

## **D. PLANNING COMMISSION HEARING**



**BENICIA PLANNING COMMISSION  
CITY COUNCIL CHAMBERS**

**REGULAR MEETING MINUTES**

**August 9, 2007  
7:00 P.M.**

**I. OPENING OF MEETING**

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

**Present:** Chair Fred Railsback, Commissioners Richard Bortolazzo, Kyle Daley, Dan Healy, Mike Ioakimedes

**Absent:** Commissioners Bonnie Silveria and Scott Strawbridge (both excused)

**Staff Present:** Community Development Director Charlie Knox  
Senior Planner Damon Golubics  
Associate Planner Xzandrea Fowler  
City Attorney Heather McLaughlin  
Contract Attorney Kat Wellman  
Administrative Secretary Gina Eleccion

- 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**

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None.

IV. **CONSENT CALENDAR**

On motion of Commissioner Daley, seconded by Commissioner Bortolazzo, the Consent Calendar was approved by the following vote:

Ayes: Commissioners Bortolazzo, Daley, Healy, Ioakimedes and Chair Railsback  
Nocs: None  
Absent: Commissioners Silveria and Strawbridge  
Abstain: None

- A. **Approval of Agenda**
- B. **Planning Commission Minutes of July 12, 2007**

V. **REGULAR AGENDA ITEMS**

- A. **134 WEST D STREET**  
06PLN-46 Use Permit/Mitigated Negative Declaration  
134 West D Street, APN: 89-243-050

**PROPOSAL:**

The applicant is proposing to relocate a three story, 112-year old house (known as the Thompson House) and its water tower from Napa County to the Benicia shore at the end of West D Street to create a Bed and Breakfast Inn. The project site is 18,750 square feet. The relocated house will undergo extensive restoration and rehabilitation. The Inn will have a total of 6 guest rooms and a caretaker's suite. In conjunction with design review approval granted on July 26, 2007, the applicant is requesting a Use Permit for off-site parking.

**Recommendation: Approve a Use Permit for off-site parking for a proposed bed and breakfast at 134 West D Street, and adopt the associated Initial Study/Mitigation Negative Declaration, based on the findings and conditions in the proposed resolution.**

Commissioners Bortolazzo and Ioakimedes stated a conflict of interest on this item. After playing cards were cut, Commissioner Bortolazzo was elected to participate in this item.

Xzandrea Fowler, Associate Planner, gave a brief overview of the project. A video presentation was given by the applicant.

The public hearing was opened.

Elliot Rapp, 560 Anderson Lane – He objected that he believes the applicant is not going about this project the correct way. He would like the property cleaned up.

Tom Adams, 223 East J Street – He supports the project and appreciates the efforts the applicants have made to clean up the property.

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Gary Wheeler, 580 Anderson Lane – He thanked Xzandrea Fowler for clarifying some issues on the project. He believes the City has the opportunity to clean up this property. He would like a condition of approval added to this effect.

Marilyn Bardet, 333 East K Street – She stated her support of the project.

Leann Taagepera, 270 West H Street – She stated her support of the project. BCDC is already requiring a lot of cleanup of the property.

Jerry Hayes, 150 West G Street – He stated his support of the project. He noted that there are many structures that have been moved to Benicia.

Manuel Lopes, 230 East 2<sup>nd</sup> Street – He stated his support of the project. The boatyard is a working boatyard.

Larry Leach, 300 East H Street – He commented that he's seen a lot of changes on First Street. He supports the project.

Jane Mallone, 566 Anderson Lane – She appreciates the Joy's efforts to build this project, but would like to see the boatyard cleaned up.

The public hearing was closed.

Commissioners discussed the project.

Charlie Knox noted that there are privately owned parcels in the water. The cleanup is a top priority for the City. BCDC has allocated \$500,000, which the City has asked for, to clean up sites. He noted that BCDC's jurisdiction overlaps with the City's.

**RESOLUTION NO. 07-15 (PC) - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA APPROVING A USE PERMIT FOR OFF-SITE PARKING AND ADOPTION OF AN INITIAL STUDY/ MITIGATED NEGATIVE DECLARATION FOR THE PROPOSED BED AND BREAKFAST INN LOCATED AT 134 WEST D STREET (06PLN-46)**

On motion of Commissioner Healy, seconded by Commissioner Daley, the above Resolution was approved by the following vote:

Ayes: Commissioners Bortolazzo, Daley, Healy and Chair Railsback  
Noes: None  
Absent: Commissioners Silveria and Strawbridge  
Abstain: Commissioner Ioakimedes

- B. **221 FIRST STREET APPEAL – BUILDING PERMIT ISSUANCE** – continued  
from July 12, 2007  
07PLN-43  
221 First Street APN: 89-244-040

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Appeal of the Community Development Director's decision on June 6, 2007, to issue a building permit for the 221 First Street Project.

**PROPOSAL:**

The appeal of the Community Development Director's decision to issue a building permit for the 221 First Street project is based on the following assertions:

1. The City's approval of the project expired; and
2. Issuance of the building permit violated a condition of approval.

**Recommendation: Reopen the July 12, 2007 public hearing, consider the appeal, staff report, and all public testimony and pertinent documents, and deny the appeal of the issuance of a building permit for a mixed-use project located at 221 First Street.**

Due to Commissioners Bortolazzo and Ioakimedes' conflicts, the Commissioners cut playing cards on this item. Commissioner Bortolazzo will be participating in the discussion of this item.

Charlie Knox gave an overview of the appeal. BCDC has issued their permit at an August 2, 2007 hearing, by a unanimous vote. The issue to be addressed by the Commission is the expiration of the approval.

The public hearing was opened.

Jerry Hayes, Appellant – He thanked the Commission for the opportunity to speak. He urged the Commission to address the two issues of the appeal:

1. The project approval expired on May 3, 2007
2. The issuance of the building permit was illegal because a condition of approval had not been met (BCDC approval of the project).

He commented on language in the Resolution that noted an amendment to the project approval. The September 22, 2005 public hearing was not noticed to reopen the project and re-approve the whole project. He stated codes on project approval expiration dates.

Leann Taagepera, Member of "FOOT" – She commented that they are not against development. She believes the approval expired on May 3, 2007. The September 22, 2005 hearing was strictly to amend the prior project approval. The building plans submitted were not what was approved.

Commissioners questioned whether a ruling was made in this case. Heather McLaughlin stated that no final determination has been made.

Commissioner Daley questioned the unanimous decision of the BCDC approval. Charlie Knox noted that BCDC's scope was much more limited than the Commission's. He further noted that the injunction was to halt work until the City made a decision on the appeal. At the moment, the applicant can proceed at their own risk.

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Dana Dean, Attorney for Applicant – She noted that under the appeal ordinance, she has rebuttal rights.

Manuel Lopes, 221 First Street LLC – He stated his embarrassment over the proceedings. He believes this is a good project and his family is planning on living in the units. He invited the Harbor Walk residents to contact him to discuss concerns.

Dana Dean – She provided a transcript of the court proceedings. She believes the conditions of approval were met. Design approvals lapse after 2 years. She referenced a letter dated August 7, 2007 regarding a judge's ruling.

