East 2nd, when considered together with cumulative air emissions from all other nearby sources, including Valero refinery and I-780.**

**(l) Cumulative traffic impacts from roadway congestion along East 2nd and into the Downtown, are said in the Supplemental Traffic Assessment to be "severe" and will affect the network of street operations from Tennys Drive to Downtown, yet concerns for public health effects on lung development and lung disease from such "severe" potential congestion are not answered by the HRA as it currently concludes.**

**(m) The public has raised serious concern for children, with respect to potential risks to lung development and potential for aggravating existing respiratory symptoms in children *already* living with asthma or chronic respiratory problems and who now attend Robert Semple Elementary, AND who may also live in the nearby neighborhoods bordering or near East 2nd and the I-680 freeway.**

Thank you for your last minute consideration of my comments made on behalf of the community. I will try to forward a short, specific page-by-page comments on the HRA to highlight its problems, before tomorrow's council meeting.

Respectfully,

Marilyn Bardet

**From:** Anne Cardwell  
**To:** Jayne York  
**Date:** 11/18/2008 12:28 PM  
**Subject:** Fwd: Fw: A good word from afar on the Seeno process  
**CC:** D Simpkins

>>> <rogrmail@gmail.com> 11/18/2008 10:55 AM >>>

Hi Anne - I forgot to copy you on this. I would like it included for the record in public comments for tonight's Council meeting. Thank you. - Roger Straw

----- Original Message -----

**From:** [rogrmail@gmail.com](mailto:rogrmail@gmail.com)

**To:** [Jim Erickson](#) ; [Charlie Knox](#) ; [Heather McLaughlin](#) ; [Tom Campbell](#) ; [Mayor Elizabeth Patterson](#) ; [Mark Hughes](#) ; [Mike Ioakimedes](#) ; [Alan Schwartzman](#)

**Cc:** [Jessica York](#) ; [Yevgeniy Sverdlik](#) ; [beniciafirst@googlegroups.com](mailto:beniciafirst@googlegroups.com) ; [greengateway@googlegroups.com](mailto:greengateway@googlegroups.com)

**Sent:** Tuesday, November 18, 2008 10:48 AM

**Subject:** A good word from afar on the Seeno process

Dear Mayor, Councilmembers and City Staff -

I am lolling about on the Garden Isle of Kauai, enjoying a 60th birthday vacation, so I will not be at Council meeting tonight to speak for Green Gateway Group. But I will take a few moments here by the beach to let you know that I have been keeping an eye on developments via wireless email.

My input will be less of a technical nature today, and more of an overview on process and tonight's decision.

I was one of the first to reach out to Mr. Evola and the Seenos following the October 7 vote to "not approve" the CEQA documentation. At that time, I thought it best to begin informal talks immediately, to keep the door open for a quick re-start after denying the project. I never received a response from them, but that didn't surprise me, given the difficult moment they had just endured with the no vote.

When staff suggested "facilitated conversations" in the context of a yet-to-be-denied project, it put me in a very conflicted position. Yes, talks should continue, and I have been a professionally trained group facilitator myself, and would normally applaud such a move. But to undertake these kinds of talks with the intention of arriving at a last-minute fix in a carefully orchestrated 2 to 3 hour workshop (led by facilitators chosen, if I understand correctly, without consultation), is, I believe, unworkable considering the divergence of opinion, existing animosity, and the serious flaws in the lengthy Seeno application process.

Sadly, it is my opinion that facilitated conversations can only succeed if the City first denies the CEQA documentation and the project. A fresh start is needed here, and a quick start, using many of the broken pieces of the revised project. Sometimes a firm no is the best way to yes.

