PROPOSAL

Project Management and Legal Services

Investigation and Cleanup Project

Benicia Arsenal

November 4, 2010

ers

THE CITY OF BENICIA CALIFORNIA

INTRODUCTION

The nearly 3000 acre Benicia Arsenal was operated by the US military for nearly 100 years and was transferred to the City of Benicia in the 1960s. Typical of military bases, significant environmental contamination, both chemical and unexploded ordnance (UXO, including munitions of environmental concern or MEC) were released at the Arsenal. To date, nearly 400 environmental sites have been identified and the US Army Corps of Engineers (USACE) has implemented several environmental investigations, some limited remediation, and a munitions cleanup program. The California Department of Toxic Substances Control (DTSC) considers many of the investigations to be incomplete and that the significant environmental impacts remaining at the Arsenal warrant further remediation.

USACE has implemented its environmental program to date in accordance with the Formerly Used Defense Sites (FUDS) policy. Based on this policy and the environmental conditions, USACE asserts that it is no longer responsible for implementing additional work at the Arsenal. Because the City of Benicia and private entities now own the land that comprised the Arsenal, the DTSC is pressuring the current land owners to investigate and remediate the existing environmental conditions at the Arsenal, including those caused by the military.

In response, the City of Benicia seeks assistance to reach an agreement with the US Army and DTSC "for characterization and standards for clean up and implementations." We have interpreted this goal to have two discrete, yet fundamentally related elements, wherein the agreement will:

- Require the US Army to fund the completion of investigation and remediation activities of environmental impacts due to military activities and to implement this effort without delay,
- Establish cleanup levels with the DTSC.

Reaching these goals should provide some certainty to the City of Benicia and those owning land (City) at the Arsenal because the City will not bear the burden of remediating DoD environmental liabilities and all parties will be held to the same, known, cleanup levels.

APPROACH and SCOPE OF WORK

The ERS Team has developed the following approach based on our understanding of:

- City of Benicia and other stakeholder goals and objectives
- FUDS policy and its effect on the USACE
- USEPA and CalEPA regulations, including those of DTSC and the Regional Water Quality Control Board
- Legal liabilities and remedies
- Insurance options

- Experience of the ERS Team.

We have identified two different approaches or tracks, one that seeks an Agreement with the USACE, and one that seeks recovery from insurance policies that the City, its tenants, or buyers of Arsenal property might maintain. Both tracks rely heavily on a thorough technical evaluation of the environmental conditions. If only partial insurance coverage is available, then the Agreement track with USACE may also be invoked. Under this scenario, with partial insurance coverage, the USACE may be more willing to negotiate because of the reduced cost.

The interrelationships between, and the key decision points within, the insurance, agreement and technical tracks are summarized in a flow chart at the end of this section.

SOLUTION ORIENTED APPROACH

ERS and its Team members have a proven track record to reaching win-win agreements between municipalities, the DoD, and state regulatory agencies. Key elements of our solution oriented approach are:

- Develop low cost remedies that the military has available to them because of efficiencies and creative scientific/engineering solutions in the private sector
- Obtain Insurance to transfer risk and cap remediation costs and environmental liabilities. This provides a high level of assurance to the regulatory agencies that sufficient funds will be available to address known and unknown contaminants, and provides the military and City with cost certainty.
- Make claim against prior insurance policies to cover some remediation efforts to reduce DoD, City, tenant, or owner costs.
- Prepare Special Legislation to compel the USACE to cooperate, which requires coordination with local, state, and federal representatives to create.
- Our high level of trust with senior members of the military will be key to negotiating successful agreements.
- Based on past transactions with the military, ERS has successfully recovered our client's transaction costs, including technical, legal, and insurance premium costs.

We also have experience obtaining alternative sources of federal funding to remediate properties encumbered with legacy military environmental liabilities. In addition to the insurance option that we detail below, options for federal funds beyond the USACE FUDS program include special legislation, Pentagon operating budget, and the mothball facility budget.

TECHNICAL TRACK

The Technical Track will support both the Agreement Track and the Insurance Track and has two overall goals:

- Allocate the environmental liability and remediation costs between the USACE, the City, and private owners or tenants.
- Obtain agreement from the DTSC and the USACE defining cleanup levels for contaminants at the Arsenal.

Fulfilling these two technical goals will bring certainty to negotiations with the USACE, DTSC, and the insurance companies.

Allocation of Liabilities

The technical effort to allocate liability will:

- Identify the remaining environmental impacts and risks associated with the military's activities at the Arsenal,
- Separate the military's liabilities from those caused by the City (if any) or private land owners,
- Estimate the cost to remediate and achieve closure of the military's environmental impacts.