The public hearing was opened.

Tom Adams, 223 East J Street – As a former Design Review and Planning Commissioner, he supports the projects and opposes the appeal. He believes there is a small minority opposing this project. He would like to see this project move forward.

Laurie Parrish, Business Owner – She spoke on behalf of the Harbor Walk Homeowner's association. A letter was submitted by a homeowner that was not sent on behalf of the Homeowner's Association. The Harbor Walk homeowners, as a whole, are not opposed to this project. Personally, she also supports this project.

Larry Fullington, 833 Clifton Court – He is concerned that there is a small segment of citizens derailing projects. He resents comments that City staff is incompetent and believes the lawsuit is frivolous. The judge has not made a determination and has left it up to the City. He urged the Commission to deny the appeal.

Pat Lopes, 230 East 2<sup>nd</sup> Street – She gave background of her family and its history in Benicia.

Kim Evans, Resident – There is a long history of the project applicants and they have contributed a lot to the City. She supports the project.

Larry Leach, 300 East H Street – He would like to see Downtown developed. He would like the Commission to resolve this issue. He would like to see people working together to better this community. Most of the people he talks to believe there is a personal vendetta driving this appeal.

Kerry Carney, 164 East H Street – She reminded the Commission that there are rules and regulations. She urged the Commission to consider only the issues raised.

Marilyn Bardet, 333 East K Street – She commented on procedural issues being raised. She believes that the district should be looked at as a whole. The 221 First Street project is an asset.

Bob Macintosh, 956 West L Street – He supports the project and believes the issue over the dates is trivial. He would like to see the project built.

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A resident on Chelsea Hills Drive commented that there are a lot of people contributing to this town. Everyone has valid concerns, but it seems that this project is a good project. She noted that small developers have a tough time getting projects approved.

Jim Phelan, 870 Channing Circle – He stated his support for the project.

The public hearing was closed.

Jerry Hayes – He commented on the issues raised by the speakers. He read statements from the court transcript regarding the effective date of the approval. He noted that BCDC did not look at any design issues. He believes that Charlie Knox should have stopped the permit and looked at the project. Conditions changed since the 2-year approval was granted. He asked the Commission to do the right thing.

Dana Dean, Attorney – She noted that the transcript had been provided to the Commission. She noted that there have been adjustments to the building plans based on ADA requirements.

Commissioners discussed the appeal.

Commissioner Bortolazzo believes, based on the transcript, that the September 22, 2005 date is valid. Commissioner Daley agreed with Commissioner Bortolazzo's assessment. He does not believe that the rules weren't followed.

Commissioner Healy commented that he is bothered that Jerry Hayes is attacked for asserting his position. He would like to see people respect each other. He noted that he had ex-parte communication with Dana Dean. There is ambiguity in the regulations and it is not unreasonable to defer to the applicants in this case.

Chair Railsback commented that everyone involved in this process has done a lot for this community.

**RESOLUTION NO. 07-16 (PC) - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA DENYING AN APPEAL OF THE ISSUANCE OF A BUILDING PERMIT FOR A MIXED-USE PROJECT LOCATED AT 221 FIRST STREET(07PLN-43)**

On motion of Commissioner Daley, seconded by Commissioner Bortolazzo, the above Resolution was approved by the following vote:

Ayes:	Commissioners Bortolazzo, Daley, Healy and Chair Railsback
Noes:	None
Absent:	Commissioners Silveria and Strawbridge
Abstain:	Commissioner Ioakimedes

A recess was called at 9:00. The meeting was reconvened at 9:10 p.m.

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C. LOWER ARSENAL MIXED USE SPECIFIC PLAN DRAFT ENVIRONMENTAL IMPACT REPORT

Arsenal Historic Overlay District

**PROPOSAL:**

The Lower Arsenal Specific Plan is intended to implement the General Plan Mixed Use designation for that area of the city. The Draft Plan is the result of field studies, community workshops, and public charrettes conducted in Benicia between July and October 2006. A Draft Environmental Impact Report (DEIR) has been prepared to identify potential impacts. The Draft EIR was circulated on July 19, 2007 with the public comment period running through September 6, 2007.

**Recommendation: Receive and forward public comment, including from Planning Commissioners, to the City Council.**

Commissioner Bortolazzo recused himself due to property ownership within the Arsenal.

Charlie Knox gave an overview of the project. A scoping session was held on April 12, 2007. The public comment period ends on September 6, 2007. Charlie Knox noted that there are alternatives proposed which only address the Jefferson Ridge area. Option 2 is "the project" per CEQA. After all comments are received, the City Council will consider the comments, the EIR and the Plan for adoption.

Adam Weinstein, LSA, gave a brief presentation. He reviewed some of the key impacts of the project and gave the project alternatives.

Charlie Knox noted that the description of the 1.5 Alternative should be more like 35-40,000 square feet.

The public hearing was opened.

Mark Hajjar, 924 West 8<sup>th</sup> Street - He is trying to develop a 22-unit project in the Arsenal. He believes the DEIR is comprehensive. He requested revisions submitted in a letter to the Commission.

Kat Wellman noted that there can be a deed notification without a restriction.

Don Basso, 511 Poppy Circle - He commented on the Senior Housing alternative. He does not believe this is a compatible use. Businesses in the area will be impacted.

Dennis McCray, Director of Solano Affordable Housing Foundation - He spoke on the Jefferson Ridge portion of the Plan, specifically the senior housing alternative his organization is proposing.

Dana Dean, Attorney - She spoke on behalf of Amports. Her preliminary comments note large flaws in the DEIR. The project description needs to be revised. She will be submitting additional comments on the environmental documents. She was pleased to see a recommendation for a General Plan amendment and rezoning.

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Belinda Smith, Resident – She spoke about the conservation plan and its purpose. The historic integrity of the district must be maintained. There are artificial zones that have been created. She will be submitting additional comments.	8
Reed Robbins, Jefferson Street Mansion – She submitted a letter to the Commission. There will be major impacts in developing Option 3 (senior housing). There are existing businesses in the area. There are easements in the area that would affect Option 3. She would like Option 3 discarded.	9
Marilyn Bardet, 333 East K Street – She noted that her verbal scoping comments were not included in the DEIR. She made reference to children in the area and Department of Toxic Substance Control (DTSC) issues. She will be submitting additional comments. She would like the EIR prepared again.	10
Larry Fullington, 833 Clifton Court – He believes the Jefferson Ridge is a jewel for this community. The Jefferson Street Mansion should be mentioned more in the EIR. He does not support the senior housing alternative in the Arsenal.	11
Dennis Owens, 1025 Grant Street applicant – He stated his objection to the new site lines in the alternatives.	12
Don Dean, 257 West I Street – Submitted a document to the Commission. He noted that the Arsenal is a historic district. The impacts to the National Register Historic districts must be identified. There should be more analysis as to why the Plan reduces impacts. The biology impacts should be further investigated. He supports the Plan, but would like to see additional impacts identified.	13
Kathleen Olson, 920 First Street – She noted that the document is daunting. She is overwhelmed by how complicated it is to get things accomplished. She supports additional analysis prior to adoption of a Specific Plan.	14
The public hearing was closed.	
The Commissioners noted that their comments will be submitted in writing. Commissioner Healy reminded everyone that the hearing is to discuss the impacts identified in the DEIR. He would like to see standard language for deed notifications.	15
Commissioner Daley stated his concerns with deed restrictions/notifications. He does not want to see major impacts to the port or wildlife. Children’s health issues should be addressed. Security and evacuation impacts need to be addressed.	16
Commissioner Ioakimedes noted that this is a comprehensive document, but there are inconsistencies. The document needs to be clear and not create ambiguity. Residential uses need to be considered.	17
Comments will be forwarded to the City Council.	