Aloha,  
Roger Straw  
cell: 707 373-6826

Heather ✓

**LAW OFFICE OF AMBER VIERLING**

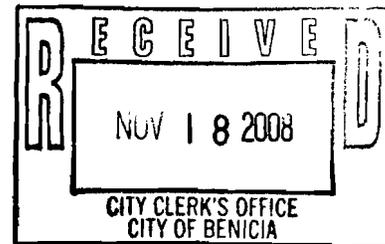
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**ATTORNEYS AT LAW**

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November 18, 2008

Benicia City Council  
City of Benicia  
250 East L Street  
Benicia, California 94510

*RE: Benicia Business Park rezoning, master plan overlay, vesting tentative map and addendum Agenda Item on November 18, 2008*

Dear Council Members:

This firm has undertaken representation of Citizens Considering the Consequences ("CCC"), an unincorporated association that has previously been represented by the Law Offices of Dana Dean. CCC continues to oppose the Benicia Business Park ("Project") proposal due to major substantive and procedural defects, which persist and have recently worsened. As a result, the City Council should vote to remove the item from the November 18, 2008 Agenda because the Council had made a previous final decision on October 7, 2008 by rejecting the Environmental Impact Report ("EIR") Addendum and Statement of Overriding Considerations for the Project at approximately 1:30 a.m.

Though the City Council had clearly made a final decision with respect to the Project and its EIR Addendum, two weeks later, at its October 21, 2008 meeting the City Council voted to re-consider the Benicia Business Park Project and associated environmental review by continuing its agenda item to its meeting on November 18, 2008.

Since then, the Community Development staff, notably not the City Council, hired "LSA Associates" to draft a six (6) page Health Risk Assessment ("Report"), which is dated November 2008 and is attached to the related staff report. This Report concludes that "it is highly unlikely that present or future students and teachers at the school site would be exposed to any health risks above that of the average California or Bay area resident." The Report is substantively and procedurally flawed.

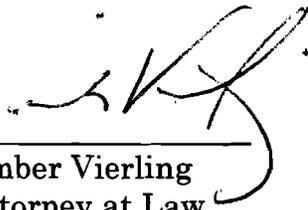
Procedurally, the public has not had sufficient notice or circulation of the Report. Moreover, the public has considered that the City Council rejected the Project as of

October 7, 2008. Additionally, the Report does not pertain to an issue which is properly before the City Council.

Substantively, the Report's conclusion is preposterous in that it controverts previous evidence in regards to the impact of air and traffic pollution. The Report is flawed because it fails to account "...for other emission sources (e.g., construction, factory emissions) around Robert Semple School..." (See Report page 1, November 2008). Moreover, the Project must discuss and include mitigations for air quality and traffic impacts, *inter alia*. Such mitigations must go through adequate CEQA process including but not limited to recirculation, public comments and City responses.

The course of action recommended by City staff to Council is to continue this agenda item until after a "facilitated workshop" addresses air quality and traffic impacts. The workshop is to include the applicant, the City and the public. The workshop should not take place because the Council has previously made a final decision to reject the Project. If the applicant wishes to have the City Council reconsider the Project, it must go through the proper procedure to do so.

Regards,



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Amber Vierling  
Attorney at Law

**From:** Anne Cardwell  
**To:** Council  
**Date:** 11/18/2008 2:04 PM  
**Subject:** Fwd: Evaluation of Semple School Health Risk Assessment  
**CC:** Charlie Knox; D Simpkins; Heather McLaughlin

>>> dsgamiles.argos@gmail.com 11/18/2008 10:40 AM >>>

Dear Ms Cardwell and Mr. Knox,

I was asked by Ms Marilyn Bardet to review the document entitled "Health Risk Assessment for Semple School" and provide feedback as to whether or not it presents an accurate summary of health risk as it relates to the children who attend Semple School. I have include a summary of my observations in the attached document.

If you have any questions, please feel free to contact me at (404) 403 4709.

Best Regards,

Don Gamiles

--

Donald S. Gamiles, PhD  
Argos Scientific, Inc.  
Phone 404 403-4709  
Fax 815 572-0443  
[www.argos-sci.com](http://www.argos-sci.com)



Argos Scientific  
416 NE 153<sup>rd</sup> Ave  
Vancouver, WA 98684  
Phone: 404 403-4709  
Fax: 815 572-0443

November 17, 2008

To: Mr. Charlie Knox and Ms Anne Cardwell

**Subject: Review of High Risk Assessment for Semple School**

Dear Mr. Knox and Ms Cardwell:

At the request of Ms. Marylin Bardet, I have reviewed the document entitled "Health Risk Assessment for Semple School" and am concerned that the study's conclusions do not adequately assess the true impact of the health of the children attending the school. A few of my concerns include:

- The study identifies the fact that vehicle emissions include "probable carcinogens that can cause adverse health impacts" (pp3), and then states that the impact of these air toxics will be minimized as EPA regulations and fleet turnover will minimize these impacts. Even if this is the case, the decrease in emissions due to regulations and fleet turnover are long-term phenomena whereas the building of the office park and subsequent increase in traffic flows are relatively short-term phenomena. Thus using assumptions that EPA regulations and fleet turnover will minimize the impact of increase traffic flows should be discounted to reflect the actual time it takes to implement these changes.
- The study correctly identifies that fact that inhalation of particulate matter smaller than 10 microns can have "serious health effects such as increase respiratory disease, lung damage, and premature death" (pp3), yet nowhere in health assessment is there any reference to particulate matter under 10 microns being measured.
- The study uses PM10 data taken from a monitoring station located on East 2<sup>nd</sup> Street to evaluate the potential health impact of the traffic located near Semple School. To be quite frank, any attempt to use data taken from the PM10 monitor that is located in a remote field that is nowhere near Semple School is irrelevant and silly.
- The document states the health risk assessment included the impacts from gasoline exhaust including 1-3 butadiene, benzene, ethylbenzene, naphthalene etc. (pp4), yet in no place is it mentioned if these gases were measured.

I could go on and on mentioning very troubling aspects of this health risk assessment but I think it would be more prudent to provide information on how to perform this task in a more meaningful and scientific manner. Thus if I were asked to provide guidance on the best approach assessing the health risks associated with increased traffic flow near Semple Schools, I would recommend the following:

- Contact Dr. Paul Roberts at Sonoma Technologies, Inc. and have his company be a lead consultant on any type of work associated with health risk assessments. As you are aware, Sonoma Technology is the primary contractor on a study to assess the health impact of near roadway vehicle emissions on children in a number of schools in Las Vegas, Nevada. Simply put, there no company with more expertise in this area than Sonoma Technologies.
- Any future work in this area should be based on work associated with the Children's Environmental Health Protection Act (Senate Bill 25 – SB25), which can be found at the following internet link - <http://www.arb.ca.gov/research/cehpa/cehpa.htm>. Available on City Attorney, Seeno Comments page.  
The studies associated with SB25 are considered to be the seminal work in this field and future health risk assessments that follow SB25 protocols would be considered to be of highest quality.

In summary it greatly concerns me that a study that presents conclusions based on very little supporting data would be used to make policy decisions related to children's health. The body of peer reviewed research overwhelmingly supports the idea that children's exposure to vehicle emissions can greatly impact their health. If you are truly concerned about the potential impact of the business park expansion on children's health, you owe it to this at-risk group to provide a comprehensive health risk assessment that employs the best available science.

Best Regards,

Don Gamiles, PhD  
President - Argos Scientific, Inc.

MARILYN BARDET  
333 East K St. Benicia, CA 94510  
(707) 745-9094 mjbardet@sbcglobal.net

November 18, 2008

Mayor Elizabeth Patterson,  
Vice Mayor Tom Campbell  
Councilmembers Mark Hughs, Alan Schwartzman and Mike Ioakimedes

**BASIC REASONS FOR INVALIDITY of THE “HEALTH RISK ASSESSMENT FOR ROBERT SEMPLE  
ELEMENTARY SCHOOL” (“HRA”) produced by LSA, Fresno, Nov. 2008**

Respecting the community’s “right to know”, I carefully study documents on serious development matters of public concern under CEQA and usually do a close-order commentary as my contribution to the Council and the public’s discussion. However, the flaws and failures of this flimsy HRA are so fundamental and pathetic, it’s not worth my effort to do a page-by-page critique. Instead, I will bullet basic reasons for the HRA’s failure as a scientific tool intended to be useful for decisionmakers, citing some of its most egregious flaws that are primary causes for its invalidity.

From its first sentence to its last, the HRA appears to have been designed to meet a politically desired, pre-determined conclusion: *“Therefore, it is unlikely that present or future students and teachers at the school site would be exposed to any health risks above that of the average California or Bay Area resident.”* (page 7, IX-B-93).

LSA is not an unbiased agent in producing a health risk assessment for Robert Semple School: LSA has argued against the need for a Supplemental EIR, having concluded that an Addendum was a satisfactory level of public review of the Revised Project. LSA has not sought to identify, either in the Draft EIR or EIR Addendum, local health effects stemming from the Project’s projected traffic increases as they add to local and cumulative air quality impacts.