We have found in the past that the military's assessment of its environmental liabilities has not been comprehensive and typically underestimate the risk and cost to remediate significantly. For example, on behalf of the City of Concord, ERS evaluated original military documents and third party reports (e.g. newspaper articles, magazine articles, books, interviews, etc.) to independently identify potential issues of environmental concern at the Concord Naval Weapons Station. We then compared our findings with those identified by the Navy and found the military's list to be severely lacking.

Based on our experience, we propose a similar effort at the Arsenal.

- First, we would review information describing the history of operations at the Arsenal to identify all potential environmental liabilities. This review would encompass all documents made available from the military, and review of records in libraries and museums, including newspapers and independent research.
- Second, we would compare our findings with those published by the military. It is quite likely that this comparison will show many potential sites not evaluated to date by the USACE.
- Third, we would identify significant data gaps, and estimate potential risks posed by these sites.
- Fourth, we would estimate the cost to remediate those sites already known to the DTSC. Estimated costs will be provided for all sites that will require remedial action, including all those that the USACE (and its contractor Brown and Caldwell) deemed as no further action. Between

the third and fourth steps, we may recommend that data be collected in the field to determine if the potential site actually poses a risk, but these costs are excluded from this proposal.

The allocated liabilities and estimated remediation costs from step four above, perhaps coupled with an insurance product to transfer the risk of cost overruns away from the City, private landowners, and the USACE, would be the basis for a VCA and possibly an ESCA with the military. The insurance would also give the DTSC confidence that sufficient funding would be available to remediate the Arsenal in the event of cost overruns or discovery of currently unknown contamination (or other contingencies). This information will also inform the effort to bring public pressure to bear upon the military and USACE.

The environmental insurance coverage would include:

- Pollution Legal Liability Coverage: This policy would protect all of the stakeholders against liabilities associated with unknown contamination.
- Remediation Cost Cap Coverage: This policy would provide coverage for cost over-runs associated with known contamination.
- Other benefits associated with these policies include coverage for MEC conditions, business interruption, 1st and 3rd party liability, property damage, off-site impacts, regulatory re-openers, and non-owned locations.
- Based on our experience, environmental liability coverage has been the *key* to assure protection for all stakeholders (including regulatory agencies) against any liabilities associated with environmental conditions. It allows all parties to cap their environmental liabilities.

Low Cost and Faster Implementation of Environmental Remedies

ERS has considerable experience developing creative solutions that provide significantly lower remediation costs than could be obtained by the military. In addition to the considerable efficiencies that the private sector can provide in comparison to federally managed environmental remedies, our creative approaches to reduce remediation costs, have included:

- Establish Land Use Covenants restricting use to commercial or industrial operations
- Design the remediation effort in concert with any redevelopment plans, such as locating a pavement feature where a remedial cap would be constructed.
- Consolidate waste onsite to reduce remediation costs and eliminating multiple sites that require similar long term monitoring and maintenance
- Establish natural background concentrations of chemicals to provide framework for evaluating risk and a sensible cleanup standard for metals and some typical prevalent organic compounds
- Alter the zoning to reduce remediation costs by relocating residential and schools away from significant contamination.

- Implement the remedy as part of the redevelopment construction.

Development of Cleanup Levels

DoD typically performs very costly and detailed human health risk assessments (HHRA) and ecological risk assessments (ERA) to evaluate risk and establish appropriate cleanup levels for a site. These assessments are typically loaded with assumptions, controversial, and fraught with costly debate between consultants and regulators. Instead, there already exist well-established chemical specific concentrations that are widely used to screen risks:

- USEPA's Regional Screening Levels (RSLs), formerly called Preliminary Remediation Goals (PRGs), address concentrations in soil, air, and water.
- DTSC's California Human Health Screening Levels (CHHSLs) address concentrations in soil, though these are not consistently applied by DTSC and some staff prefer the RSLs.
- Regional Water Board's Environmental Screening Levels (ESLs) address concentrations in soil and ground water.
- OSHA and the USEPA have also established indoor air quality standards, which can be predicted based on soil gas concentrations.

While none of the above standards are formal remediation cleanup levels, in practice they are widely used as such because exceeding these concentrations is an indication of a potentially significant risk. Thus, concentrations below these levels would be indicative of no potentially significant risk. It is important to note that because risks can be compounded among multiple chemicals, use of these screening levels becomes somewhat more complicated when there are several chemicals at or near the screening level. Nonetheless, in general it is far simpler and cost effective to abide by these levels when designing a remedial action. In those cases where a chemical does not have a screening level, though not common can happen, then an HHRA and ERA may be necessary, depending on the proposed land use.

In addition to using established screening levels, we would also characterize background concentrations for some common inorganic and organic compounds that are at the Arsenal, such as lead, arsenic, and polynuclear aromatic hydrocarbons (PAHs, sometimes called PNAs). Finally, ERS has routinely and successfully developed background concentrations at many former military sites in California and environmental regulations cannot compel remediation to a concentration below background.