VI. COMMUNICATIONS FROM STAFF

DRAFT

Gina Eleccion noted that the Arsenal PowerPoint slides will be posted online tomorrow and apologized for technical difficulties.

Charlie Knox noted that the next step in the EIR process is that LSA will compile all comments submitted, and a Response to Comments document will be prepared. The Draft EIR adequacy step in the CEQA review process will most likely be removed prior to EIR certification of this project. The City Council will hold certification hearings.

Charlie Knox noted that Opticos has developed a Consistency Matrix between the plan policies and programs and the Arsenal Historic Conservation Plan, to be included in the adopted Lower Arsenal Mixed Use Specific Plan.

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**VII. COMMUNICATIONS FROM COMMISSIONERS**

Commissioner Daley requested email copies of the packets.

**VIII. ADJOURNMENT**

Chair Railsback adjourned the meeting at 10:24 p.m.

## City of Benicia Planning Commission Minutes – August 9, 2007

- D1-1: This overview of the proposed project and environmental review process is noted. No response is required.
- D1-2: This comment, which states that the Option 1.5 alternative analyzed in the Draft EIR would allow for the construction of two new buildings on Jefferson Ridge, each of which would be 35,000 to 40,000 square feet, is noted. The Draft EIR describes each building in the Option 1.5 Alternative as comprising “roughly 35,000 square feet.”
- D1-3: This comment, which states that the Draft EIR is comprehensive, is noted. Also refer to Response to Comments B4-1 through B4-6.
- D1-4: This comment is noted. Also refer to Response to Comment B1-9.
- D1-5: Refer to Response to Comment B9-2.
- D1-6: Refer to Response to Comments B5-1 through B5-17 and E3-1 through E3-3.
- D1-7: Refer to Response to Comments B1-1 through B1-14, B2-1, B8-1 through B8-26, E4-1 through E4-12, and E8-1 through E8-11.
- D1-8: Refer to Response to Comments C2-1 through C2-47 and E9-1 through E9-7.
- D1-9: This comment, which pertains to the merits of the Senior Housing alternative evaluated in the Draft EIR, is noted. Refer to Response to Comments B9-1 through B9-4.
- D1-10: Refer to Response to Comments C4-1 through C4-46 (which include a summary of the referenced scoping comments) and E2-1 through E2-10.
- D1-11: This comment, which pertains to the merits of the Senior Housing alternative, is noted. A description of Jefferson Street Mansion was added to Table IV.K-1 of recirculated Section IV.K-1, Cultural and Paleontological Resources.
- D1-12: Refer to Response to Comment B3-7.
- D1-13: Refer to Response to Comments C1-1 through C1-20 and E6-1 through E6-6.
- D1-14: This comment, which does not pertain to the adequacy of the Draft EIR, is noted. No additional response is required.
- D1-15: Standard language for deed notifications would be provided by City staff.

- D1-16: All significant impacts identified in the Draft EIR (including impacts to/from surrounding land uses and wildlife) would be reduced to a less-than-significant level with implementation of the recommended mitigation measures. Refer to Response to Comments B1-9 concerning the use of deed restrictions/notifications, Response to Comment C4-36 concerning children's health issues, and Response to Comment C4-27 concerning security and evacuation issues (for which no significant impacts were identified).
- D1-17: Refer to Master Response #4 regarding the use of the Draft EIR to evaluate future development projects. Refer to Master Response #6 regarding potential conflicts between industrial and residential uses, and mitigation measures recommended to reduce the impacts of these potential conflicts.
- D1-18: This concluding information about the environmental review process is noted.

## **E. COMMENTS ON THE RECIRCULATED SECTIONS**

Letter  
E1



STATE OF CALIFORNIA  
GOVERNOR'S OFFICE of PLANNING AND RESEARCH  
STATE CLEARINGHOUSE AND PLANNING UNIT



ARNOLD SCHWARZENEGGER  
GOVERNOR

CYNTHIA BRYANT  
DIRECTOR

June 12, 2008

Damon Golubics  
City of Benicia  
250 East L Street  
Benicia, CA 94510

Subject: Lower Arsenal Mixed Use Specific Plan Program  
SCH#: 2007062021

Dear Damon Golubics:

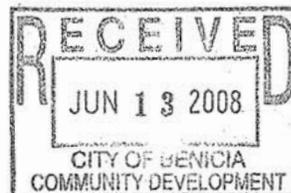
The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. The review period closed on June 11, 2008, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

Terry Roberts  
Director, State Clearinghouse

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**Document Details Report  
State Clearinghouse Data Base**

<p><i>Letter EI cont.</i></p>
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**SCH#** 2007062021  
**Project Title** Lower Arsenal Mixed Use Specific Plan Program  
**Lead Agency** Benicia, City of

**Type** EIR Draft EIR  
**Description** NOTE: Recirculation of Select Topical Sections of Draft EIR.

The proposed project includes implementation of a Specific Plan for the Lower Arsenal site, which is designated for mixed use 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 the 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 on the City's website (<http://www.ci.benicia.ca.us/downtown-arsenalimprovements.php>) or at the City's Community Development Department.

**Lead Agency Contact**

**Name** Damon Golubics  
**Agency** City of Benicia  
**Phone** (707) 746-4280 **Fax**  
**email**  
**Address** 250 East L Street  
**City** Benicia **State** CA **Zip** 94510

**Project Location**

**County** Solano  
**City** Benicia, Vallejo  
**Region**  
**Lat / Long**  
**Cross Streets** Jefferson Street and Park Road  
**Parcel No.** Book 80  
**Township** **Range** **Section** **Base**

**Proximity to:**

**Highways** I-680, I-780  
**Airports**  
**Railways** Union Pacific  
**Waterways** Carquinez Strait  
**Schools** Robert Semple Elementary  
**Land Use** Light Industrial / Office Commercial, General Commercial, Planned Development, Public, and Semi-Public / Mixed Use and Quasi-Public

**Project Issues** Aesthetic/Visual; Air Quality; Archaeologic-Historic; Biological Resources; Cumulative Effects; Drainage/Absorption; Economics/Jobs; Flood Plain/Flooding; Geologic/Seismic; Growth Inducing; Landuse; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Wildlife

**Reviewing Agencies** Resources Agency; Regional Water Quality Control Board, Region 2; Department of Parks and Recreation; Native American Heritage Commission; Public Utilities Commission; Office of Historic Preservation; Department of Fish and Game, Region 3; Department of Water Resources; Department of Conservation; California Highway Patrol; Caltrans, District 4; San Francisco Bay Conservation and Development Commission; Department of Toxic Substances Control; Delta Protection Commission

Note: Blanks in data fields result from insufficient information provided by lead agency.