Further, criteria for the HRA’s development were not established beforehand with collaboration of the community stakeholders: neither consultation of the School District or concerned citizens and local experts.

- There is no mention of AB25, the Environmental Health Protection Act, passed in October, 1999, to protect children from air pollution. There is no review of the literature on effects of air pollution on children, especially on lung development, pulmonary function and respiratory diseases, such as asthma, wheezing, acute and chronic bronchitis. There is no reference to the ream of materials on air-monitoring and health risk studies involving children and air pollution submitted into the public record by Benicia First.
- There is no referent baseline study of the history and current incidences of respiratory illness among Semple children.
- The primary focus of the assessment and its conclusion is “cancer-risk”, when the expressed concern of the public was to ascertain risks to children’s lungs, and the downstream consequences of lung dysfunction. As Dr. Ira Tager of UC Berkeley’s School of Public Health said at the Benicia First Forum, **“Air Quality and Children’s Health”: Lung function is a better indicator of mortality - better than blood pressure.**” (see further comments on HRA, submitted previously by me, Nov. 17, 2008)

- Data is unreliable: The HRA does not make available the air-monitoring data on which its “summary” conclusions are based. The HRA in its first sentence claims to be a *summary* of health risks, but it doesn’t come close to achieving this, since the focus of the data assessment is mainly on life-long cancer risk. There’s no account of the location of existing monitors or meteorological towers, nor monitoring methodology, length and times of data collection, etc.
- The purpose of existing monitors located in Benicia was not to determine the specific air quality conditions at Semple School. Apparently, there were no air-monitoring studies conducted at the Semple campus, inside classrooms, on the playground and playing field. There are references to “black carbon” particulate at 10 microns and smaller, but no explanation of where the data came from that assessed the presence of particulate smaller than 10 microns. PM 2.5 and PM 1.0 are now being discussed by EPA as most dangerous, since such small particles can penetrate lung tissue and enter the bloodstream, carrying other airborne toxics with them. There is no PM monitor at Semple School. Children’s lung development is affected by chronic exposures to particulate emissions. The HRA limits discussion of effects of diesel particulate to the cancer risk posed.
- The sunny conclusion of the HRA is dependent on assumptions that state regulators will implement policy goals for reduction in “vehicle miles traveled” by 2030 and that those reductions will have been achieved. (see page 2, paragraph 3). This assumption cannot be relied on in a scientific study that purports to determine cumulative potential health risks owing to increased commute traffic and its contribution to cumulative potential local air quality impacts. Such assumptions were not used in the Supplemental Transportation Assessment or Addendum.
- Most important: there has been no peer review of the HRA produced by LSA. Expert, professional peer review is the *sin quo non* of respected scientific method. State toxicologists and air-monitoring specialists should be contacted to provide the City with independent, objective review of the data, methodology and risk analyses.

Respectfully,

Marilyn Bardet  
for Benicia First

to post... not sure if this one got to you?

>>> John Cosmides <john@barustors.com> 11/18/2008 4:05 PM >>>  
Mayor Patterson & City Council,

I will be unable to attend tonight's City Council meeting, so my comments for the record are coming in this email. My comments only address that portion of the Housing Element report that deals with low- and very-low income housing.

### **An Unreliable Report**

This report does not reflect the feedback of the stakeholders, and is therefore inappropriate for use by the Council. The Housing Element workshop revealed that at least ten properties in Benicia are being targeted as potential sites for low-income housing, yet, few, if any residents near those sites were in attendance at the workshop. Rather, most of the people I saw there were either City officials or the same low-income housing lobbyists who, for the past decade have been trying to bring more low-income housing projects to Benicia. It is the feedback of these lobbyists that is represented in the first bullet under the "Expo Outcomes" heading on page IX-A-3 of the report which misleadingly states that "Affordable housing is important to the community".