We note that nearly all metals and some radionuclides have a natural background concentration because they are associated with geologic materials. Some PAHs have a natural background concentration because they are a consequence of fire. There are many areas of California where natural background concentrations exceed screening levels. Therefore, establishing background concentrations at a remediation site is a critical early step in developing site specific cleanup levels. There are many chemicals that are considered unnatural and without a background concentration, which would then default directly to the established screening levels.

AGREEMENT TRACK

Our approach is centered on developing a **Voluntary Cleanup Agreement** (VCA) with the City, USACE (including the US Army), and DTSC. In the event the USACE is reluctant to directly engage in a VCA, we recommend pursuing the related **PRP Process** available within the FUDS policy, which requires US Department of Justice (DOJ) involvement. These approaches are similar in their technical needs, and with the exception of the DOJ, involve the same parties and most of the strategic elements. The main difference is likely to be the additional time and transactional costs associated with the more formal PRP Process.

The ERS Team has the experience and relationships to pursue the VCA or PRP Process with the USACE. Furthermore, we have successfully negotiated similar agreements with the military. Almost all of these agreements required us to implement the following steps to motivate all parties to approve and sign:

- Creative approaches that reduce remediation costs, for example:
  - Implement Land Use Covenants restricting use to commercial or industrial operations
  - Coordinate the remediation effort to the redevelopment plan, such as locating a pavement feature where a remedial cap would be constructed
  - Consolidate waste onsite to reduce remediation costs and eliminating multiple sites that require similar long term monitoring and maintenance
  - Establish natural background concentrations of chemicals to provide framework for evaluating risk and a sensible cleanup standard for metals and some typical prevalent organic compounds
  - Alter the zoning to reduce remediation costs by relocating residential and schools away from significant contamination
  - In practice, investigation and remediation costs performed by the private sector are significantly lower than when performed by the federal government, including USACE. Furthermore, the overall cost to remediate contamination caused by military and non-military activities in a single design, implementation, and documentation effort would be much lower than if performed separately. For these reasons we have routinely been successful in receiving federal funds to implement a lower cost, more efficient, and faster tracked remediation effort.
- Acquire federal funds for remediation
  - We have successfully negotiated many Environmental Services Cooperative Agreements (ESCA) that transfer funds from the Pentagon and cover remediation costs
  - All of our agreements to date have included sufficient funds to reimburse our client's upfront transaction costs, including environmental consulting, legal support, and insurance

The City is under increasing pressure from the DTSC to remediate the Arsenal, and from those owning land and/or seeking to develop land in the Arsenal to obtain an agreement for federal funding. Alleviating the environmental impacts at the Arsenal would remove a significant obstacle to redevelopment, which is in the economic interest of the City.

DTSC

Remedial Investigations have identified significant widespread environmental impacts and risks at the Arsenal. Consequently, the DTSC has been increasing its pressure upon the City, and to some extent USACE, to compel remedial action. According to USACE, DTSC understands the USACE position with regard to the FUDS policy (see below), and believes that the PRP option, with support from the United States Department of Justice (DOJ), is more likely to obtain some federal funding of the remedy.

USACE

USACE asserts that under FUDS, they are not responsible for the remaining chemical contamination at the Arsenal that is also co-incident with contamination sourced after the facility was transferred in the 1960s, even if that contamination is due to historical military activities. The USACE also concludes that most, if not all, of the remaining contamination due solely to military activities and not co-incident with post-transfer activities does not rise to the level of significant risk and does not warrant remediation. DTSC does not agree with this USACE conclusion. The USACE states the cleanup of munitions (UXO, MEC) at the Arsenal is complete, which is consistent with the limited additional UXO (reportedly 3 or 4 items) that have been identified in the last few years. Discovery of UXO at this rate is similar to what is found at the Presidio in San Francisco and does not rise to the level of a significant UXO or MEC site. As required, the USACE will continue to respond and remove UXO as it is encountered.

FUDS Policy

Put simply, the FUDS Policy requires the USACE to clean up environmental impacts that are:

- Due solely to military activities
- Not comingled with non-military activities, which is described as "Beneficial Use"
- The contaminants have applicable preliminary remediation goals (PRGs) or maximum contaminant levels (MCLs)
- UXO and MEC, without exception.