**Document Details Report  
State Clearinghouse Data Base**

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**Date Received** 04/28/2008      **Start of Review** 04/28/2008      **End of Review** 06/11/2008

**COMMENTOR E1**

**Governor's Office of Planning and Research  
Terry Roberts, Director, State Clearinghouse  
June 12, 2008**

E1-1: This comment notes that the City complied with the requirements of the State Clearinghouse for submittal of draft environmental documents, and that no State agencies submitted comments on the recirculated sections of the EIR by June 11, 2008 (the original close of the public review period).

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

June 11, 2008

Charlie Knox, Community Development Director  
Damon Golubics, Principal Planner  
Planning Commissioners:  
Fred Railsback, Chair;  
Brad Thomas, Lee Syracuse, Dan Healy, Rick Ernst, Rod Sherry, Richard Bortolazzo

**Comments on the Lower Arsenal Mixed Use Specific Plan -(LAMUSP)  
“Recirculation of Select Sections”: Hazards and Cultural Resources**

Dear Mr. Knox, Mr. Golubics, Chairman Railsback and Commissioners,

Thank you for this opportunity to comment on a most highly important “Hazards” section of the Lower Arsenal Specific Plan’s Draft EIR. Please forgive some redundancy in these comments: I have not been able to devote exclusive time to a better effort at editing. However, I can see reason for repetition: so much is still wrong with the revised Hazards section that its failures are worth repeating, with hope that we can “get it right” finally, considering the public investment in hope for the Plan’s success.

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**GENERAL COMMENTS:**

Unfortunately, I must conclude that the current attempt to rectify problems with the original DEIR’s Hazards and Cultural Resource sections has failed— *failed so completely again* as to REQUIRE the redrafting of the DEIR and re-circulation. I will again focus on the Hazards section, since its flaws and “weaknesses” in descriptions, analyses of potential significant impacts to human health and ecology, and in its few proposed mitigations, points to the question of the feasibility of implementing the entire Plan.

It was an appalling, inexcusable failure that the DEIR did not include the most significant, foundational record of the Benicia Arsenal “Formerly Used Defense Site( FUDS) Restoration Project”, a military site cleanup project that was formally initiated by the Department of Defense and led by the Army Corps of Engineers, under the DoD’s “Defense Environmental Restoration Program” begun in of 1986.

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This fact , *and all that flows from it*, is highly relevant to analysis of hazards, which we may, with little doubt, assume still exist from former military uses and subsequent uses of the lower Arsenal, and especially considering the precedent-setting experience of the Tourtelot Cleanup and Restoration Project that prepared formerly leased property of the Benicia Arsenal for residential development. The weight of existing evidence recorded to date by the Army Corps and the level of concern expressed by Cal-EPA’s Department of Toxic Substances Control, military facilities division prove the risk is real. In fact, DTSC demonstrated their concern, sending three separate letters, one during the scoping and subsequently two on the DEIR, (one from

BARDET, LAMUSP, Hazards Section, page 2

Mark Piros and two letters from Chris Parent) to attest to the potential for public harm on any site proposed for infill development within the lower Arsenal, and also, to the incomplete “site characterization” accomplished by the Army Corp under the FUDS curtailed investigation and limited remedial activities.

The revised Hazards section is STILL MISSING PERTINENT CONTEXTUAL INFORMATION that needs to be included and explained: specifically, the relationship to the Arsenal Specific Plan of the **TOURTELOT CLEANUP AND RESTORATION PROJECT**, a precedent-setting former military site investigation and cleanup project, independently conducted here in Benicia from 1996 - 2003, which was first led by the U.S. Army Corps of Engineers (USACE) and by 2000, by Cal-EPA. The ultimate purpose of the cleanup was to protect the public from all form of harm and hazard, and to prepare heretofore undeveloped, formerly leased property of the Benicia Arsenal for residential development. This land was once used for “demilitarization activities” post WWII. The main structures that had previously existed on the 190+ acres were constructed for testing the borings of howitzer guns. However, through a long, preliminary investigation process, other sources of “potential impacts” were found, including terraced “strips” of TNT-contaminated soils. Seven pieces of live ordnance were found on the site initially, in 1996, prompting serious concern at the highest levels of Cal-EPA management. As a result, a highly conservative approach to designing an investigation and cleanup plan was adopted. The “Tourtelot Cleanup” was originally to have been included as part of the whole Arsenal investigation then beginning and officially called “the Benicia Arsenal Formerly Used Defense Site (FUDS) Restoration Program”. As designed and carried out, the Tourtelot Project speaks clearly and directly to the FUNDAMENTAL problems of implementing the LAMUSP under the conditions cited in the Hazards Section as “mitigations.”

I hereby reference each and every previously submitted comment letter on the DEIR in 2007-08, including those of Dana Dean, Attorney for the Port of Benicia, to underscore what I have to say here. Especially important are the two letters from Cal-EPA’s Department of Toxic Substances Control, which were omitted from the DEIR, but are now referenced in the revised Hazards Section, albeit, without meaningful explanatory comment or discussion of their implications. My own comment letters on the DEIR—one 4-page letter dated Aug. 9, 2007, addressed to the Planning Commission, and also a much more detailed 30-page letter, dated Sept. 6, 2007, which fully details the failure of the DEIR—both state what I consider *still* to be central problems with descriptions, impact analyses and suggested mitigations, as presented in the currently revised Hazards section. [Both letters were sent as pdf files to the Community Development Department as well as to the PC and Council.]

**It’s stunning to realize that apparently, neither LSA or staff yet fully understands the ramifications of the precedent-setting Tourtelot Cleanup Project and how the standards for level of cleanup required “for residential” will inevitably affect what DTSC will expect of all Arsenal property owners in the event that “residential use” is EVER ENTERTAINED in accordance with the flexible use concept enshrined in “Form Based Code”.**

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Without an understanding of Tourtelot's precedents, it would be nearly impossible to get at the true costs of allowing such "flexibility of use" wherein "family residential" is allowed as part of the acceptable mix of uses at ANY FUTURE TIME. If residential is allowed, the feasibility of implementation is highly questionable, because of prohibitive costs associated to PRELIMINARY investigative work that MUST OCCUR prior to any construction; AND, ALL property owners would be subject to requirements to conduct PRELIMINARY ENDANGERMENT ASSESSMENTS (PEA), if and when ONE property owner wants to build family housing, for the reason that all properties contiguous or near land slated for housing must be clear of hazards, and the only way to know this is to do PEAs.