As this Council knows, the residents of Benicia strongly oppose the construction of low-income housing in their neighborhoods. In the 1990s the residents of this community packed the Council chambers, the Veterans Hall, the Camel Barn, and the library's Dona Benicia Room on several occasions over the course of many months to protest our town's commitment to accommodate 229 units of low-income housing. So heated and unrelenting was the community's opposition to low-income housing projects that the Council was forced to spend a reported \$1M on a failed, multi-year effort to extricate our town from the reckless legal commitment they had made to accommodate this housing. Never once, in all those encounters, did a single neighborhood of stakeholders stand up to say that they would welcome high density, low-income housing projects in their neighborhoods. Now, our Council is planning for even more low-income housing - 246 units - on less land than we had back then.

To say that low-income housing is important to Benicians when so much empirical evidence exists to the contrary, destroys the credibility of this report from the outset. Moreover, that this report is based on the feedback of a mere "about 50 people" renders it statistically invalid, as well.

The reason why so few Benicians showed up to the October workshop is because they didn't realize that high density, low-income housing projects may be coming to their neighborhoods. And the reason they don't know this is because the promotional campaign said **nothing about this fact**. Instead, it invited residents to a "Housing Element workshop". Most Benicians have no idea what a housing element is, let alone why they should attend a workshop on the subject. Had the stakeholders been told,

**"Benicia is planning for up to 246 units of low-income housing. Some of this housing may come to your neighborhood. To learn more, come to a workshop on..."**

this Council would tonight be receiving a very different report. That report would reflect a true picture of this community's sentiment, and that sentiment would overwhelmingly contradict the thesis that low-income housing is important to Benicians.

I am the marketing director of a legal media company, and the founder of the grassroots organization that represented our community in the low-income housing conflicts of the 1990s. In my professional capacity I specialize in

attracting stakeholders to events. As a community organizer, I developed considerable expertise on the issues surrounding Housing Elements and the process of planning for low-income housing. After the October workshop, I created and donated a complete promotional kit to the city which would have, with very little effort or expense on the city's part, thoroughly informed the stakeholders that low-income housing may be coming to their neighborhoods. It would have produced a large body of community feedback which the city could have used to plan appropriately.

Instead, you are tonight hearing a report based on the feedback of "about 50 people" that does not reflect the sentiments of our community and especially not the stakeholders. Is the feedback of "about 50 people" in a town of 28,000 sufficient to base decisions upon, when you know, as a matter of fact, that this town's attitude toward low-income housing has been overwhelmingly contrary to the findings of this report? Should the Council even be taking the time to hear such findings?

Please, postpone further work on the low-income housing portion of the Housing Element, schedule a second Housing Element workshop, and use the donated promotional materials and their accompanying promotional schedule to attract the stakeholders to that workshop. It's your duty to the people who elected you and to this town.

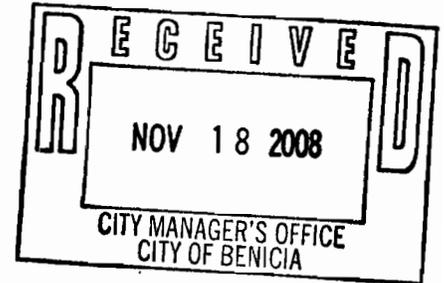
Respectfully submitted,

John Cosmides  
707-319-3937



BENICIA CHAMBER OF COMMERCE & VISITORS CENTER  
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November 17, 2008



Mayor Elizabeth Patterson and City Council Members  
City of Benicia  
250 East L Street  
Benicia, California 94510

**Re: Proposed Benicia Business Park**

Dear Mayor Patterson and Council Members Campbell, Schwartzman, Hughes,  
and Ioakimedes:

The Benicia Chamber of Commerce is encouraged by City staff's recommendation and Discovery Builders willingness to continue this item to allow for a facilitated workshop regarding this proposed Industrial Park project. As you are aware, the plan submitted by Discovery Builders has been substantially altered from its original conception. Great strides have been taken to move the project forward by addressing numerous requests for "greener" planning, and a land use ratio that provides sixty percent open space accommodation. Additionally, another two hundred issues have been mitigated and with that, staff has recommended project approval.

Benicia will benefit from significant tax revenues and careers for thousands of new employees. This will enhance the vibrancy of Benicia's business community and our greater city as well. We look forward to your favorable vote to continue discussions to move forward the progress of this important development.

Sincerely,

A handwritten signature in cursive script that reads "Martha Christopher".

Martha Christopher  
Chair of the Board

cc Jim Erickson, City Manager  
Charlie Knox, Community Development Director