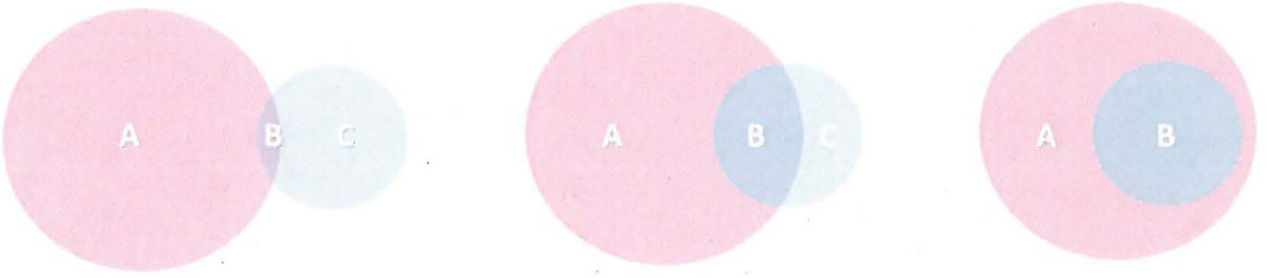
Put another way, the FUDS policy allows the USACE to avoid responsibility for environmental impacts due to military activities where those impacts are comingled with contamination caused by non-military activities.

For those sites with comingled contamination, the FUDS policy provides the PRP Process with the primary goal to "resolve DoD liability in a DOJ coordinated settlement providing DoD a complete release from all claims" (FUDS Policy, 2004). At its core, the PRP Process allocates the comingled environmental impact between the various responsible parties and requires the USACE to clean up the allocated share

of environmental impacts due to military activities. This process can be formalized in a Consent Decree between the Army, USACE, and the private parties. The Consent Decree also could be extended to include the DTSC, which would likely reduce transaction costs and restrict the DTSC to require cleanup in strict accordance with the PRP Process agreement.

Either approach, VCA or PRP Project, will rely heavily on a technically-based allocation of environmental impacts between the military and non-military activities. Below is a schematic of some possible findings from the technical evaluation of environmental conditions at the Arsenal.

Possible Allocation of Responsibility for Environmental Contamination



A = Contamination sourced solely from military operations at the Arsenal

B = Contamination comingled from both the Arsenal and City of Benicia, including private land owners

C = Contamination sourced solely from the City of Benicia, including private land owners

A + B + C = All of the contamination at the Arsenal

At a minimum, the VCA and the PRP Process will formalize the allocation of responsibility within the B area, which represents comingled contamination. As represented above, the amount of contamination due solely to the military, solely to the City and private sector, or comingled, is not currently well understood. Due to comingling, we note that the USACE identified 23 No DoD Action Indicated (NDAI) sites (Area B) in the 2004 Site Investigation Report. There is considerable disagreement between the USACE and the DTSC at 32 non-comingled sites (Area A) regarding the need for further action. Continued delay towards closure of these liabilities hampers the redevelopment of the Arsenal and economic conditions of the City.

Legal Issues and Strategies to Consider

The environmental impacts at the Arsenal, the transfer of the property to the City, the sale of some property to private parties, and the slow pace of environmental cleanup all pose potential legal liabilities and economic impact to the City. We suggest that the City should consider addressing these in the overall project, some which could be addressed in the agreement. These issues and approaches are listed according to the sources of contamination, represented as Areas A, B, and C above.

<u>Area A Issues and Strategies</u>

- Under FUDS, all environmental liabilities are the responsibility of the USACE to remedy. However, disagreements continue between the USACE and DTSC as whether or not the sites

require further action. Without formal DTSC closure of these liabilities, the sites are unlikely to be developed, which could impact the City's economy. The City's options to consider:

- Include requirements in the Agreement that compels the USACE to prioritize funding to promptly obtain closure with DTSC.
- Pursue legal remedy against USACE due to the transfer of contaminated property, associated environmental risks, economic impacts, etc.
- Utilize the Anti-Deficiency Act (ADA) to demonstrate that the USACE spent money for the wrong purpose by not prioritizing the environmental cleanup at the Arsenal, and thereby compel the USACE to prioritize cleanup at the Arsenal.
- Review the documents that transferred the Arsenal to the City to identify environmental obligations of the Army. If the Army retained obligations then those could be pursued.
- Review the City's insurance policies in place at the time of the transfer of the Arsenal for environmental exclusions. If there are no exclusions then environmental issues are considered included, and the City could pursue the policy to cleanup environmental impacts, including those due solely to military activities.

- Technical evaluation would characterize the environmental impact and estimate the cost to remediate.
- The City may be vulnerable to legal claims and remedies for selling or leasing contaminated property to a private party, which include diminution of property value and/or significant human health risks due to exposure.
  - Agreements from the VCA or PRP Process should preclude such claims.
  - Review sales and lease agreements between the City and private buyers and lessors and associated insurance policies and certificates for environmental obligations. These policies may provide opportunities to the City to cover remediation costs and protection from environmental claims.

Area B Issues and Strategies

- All of the issues associated with Area A apply to Area B, plus the following.
- Under FUDS, the PRP Process is used to address the DoD's liabilities for comingled environmental impacts.
  - We recommend pursuing a VCA before deciding to implement the PRP Process
- Technical evaluation will characterize all environmental impacts and allocate the impact between the military, the City and/or the private entity that leased or purchased the property. Costs to remediate all contamination will be estimated.