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**Staff's description of the mitigation measures and what they require is highly troubling.**

I quote here from the staff's most current report on the recirculated sections:  
*"Mitigation measures for the two recirculated sections have been expanded. Previously, there were two mitigation measures for the Hazards and Hazardous Materials section of the EIR. The original mitigation measures dealt with construction activities and what a contractor must do when hazardous materials are uncovered. An additional mitigation measure has been added that acknowledges hazardous materials throughout the lower Arsenal area and directs property owners to remediate contaminated areas if discovered. [my underlining, for emphasis].*

This is a rather blithe description hinting at a very serious set of potential conditions that deserve much more in-depth portrayal. The DEIR must discuss the potential for encountering hazardous soils and ordnance OUTSIDE the areas surveyed by the Army Corps of Engineers, during their Arsenal FUDS investigation, given that conditions in the Lower Arsenal are as yet "not fully characterized", (to paraphrase one major point made in the letter, dated Sept 6, 2007, written by Chris Parent of DTSC). Especially pertinent: CEQA in this case would require full explanation of what constitutes a property owner's total responsibility with regard to protecting public safety in pursuing development of his or her land.

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The "original mitigation measure" meant to reduce potentially significant impacts from hazardous materials is described as relating to "construction activities"; but the description suggests a greater risk: to public health and safety: opening up an "exposure pathway" to harm, by pursuing construction activities WITHOUT any preliminary investigative work to rule out such hazards as might be otherwise unsafely "uncovered". Also, the inference is that ALL hazardous materials that could be buried or contained in soil are visible to the eye: how else would, say, a bulldozer's operator recognize that he'd "uncovered" anything suspicious? In fact, a bulldozer could excavate 600,000 cubic yards of soil, (as happened at Tourtelot PRIOR to investigative work, in violation of federal RCRA law) not recognizing that it contained chemical contaminants because they are not "visible". (such as TNT, hydrocarbons, TCE, etc.). As the Chris Parent letter explained, a Preliminary Endangerment Assessment would be required PRIOR to any FURTHER investigative work, and certainly before any "construction activities".

**The new mitigation measure addressing the potential for hazardous materials to exist throughout the lower Arsenal also reveals a lack of understanding of the full scope and nature of the problem of allowing family residential.**

First, there is no way a property owner can safely and accurately judge whether his or her property presents a danger to public health and safety, unless preliminary investigative work is accomplished. The only thing the new mitigation measure does is foist all responsibility for such testing on individual property owners. And again, it presumes that property owners will somehow know whether or not they “need” to pursue further investigation for hazardous materials, including ordnance, metal fragments, chemical contaminants, etc.

IF residential is a permitted use and is contemplated for a specific site, then ALL properties in the lower Arsenal would likely have to be preliminarily investigated for hazards, since DTSC has concluded, as a result of their oversight of the Army Corp’s FUDS investigation, that the lower Arsenal is “not fully characterized”. This fact begs the question of the feasibility of implementing the LAMUSP, given the astronomical costs to individual property owners of pursuing such investigative work as would be required, ESPECIALLY if residential use is permitted ANYWHERE in the lower Arsenal.

What’s the reason for roping in all property owners if only one intends to build residential? The safety of children, who may wander into other areas, play in dirt, dig holes, find metal bits, etc etc.....The trouble is, with “Form Based Code” replacing traditional zoning, one can imagine the circumstance, 10 or 20 years from now, when a property owner suddenly decides to modify an existing building for residential use. Other property owners may not be prepared to cooperate to investigate their properties, which would be required, once intent has been demonstrated to build residential.

**The original Hazards section with its several feeble mitigations was an utter disaster for the reason that fundamentally significant and highly relevant information was missing that could cause the entire EIR to be thrown out, re-done and re-circulated.**

None of this “relevant information” was then, or is now “new”, despite the claims of the recirculated Hazards and Cultural Resources sections. [See revised Project Description.]. The “BENICIA ARSENAL FORMERLY USED DEFENSE SITE RESTORATION PROGRAM” was on-going between 1996-97 and 2005, but was not described or discussed in the DEIR. Also, as stated previously, the “TOURTELOT CLEANUP AND RESTORATION PROJECT”, was not included in any discussion relevant to LAMUSP implementation—its feasibility.

**What was missing from the original DEIR;**

All the historical facts and more recent findings associated to former military uses of the Benicia Arsenal for over 150 years, as well as to more recent uses by current or former property owners and businesses. Such reporting, published or recorded in letters and email, by the Army Corps of Engineers and the California

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BARDET, LAMUSP, Hazards Section, page 5

Environmental Protection Agency’s Department of Toxic Substances Control [Cal-EPA, “DTSC”] pertinent to a full understanding of what would be required to implement suggested mitigations for potential impacts associated to hazards suspected or identified in the lower Arsenal area.

It is hugely important—e.g., legally ESSENTIAL—that this context be clearly stated and understood by the EIR preparers, since it bears on whether and/or how the lower Arsenal Specific Plan can be implemented, as currently proposed.

I am referring to the experience in Benicia, of DTSC, when the Department served as “Lead Agent”(by order of the governor, by way of Cal-EPA’s director at the time) on the “Tourtelot Cleanup Project”—a military site cleanup having to be done to clear potential “explosive ordnance”(whole pieces or metal fragments of “OE”) as well as hazardous waste-contaminated soils from the 190 acre site slated for a housing development—now Water’s End.

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**What’s crucial to understand about the “Tourtelot Cleanup Project” :**

The DTSC views the site characterization work done by the Army Corps under the FUDS investigation to be incomplete, both in scope, analysis and interpretation. This controversy is central to the problem of whether the LAMUPS can be implemented, with property owners assuming investigation and remediation costs. The Tourtelot Cleanup Project offers a concrete roadmap (though larger in scale) of what might be involved in similar cleanup efforts, in terms of time, labor and financial commitment. In previous letters and private meetings with staff and City Manager, as well as with Mark Hajjar, I have tried to explain why the Tourtelot experience is so relevant, in planning for any infill that my involve residential.

**Feasability of the LAMUSP’s implementation is questionable:**

In such opportunities initiated by me to discuss the Plan and the CEQA review, I’ve raised the issue of the premise that undergirds the Plan itself: that FEASIBILITY TO IMPLEMENT THE PLAN, environmentally and economically, given foundational information and ramifications of the Arsenal’s history of former military activities and current uses and activities, especially at the Port of Benicia, and especially in light of the fact that the DEIR and the revised Hazards Section still assume that 22 units of family residential will be permitted.

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The recirculated Hazards Section does not reference the Mark Piros or Chris Parent letters representing Cal-EPA, nor reproduce the letters in any appendicies.

DTSC contests the the Army Corps’s report of the investigation’s data and therefore its conclusions, and calls into question the virtual termination of the investigation in 2005. Why is this important to understand? DoD has no more money to fund further investigation at our Arsenal site.

According to The DEIR and currently revised hazards section, it will be incumbent on individual property owners in the Arsenal to pursue remedial investigation and if necessary, hazardous waste cleanups, in order to proceed with development plans. The high costs of such encumbrances has not been evaluated as part of the analysis of the economic feasibility of implementing the Plan.