Area C Issues and Strategies

- Review sales and lease agreements between the City and tenants and associated insurance policies and certificates for environmental obligations. These policies may provide opportunities to the City to cover remediation costs and protection from environmental claims.

Legal Approach

The attorneys could begin negotiations immediately with their counterparts at the USACE, Pentagon, and DTSC.

- The objective of discussions with the USACE is to better understand their legal position, identify paths toward the VCA, and to make the USACE aware of the claims the City and property owners could file to recover damages for injury and remediation costs incurred to cleanup military environmental liabilities.

- The objective of discussions with the Pentagon is to make them aware of the remaining environmental issues at the Arsenal and to utilize existing relationships to bring pressure on the USACE to sign a VCA.

- The objective of discussions with the DTSC is to calm the delay orders and/or fines pending an agreement and source of funding. Making the DTSC aware of some of the general approach may be necessary in order to gain their support.

In the case the preferred voluntary agreement process is found to be infeasible, the legal team would pursue the USDOJ PRP Project approach. Here, the USDOJ gets involved to allocate the comingled liability between the DoD/USACE and current landowners, which are both PRPs. The allocation becomes the basis for a settlement that requires the DoD/USACE to cover their share of the remediation costs. These allocations are usually formalized in a USDOJ Consent Decree, which in rare cases includes DTSC in a Fed/State Joint Consent Decree, that we would negotiate for the City.

Following the transfer of the Arsenal to the City, the City sold or leased portions of the Arsenal to private parties. It is possible that these parties could claim damages against the City for receiving contaminated property and/or being exposed to chemicals that pose(d) a human health risk. At the discretion of the City, the legal team could begin to formulate strategies to protect the City from such claims. These protections could also include the insurance policies the City has or had in place at the time.

We recommend that the City consider delaying the start of VCA discussions with USACE until the first steps in the insurance and technical tracks are completed. This delayed start would allow the City to be better informed regarding the extent of the comingled contamination and the possibility for insurance to cover some or all of the remediation costs without involving the USACE. Assuming insurance is available to cover some portion of the environmental remediation, the likely effect would be to reduce cost to the federal government and encourage USACE to support the VCA.

The Role of Insurance to Support Agreements with DoD and DTSC

Insurance has played a *critical role* in many of the base transfers and liabilities associated with environmental conditions. It gives all parties a level of protection against costs and liabilities associated with both known and unknown pollution conditions.

Insurance allows DoD to cap their costs associated with both their known and unknown environmental liabilities. It provides them with the comfort that they will not have to return to the site due to ongoing unfunded environmental liabilities.

Insurance also provides DTSC with the assurance that adequate funds will be available to clean-up the site, even if the money provided by USACE is not sufficient, or if other stakeholders were to declare bankruptcy.

The Role of Public Relations

We propose to work closely with the City to inform the public and private property owners of the legacy environmental impacts associated with the military's use of the Arsenal. We also suggest that these efforts be oriented to organize and encourage the public to bring pressure on the military to assume proper responsibility for their historical actions. With a compelling technical argument, sufficient public pressure, the prudent legal actions, the USACE could be compelled to simply "do the right thing" and either take on the remedy themselves or use an ESCA to fund the remedy by the City.

The Role of the Team's Relationships

Successful implementation of the above strategy will rely on the strength of our team's relationships with decision-makers within the Pentagon, USACE, DOJ, and DTSC. Reaching a final agreement with the various parties will require extensive negotiation and trust among all parties. Our team offers established relationships with all key stakeholders, with the exception of the private landowners and public. The following table highlights those relationships.

Stakeholder		Team Member
City of Benicia	Mayor and Attorney	John Briscoe, Mark O'Brien
USACE – Sacramento District	Engineering and Environmental Section Chief and Technical Manager (Bruce Handel)	Steven Michelson
USACE – South Pacific Division	General Rock Donahue	John Briscoe, Mark O'Brien
	Sr Aides: Paul Robershotte and Pat Oyabe	John Briscoe
	Environmental Chief (Bruce Handel – as of Dec 2010)	Steven Michelson
Pentagon	US Army Attorneys and General	David Knisely, Mark O'Brien

US Department of Justice	Various Attorneys	David Knisely, Mark O'Brien John Brisoe, Larry Bazel, Tim Swickard,
CA DTSC	Attorneys, Senior Management, and Staff	Mark O'Brien, Steven Michelson David Knisely, Tim Swickard
Regional Water Board	Attorneys, Senior Management, and Staff	Mark O'Brien, Steven Michelson Larry Bazel, David Knisely

INSURANCE TRACK

Based on review of Arsenal transfer documents, sales and lease agreements and current and former insurance policies, (including the City's and former and current land owners' and tenants' policies) we would determine if the environmental liabilities could be reimbursed by making a claim against *non pollution exclusion policies*.