The potential for finding ANY serious hazards sets up the prospect that EACH property owner must assume his or her responsibility to bear the price of investigation work done under the auspices of the DTSC military facilities division, as was the case finally on the Tourtelot cleanup project, and which highlights the issue of liability for the State of California as well as Department of Defense: explosive hazards may still exist in subsurfaces or buried, on ANY land formerly owned or leased by the Benicia Arsenal.

THUS, The DEIR's newly revised hazards section fails to take account of the MEANING and IMPLICATION of its premise that 22 single family units of residential housing will be permitted. If this is the case, which it CANNOT be, for many reasons I have previously and exhaustively accounted for in my other letters, especially the Sept. 6, 2007 letter, then example must be given of the REQUIREMENTS set by CalEPA that would have to be met, under specific investigation by the property owner of the site slated for housing, but also, the REQUIREMENTS that would have to be met by ALL owners of contiguous properties, in order to protect the health and safety of people and children who would live in such housing.

**The revised Hazards Section is misleading:** it does not disclose what is involved in investigations and cleanups of "formerly used defense sites"(FUDS) ,e.g., the kinds of activities performed under a "Preliminary Endangerment Assessment" or "Health Risk Analysis", nor the actual time, effort and financial investment that would be REQUIRED of area stakeholders in implementing ANY PART OF THE PLAN, IN THE EVENT THAT FAMILY RESIDENTIAL IS A PERMITTED USE ANYWHERE IN THE LOWER ARSENAL. For example: performing a "Preliminary Endangerment Assessment" would involve records research and field investigation and may foreseeably call for further soils studies and remedial actions.

Based on our City's 7-year experience of the Tourtelot Cleanup and Restoration Project, for remediation of former leased lands of the Benicia Arsenal in preparation for a new housing development, all properties contiguous to a parcel considered for residential development allowed under Form Based Code as part of the "mix", would have to be scanned for clearance of any possible "OE" or "ordnance explosive" metal fragments, etc.

It's profoundly amazing to me that there is no reference or mention in the summary chart of environmental impacts and proposed mitigation measures for "Hazards and Hazardous Materials" of the potential for finding "Ordnance Explosives"(OE), when disturbing surface or subsurface soils in the lower Arsenal. The scope of work involved in any potential remedial investigation would most likely recommend a scan for potentially remaining ordnance or OE metal fragments. This would precede investigation for "non-OE" soil

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BARDET-LAMUSP Hazards, page 7

contamination, from chemicals and other sources. The precedent for a foreseeable “scope of work” for an investigation and cleanup done to prepare for residential development can be found in reviewing the Tourtelot investigation documents. Nowhere in the newly recirculated Hazards Section is there any reference to the Tourtelot cleanup and the cleanup standards that project set for the state.

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Although the **Hazards and Hazardous Materials. HAZ-1 [page 15]** cites various Cal-EPA REQUIREMENTS that will be imposed preliminary to any infill development, the enormous financial implications for the City, Arsenal stakeholders and the public of this allegedly “new” information is nowhere accounted for in the DEIR’s economic analysis.

Funding for military site investigations—even if it is possible to get agreement from all stakeholders to voluntarily participate to subject their properties to such investigation on behalf of permitting family residential in the area—is not easily found, and certainly, if property owners find onerous the cost of doing an EIR, then they should be very concerned to learn of the true costs of such actions as would be required by EPA, where each stakeholder must front money for any remedial investigations and cleanup activities.

In this light, the evidence now incompletely referenced in the recirculated Hazards Section points to now highly questionable and most likely erroneous assumptions, claims and judgments of the original Feasibility Study supporting the Plan. This is important, since the City is a property owner in the Arsenal, and also, as I understand, the City must demonstrate intent and fund basic infrastructure improvements in order that the Plan be certified by the State. ANY improvement requiring disturbance of soils, at the surface or below ground, will trigger for the City, at City expense, REQUIREMENTS by CAL-EPA, such as the Preliminary Endangerment Assessment and Health Risk Analysis. The PEA would require preliminary investigation for ordnance, since the Arsenal was an ordnance depot and shipping terminal. The experience of the Tourtelot cleanup for residential use, and the state STANDARD for residential cleanup that was established as a result of that project, is not referenced anywhere, and it must be, if stakeholders and the public are clearly to understand what the responsibility is but also, what the financial burden is for anyone contemplating residential infill development.

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It’s highly curious that in the “II. Summary - A. Project Under Review” the first paragraph notes the 22 units of residential, but in the following bullets which describe the four “development zones”, there is no mention of these 22 units where they should be identified as potentially permitted, in the Grant Street zone. Instead, that zone is described as permitting “work/live”. Which is it? -- 22 units of (family) residential or new artists’ studios with living spaces?

**The continued confusions and omissions of the recirculated hazards section cannot be tolerated, given the amount of material previously submitted that would have allowed a careful accounting of every concern previously cited by the public at formal hearings and in informal personal exchanges in conversation, by email and phone.**

In previous comment letters I have outlined other concerns for permitting residential: the current and continuous hazards of contamination, both air-borne, thus inhaled, as well as from surface soils contamination, emanating from the Port of Benicia, its refinery port operation, including the petroleum coke storage and transport operations. The pollutants involved are all those volatile organic compounds associated to the refinery, as well as diesel exhaust from ships in port, and coke dust, which contains nickel, which is a carcinogen when inhaled. Right now, housing is suggested to be permitted on Grant St. Obviously, this means people, including children, would be subject to daily exposures that add up to chronic exposures over time, in close range of port-generated pollutants of all kinds, none good for health, and many contributive to respiratory distress and disease—especially from diesel and soot particulates, including that of petroleum coke dust.

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I've submitted formal comments at every stage of the Plan's process since Sept 2006, and at every point of public review during the CEQA process. I demonstrated my special concern for the hazards section, which must consider potential, foreseeable risks to public health and safety of implementing the Plan: specifically, my comment letter dated April 12, 2007, addressed to the Planning Commission for the scoping session; my comment letter of August 9th for initial review of the DEIR,; and finally, my adamant 27 comment letter, dated Sept. 6th, that notified, Community Development Director, Principal Planner, City Manager, City Council, Planning Commission, and LSA of the very serious omissions of record. I believe that my testimony, coupled with the letter of record, by Attorney Dana Dean, finally forced the recirculation of the Hazards section and would cause failure of any final EIR if that hazards section was to be accepted "as is" at that time.

#### **INTRODUCTION, C. PURPOSE OF RECIRCULATION: What's new?**

It's important for the public to understand the full scope of the reason for re-circulation, but the text does not clarify that the "significant new information" which is alleged to have required the re-circulation of the hazards section is absolutely **NOT new** information, but was readily available, extremely serious and important information that had been repeatedly neglected by the city as an issue for analysis during drafting of the LAMUSP, and during the scoping for the DEIR, and which remained unaccounted for and omitted by LSA in the original Draft EIR. Namely, complete description and information on the "Benicia Arsenal Formerly Used Defense Site Restoration Project", [or "FUDS"], which project officially began in 1996-97 and continued until 2005 under authority of the Department of Defense, Defense Environmental Restoration Program, of 1986. The Arsenal FUDS investigation was initiated by a very first "Hazards Assessment" done in the mid to late 1980's, and subsequent publishing and distribution of the "Arsenal Archives Search Report of 1994" and its Supplement. Both of these documents described research findings that supported the FUDS Restoration Project. Subsequent documents produced by Jacobs Engineering and Brown and Caldwell for the Army Corps of Engineers, from 1996 - 1997, sequentially reviewed parts of the investigation conducted by

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USACE. These documents are all publicly available at the library and have been reviewed by the Arsenal Restoration Advisory Board (RAB) up until 2005, when the RAB no longer met.