DESCRIPTION OF ORGANIZATION, MANAGEMENT and TEAM MEMBERS

ERS has assembled a team of firms offering relevant, successful, and highly experienced technical and legal services. This section summarizes our team and the appendix contains a detailed Statement of Qualifications for each firm. The ERS Team consists of:

Company	Primary Role	Sr Key Personnel	Services
Environmental Risk Services (ERS)	Prime	Mark O'Brien Steven Michelson	Program Management Project Management Technical environmental services
Briscoe Ivester & Bazel	Legal	Tom Briscoe Larry Bazel Christian Marsh	Negotiations with USACE and DOJ Defense from third party claims Environmental Compliance
Garrity & Knisely	Legal	David Knisely	Access to the Pentagon Negotiations with USACE, DTSC, DOJ
Dongell Lawrence Finney	Legal	Tom Swickard	Negotiations with USACE, DOJ, DTSC
Quantitative Risk Services (QRS)	Insurance	Mark O'Brien	Evaluating existing policies Brokering new environmental policies
Engineering/Remediation Resources Group (ERRG)	UXO/MEC	Brad Hall	UXO/MEC evaluation and remediation cost estimates

SUMMARY OF TEAM MEMBERS

Environmental Risk Services (ERS)

By design, ERS combines high-level environmental consulting services with insurance brokerage services to identify, manage, and resolve risk. We help our clients minimize risk and maximize opportunities with strategic management and resolution of environmental liabilities. It is imperative to fully understand the Benicia Arsenal's environmental conditions (such as Munitions and Explosives of Concern (MEC), Unexploded Ordinance (UXO), Hazardous, Toxic and Radioactive Waste (HTRW), Chemical Warfare Material (CWM)) in order to allocate risks and liabilities, determine environmental management options, and ultimately develop an engineering cost estimate the City's ability to negotiate a *Voluntary Consent Agreement* will be compromised. Therefore, we see our responsibility as to provide the City with the necessary information that is needed to successfully negotiate a *Voluntary Consent Agreement*, or another structured solution that allows the City to manage risks, and begin cleanup and redevelopment in a timely fashion.

In several cases, the Department of Defense (DoD) has recommended that ERS assist various parties, such as regulators, cities, military and developers in resolving technical issues in order to find environmental solutions. These failing efforts were the result of others making unrealistic and

uncoordinated assumptions about the site conditions, risks, liabilities, the military's willingness to negotiate and fund cleanup, land use plans, and developer flexibility. A profound lack of coordination of the various interests, or deferring too much leadership to the development community can pose significant, and at times insurmountable, obstacles to successful negotiations.

Briscoe, Ivester & Bazel

Attorneys at Briscoe Ivester & Bazel LLP are expert in remediation of contaminated soil and groundwater, hazardous waste, toxic torts, and liabilities under the Resource Conservation & Recovery Act, the Comprehensive Environmental Response, Compensation & Liability Act ("Superfund"), California hazardous waste law, and California Hazardous Substance Account Act. They regularly assist clients on environmental remediation matters, from initial environmental due diligence on a particular property to developing and negotiating strategies for remediation of contaminated sites. The firm's attorneys have successfully resolved contamination issues at dozens of properties since the 1980s by developing assessment and remediation strategies, negotiating with potentially responsible parties or state and federal agencies, by helping clients assess the risks posed by contamination, or, when necessary, by defending enforcement actions and litigating responsibility issues. This experience has included advising the cities of Vallejo and San Diego on the transfer and reuse of the Mare Island Naval Shipyard and Naval Training Center at San Diego.

Attorneys at the firm know the regulatory and permitting agencies at all levels, including the USACE, DTSC, USDOJ, the Regional Water Quality Control Board, and the US Environmental Protection Agency. The firm has developed good working relationships with these agencies, which helps us develop creative solutions and to advocate for its clients.

Garrity & Knisely

The law firm of Garrity and Knisely has developed extensive expertise in negotiating the transfer of military bases scheduled to be closed or realigned, and in the implementation of base reuse plans. Garrity and Knisely has provided legal services to public agencies and local redevelopment authorities all in support of negotiating the transfer of military bases along with ESCAs that would fund the cleanup of legacy environmental liabilities. These negotiations are complex and require federal approval at the highest levels of the Pentagon and State. David Knisely has routinely met with high ranking officials at the Pentagon, including the Army, USDOJ, DTSC, and the Regional Water Board. He is very well known and highly regarded in this arena and has strong positive relations will be critical to the success of this project.