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#### D. SUBSTANTIAL NEW INFORMATION

This “new information” was readily available, in staff files, at the library’s city reference shelves, and also, by reference, in comments I submitted into the record during scoping session at the Planning Commission hearing.

I specifically urged that the Army Corps of Engineers, Sacramento office (USACE) and Cal-EPA’s Military Facilities division of the Department of Toxic Substances Control be contacted regarding proposal for family residential in the Arsenal, since both agencies had worked in Benicia on both the 7-year Tourtelot Property Cleanup and Restoration Project (formerly used military land, investigated and remediated for WatersEnd housing development) and also, on the Arsenal FUDS Restoration Project.

Of course, a description of these two related projects, (all lands of the Benicia Arsenal, both leased and owned by DoD) and the potential impacts and ramifications for the feasibility of the Specific Plan’s mixed use concept involving family residential, should have been part of the original draft EIR.

In September ‘07, when the DEIR was made publicly available for review, I submitted 30+ pages of comments about the singular and fatal glaring omission: that the draft EIR did not mention the Arsenal FUDS investigation or the Tourtelot Restoration Project.

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In my September comments, I also explained the on-going controversy between USACE and EPA, where DTSC believes that the lower Arsenal has not been sufficiently “characterized” for hazards and that the FUDS investigation therefore is not complete enough to understand current potential health and safety risks associated to contamination left from Arsenal activity or subsequent uses.

Also, I commented on the fact that two letters had been sent to city staff by Chris Parent, of EPA’s military facilities division. Ms. Parent actively served for the agency on the community’s Restoration Advisory Board, and I have spoken with her on at least 5 occasions with regard to the inter-agency controversy and EPA’s position about what is known and not known to date about the lower Arsenal site. Ms. Parent’s first letter was dated March 27, 2007 addressed to the City Attorney, and was meant to be included for the scoping of the draft EIR. That letter never got cited, discussed, referenced or included in the Appendices in the draft EIR. A second letter was written in September 2007, addressed to staff, following up on the first letter, after DTSC had learned that the draft EIR had been circulated but that they had not rec’d direct notice of its availability. I had called Don Diebert, chief of military facilities division, Ms. Parent’s boss, (who spent 7 years on the Tourtelot site investigation and cleanup), to tell him about the draft EIR’s omission of reference of the FUDS

investigation and its findings. It was then that Ms. Parent wrote her second letter to reaffirm the agency's serious concern regarding the insufficient characterization of the lower Arsenal site(s) by USACE's investigation to date.

- The introduction should describe the “new information” as having been originally omitted because of human neglect or error in the draft EIR. This was a gross oversight failure on the part of EIR preparers, LSA, since such information was clearly referenced and discussed in my comments, both during scoping and in my comments on the Draft EIR.
- What actual “new information” that would be forthcoming would be from further investigation of the lower Arsenal sites by USACE, and if they would not pursue further characterization, then, sampling and testing done under authority of the DTSC's military facilities division.

The introduction tells us that the new recirculated hazard section includes “*Descriptive information about remedial investigations and clean-ups that have been undertaken at the former Benicia Arsenal by the U.S. Army Corps...*” and that it also includes “*information related to hazardous materials concerns associated with the 50 Series Complex, fuel storage tanks, and groundwater contamination; and ...a new impact associated with development that would occur in areas documented and/or partly characterised environmental releases associated with historical site uses, and an associated mitigation measure that would reduce this impact to a less-than-significant level.*”

It's highly disturbing that the DTSC is not mentioned as an oversight agency for the FUDS investigation and is not mentioned in this intro, nor the inter-agency controversy about “extent of characterization” which the two Chris Parent letters very clearly expose. [See my references to the Parent letters, above].

- The introduction and “Substantial New Information” section should include reference to the two Chris Parent letters, sent on behalf of the DTSC military facilities division, in March 2007 and Sept. 2007.

**To conclude:** I believe my comments give a general idea, with specific examples of why the revised Hazards Section fails the test of CEQA and even jeopardizes the Plan itself, considering ramifications suggested in the new mitigation measure for impacts related to “hazardous materials”.that call into question the feasibility of implementation.

Sincerely,

Marilyn Bardet

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## **Legal questions we need answered by our City Attorney, before the PC hearing on the Arsenal Specific Plan DEIR recirculated Hazards Section:**

- 1) What is the nature of the city's liability if the council approves the LAMUSP with the inclusion of residential, if, now, or at any time in the future, residential use can be entertained, under Form Based Code, for any particular new infill or rehabbed building in the lower Arsenal?
- 2) From a legal standpoint, what is the necessary context in which to discuss the standards to be set for "site characterization", "scope of investigation", "cleanup levels" for lower Arsenal properties considered for "highest and best use", e.g., for residential development now or at any time in the future?
- 3) Based on our (yours, the City's, the Tourtelot Community Advisory Group's, ComPACT's) knowledge of CAL-EPA's requirements and standards developed for designing a scope of work for the Tourtelot investigation and cleanup of contaminated soils and "OE", please describe how those standards will bear on Arsenal property owners if and when any one stakeholder is determined to build family housing on his or her property.
- 4) Please discuss the feasibility, from a legal standpoint, of developing consensus among all property owners, if and when any one property owner decides to pursue "residential" development. Could the Specific Plan itself insist on complete characterization and investigation of the entire lower Arsenal for the protection of any one property developer's interest in building residential?
- 5) Please identify the main precedent-setting standards developed by Cal-EPA as lead agent to address the Tourtelot site investigation and cleanup of military hazards for prospective residential development. How do those standards affect our legal understanding of the LAMUSP DEIR's assertions (in the Hazards Section, under "Mitigations") that individual property owners will be responsible for investigating their properties, if and when they should "discover anything"? Please discuss the use of hindsight here, since we know Granite Management's knowledge of the problem of the existence of the "North Valley tunnels" didn't really stop them from "going forward", excavating over 600,000 cubic yards of soil, against fed RCRA laws. . . It was much later that live ordnance and metal frag were found.
- 6) Now that we have hindsight, thanks to 7-year Tourtelot investigation, about what quite potentially could be encountered in the lower Arsenal (ordnance, OE frags, powders, contaminated soils, TCE, hydrocarbons, etc. etc...) on properties and in nearby existing Army landfill identified below the Clocktower, is it possible to allow ANY property owner, including the City, to turn over a teaspoon of dirt without prior authorization from Cal-EPA?
- 7) Describe, from a city legal perspective, your view of the controversy between the Army Corp and DTSC, involving standards of site characterization used by the Army Corps for its "Arsenal FUDS Restoration Program" ,~1997-2005. Also, describe the impact of the suspension of the investigation for lack of funding on the conclusions of the LAMUSP DEIR re-circulated Hazards Section. ) and the standards that Cal-EPA implicitly references in its several letters to the city dated March 27, 2007 and

*Letter*  
***E2***  
*Attach.*

Sept 6 (?) 2007. by the Tourtelot for levels of site characterization and investigation and cleanup required for residential development where the site has been a "formerly used defense site".