Dongell, Lawrence, Finney

Dongell Lawrence Finney has substantial experience in representing various clients in matters involving state and federal Superfund (HSAA and CERCLA). These matters typically involve both defending against such claims, as well as pursuing cost allocation against those responsible for the contamination at issue. Tim Swickard was selected to join our team because of his tenure as a Senior DTSC attorney and has knowledge of negotiating successful agreements with the USACE, DTSC, and USDOJ.

Quantitative Risk Services (QRS)

Unlike all other environmental consulting firms, ERS has a sister company, Quantitative Risk and Insurance Services (QRS), which is a licensed and bonded environmental insurance brokerage company (#0D87970). Together, ERS and QRS provide our clients a coordinated blend of environmental engineering, scientific, and risk analysis services, coupled with specialized insurance brokerage services. In short, we reduce risk by adding certainty.

Our risk analysis integrates our expert knowledge of the environmental conditions and the needs of the transfer and supporting agreements with knowledge of the insurance marketplace and our clients' tolerance for risk. Modeling environmental risk scenarios allows more informed decisions about costs, benefits, risk management options, and negotiating the remedial costs. As a result, our clients receive superior representation in the underwriting process and the most favorable insurance policy terms, conditions, and premiums. While insurance may not always be a complete solution for our clients, it is a powerful tool to manage exposure to environmental liabilities.

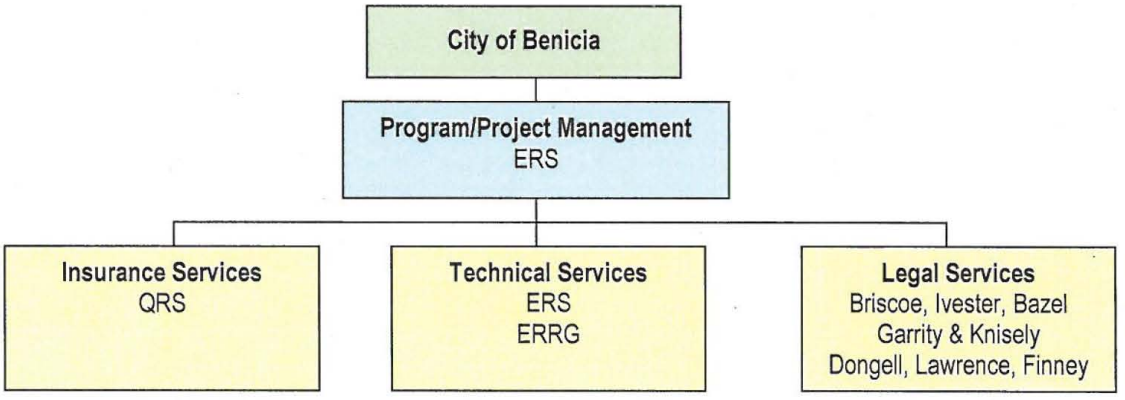
QRS core services include:

- Environmental liability management, Finite liability transfer,
- Insurance brokerage and policy negotiations on such products as pollution liability, remediation cost cap, and blended insurance programs,
- Insurance placement, policy maintenance, and claims representation and support.

Engineering/Remediation Resources Group (ERRG)

During ERRG 's time in the MEC industry they have compiled an exceptional record of accomplishments. ERRG has completed assessment and investigation projects for both public and private entitles under varying terrain, vegetation, and weather conditions. They fully understand that every site is unique and planned MEC operations will be dependent on its historical use, physical features, intended end use, state of available technologies and budgetary limitations. Through their extensive planning and execution of "end-use" driven remediation projects, they have developed innovative, unique and cost effective techniques that benefit all parties involved in the current and future usage of the site. They believe that the integration of different disciplines often times provide opportunities for gains in efficiency helping to reduce the overall time and cost required of a project. ERRG currently employs the senior UXO/MEC specialists, formerly with NGEM, that were responsible for the success remediation of the Tourtelot Site.

ORGANIZATIONAL CHART



SUMMARY OF KEY SENIOR PERSONNEL

Mark O'Brien (ERS, QRS)

Mr. O'Brien brings over 20 years' experience assessing and managing risks associated with major port operations, dredging, Brownfields, and DoD facilities for Base Realignment and Closure (BRAC) projects involving chemical and radioactive contamination. He advises the Institute for Defense Analysis (IDA) and Chaired the committee dealing with contaminated military properties. Mark was responsible for the nation's first early transfer of contaminated property to the private sector. Mark also is an environmental insurance broker.

Steven Michelson (ERS)

Mr. Michelson brings over 20 years of experience applying technical, economic, and regulatory analysis to the management and closure of environmental liabilities at industrial, port, mining, and military facilities, including BRAC sites. He has addressed environmental liabilities including chemical, radiation, and UXO/MEC contamination. He has particular expertise with NRDA and assessing hydrogeologic conditions and the interaction between ground water and surface water, including coastal aquifers.