## COMMENTOR E2

Marilyn Bardet

June 11, 2008

- E2-1: This introductory comment is noted.
- E2-2: This comment suggests that additional information be added to the Draft EIR about the Tourtelot site because the cleanup standards at this site “will inevitably affect what [the Department of Toxic Substances Control] DTSC will expect of all Arsenal property owners in the event that residential use” is developed in the Plan Area. The Tourtelot site, which is located approximately 1.15 miles north of the northernmost boundary of the Plan Area (in a different watershed) is discussed in general terms in the context of the remedial investigations and cleanups conducted by the U.S. Army Corps of Engineers at the Benicia Arsenal (see pages 44 to 53 of recirculated Section IV.E, Hazards and Hazardous Materials). The Tourtelot site is also shown on Figure IV.E-1 (labeled V.E-1) on page 47. The focus in the Draft EIR of the description of past investigations at the Arsenal is Area I, which encompasses the Plan Area.
- Providing additional background information about Area W (the Tourtelot site) in this EIR is not warranted because: 1) the Tourtelot site is geographically removed from the Plan Area and 2) the City engaged directly with DTSC and the U.S. Army Corps of Engineers to devise a mitigation measure that would effectively and feasibly address redevelopment of potentially contaminated areas in the Plan Area with a range of uses, including residential uses. This mitigation measure (HAZ-1), is discussed in more detail in Master Response #2. Additional background information about the Tourtelot site is not necessary to understand the impacts of the Draft Specific Plan as they relate to hazardous materials, or appropriate mitigation, and would be contrary to *CEQA Guidelines* section 15125, which states that: “The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.”
- E2-3: Refer to Response to Comment E2-2 regarding why additional information about investigations outside the Plan Area was not included in the Draft EIR. In regard to “what constitutes a property owner’s total responsibility with regard to protecting public safety,” this would comprise the activities listed in Mitigation Measure HAZ-1 and the associated health risk standard (an incremental lifetime cancer risk within the U.S. Environmental Protection Agency’s range of one in 10,000 to one in 1 million or less and a non-cancer health hazard index of less than one). Property owners, prior to site redevelopment, would be required to show that the health risk of their property due to potential contamination is below this threshold. As suggested in the comment, this highly protective health standard is warranted because residential uses could be developed throughout the Plan Area as buildings

are reused and vacant sites are redeveloped. Because this Draft EIR is a program-level document, mitigation measures were designed to apply to long-term redevelopment of the site, not just development projects planned in the near-term.

Mitigation Measure HAZ-2 was retained in Section IV.E as a supplemental mitigation measure to Mitigation Measure HAZ-1 in the unlikely event that specific development sites contain hazardous materials that are not identified as part of Mitigation Measure HAZ-1. In the event that hazardous materials are uncovered during the construction period, evaluation and remediation actions would be initiated in accordance with the oversight of an applicable regulatory agency. Evaluation and remediation would likely resemble that outlined in Mitigation Measure HAZ-1, but would be customized to reflect hazardous materials concerns on a specific development parcel. However, Mitigation Measure HAZ-1 would effectively preclude the initiation of construction activities without a preliminary investigation.

- E2-4: Refer to Response to Comment E2-2 regarding the need to include additional background information about the Tourtelot site. Mitigation Measure HAZ-1 was specifically designed to address the fact that certain site investigations of the Plan Area are not yet complete.
- E2-5: This comment notes that individual property owners in the Plan Area will be responsible for investigation of site contamination, and clean up of such contamination, if necessary. This statement is correct, and is consistent with existing federal and State laws governing remediation of hazardous materials. However, the claim that the provisions of Mitigation Measure HAZ-1 would not necessarily make redevelopment of the site infeasible is unfounded. This mitigation was developed in coordination with DTSC and the U.S. Army Corps of Engineers, and was designed to offer flexibility so that the investigations can be customized to take into account unique characteristics of individual parcels. The human health risk assessment would be the critical tool used to determine whether a site poses an unacceptable health risk. Human health risk assessments are commonly-used tools to determine risks associated with soil and groundwater contamination, and are feasible to implement. The use of references in the Draft EIR is consistent with *CEQA Guidelines* section 15148, which states that: "Preparation of EIRs is dependent upon information from many sources, including engineering project reports and many scientific documents relating to environmental features. These documents should be cited but not included in the EIR."
- E2-6: The labor and time costs involved with implementing Mitigation Measure HAZ-1 would vary by property, with a lesser investment required of properties that have already been partially investigated. However, much of the work required as part of the mitigation measure would be required by the "due diligence" process involved in securing a loan for property development. Such a mitigation measure imposes an appropriate and entirely conventional burden on landowners in the Plan Area. Due to past redevelopment activities, unexploded ordnance is not expected to be a significant hazard within the Plan Area. However, Community Hazards Policy

4.7.5 (referenced on page 58 of recirculated Section IV.E) requires testing and remediation of all sites known to have unexploded ordnance. These actions would be required as part of Mitigation Measures HAZ-1 and HAZ-2.

- E2-7: Economic issues, except as they are related to environmental impacts, are outside the scope of the Draft EIR. Mitigation Measures HAZ-1 and HAZ-2 are feasible, and meet applicable constitutional requirements, and thus are consistent with the requirements of CEQA. Refer to Response to Comment E2-6 regarding the costs associated with the recommended hazards mitigation measures. The comment regarding the adequacy of the feasibility analysis conducted for the Draft Specific Plan pertains to the merits of the project and is also outside the scope of the environmental review in the Draft EIR. These comments are noted, and no additional response is required.
- E2-8: This comment, which suggests that the new information added to the Draft EIR in April 2008 was not “new” information, is noted. This comment does not pertain to the adequacy of the environmental review, and no further response is necessary.
- E2-9: The City met with both the U.S. Army Corps of Engineers and DTSC to address their concerns regarding potential contamination within the Plan Area, and ways to investigate and remediate this contamination to allow for redevelopment with a range of land uses, including residential uses. Mitigation Measure HAZ-1 was drafted in consultation with these agencies. Mitigation Measure HAZ-1 was specifically crafted to account for the fact that contamination in certain portions of the Plan Area is not fully characterized. Additional background information about past investigation and clean up activities on the site was also added to Section IV.E, Hazards and Hazardous Materials, in response to letters submitted by DTSC and others on the Draft EIR. Inclusion of the various references and letters cited in the comment is not necessary to achieve the objective of identifying the significant impacts of the Draft Specific Plan associated with hazardous materials.
- E2-10: This concluding comment is noted. No additional response is required.