John Briscoe (Briscoe, Ivester, Bazel, LLP)

Beginning with his time in the California Attorney General's Office, John has successfully litigated land use, environmental, and natural-resources cases for over thirty-eight years. In addition, John has represented clients in hundreds of matters before administrative agencies such as the USACE, USEPA, DTSC, and State and Regional Water Resources Control Boards. He represented the cities of Vallejo and San Diego in the closure and transfer of the former Mare Island Naval Shipyard and Naval Training Center at San Diego.

Larry Bazel (Briscoe, Ivester, Bazel, LLP)

Larry is a nationwide expert in Clean Water Act issues related to water quality and wastewater discharges, and has years of experience in negotiating and resolving contaminated properties issues under CERCLA, RCRA, and California hazardous waste laws. In the 1970s, before he began practicing law, he spent eight years as a hydrologist specializing in water pollution control, and as a consultant to the Environmental Protection Agency and the National Science Foundation. He litigates cases involving contaminated property and related environmental issues. He has litigated, negotiated with regulatory agencies, and advised potential buyers and lenders about dozens of contaminated properties.

Christian Marsh (Briscoe, Ivestor, Bazel)

Christian has been practicing land-use and natural-resources law for more than ten years. Before law school, he spent five years at the U.S. Department of the Interior and the White House Office on Environmental Policy, where he had occasion to work with USACE and DoD on flood management and base transfer issues at Alameda Naval Air Station. He was also responsible for assisting John Briscoe in representing the cities of Vallejo and San Diego on the transfer of the former Mare Island Naval Shipyard and the Naval Training Center at San Diego. Christian counsels clients on contaminated property matters, and he is responsible for ensuring compliance with the California Environmental Quality Act and the National Environmental Policy Act.

David Knisely (Garrity & Knisely)

Mr. Knisely is a nationally recognized expert regarding the completion of property transfers at closing and realigning military installations. He has a great deal of experience in matters related to managing the risks associated with the environmental clean-up at closing and realigning installations. He has been involved in coordinating clean-up and redevelopment priorities, and has successfully negotiated consent agreements, covenants not to sue, findings of suitability to transfer, environmental services cooperative agreements and related documents with federal and state environmental agencies and military departments. He has also completed the negotiation of clean-up privatization and early transfer agreements at closing Army, Air Force and Navy installations.

Tim Swickard (Dongell, Lawrence, Finney)

Mr. Swickard, in his former positions as Chief Counsel and later Director of Cal/EPA Department of Toxic Substances Control, oversaw the negotiation of the Voluntary Cleanup Agreements, Redevelopment Agreements, Cleanup Orders and cleanup criteria associated with the Brownfield redevelopment of former DoD bases including Fort Ord Army Base, Tustin Naval Air Station and Mare Island Naval Base, defense contractor facilities including Whittaker Bermite Santa Clarita and large and small contaminated properties including BKK Hazardous Waste Landfill, with Cal/EPA DTSC and USEPA, USDOJ and other governmental and private entities. Mr. Swickard negotiated the final model Joint Consent Decree language between the State of California and the USEPA and USDOJ for joint federal/state superfund sites.

Brad Hall (ERRG)

Mr. Hall is a Sr. Program Manager with more than 20 years of expert Environmental Remediation Services and Site Assessment experience. He offers substantial expertise concerning military installations and has overseen the investigation, remedial design, and implementation of UXO/MEC programs at several military installations. ERRG is respected by USACE Sacramento and the former NGEM employees that implemented the UXO remedy at Tourtelot now report to Mr. Hall.

ORGANIZATION QUALIFICATIONS

The ERS Team commits to provide the City with the resources necessary to competently implement this project. The Appendix lists the senior ERS staff for this project. ERS has been involved in the development, quantification, negotiation, and implementation of many transfers of military installations. ERS's primary role at these sites has been to represent the interest of the property recipient, such as developers and the Local Reuse Agency (LRA). ERS has served both as the Program Manager and Advisor to several LRAs and developers negotiating the voluntary consent agreements to support the transfer of military installations and associated funding for the remediation of environmental contamination. In all cases where ERS has served as the Program Manager and or Technical Advisor, the military base has successfully transferred, with the necessary funding to complete

Military Installation (sample list)	ERS Role	Early Transfer Status
Fleet Industrial Supply Center Oakland	Program/Technical Manager	Transferred *with Remedial Compensation*
Louisville Naval Ordnance Station	Program/Technical Manager	Transferred *with Remedial Compensation*
Naval Communications Center (INS) Stockton	Program/Technical Manager	Transferred *with Remedial Compensation*
Oakland Army Base	Program/Technical Manager	Transferred *with Remedial Compensation*
Point Molate Naval Fuel Depot	Program/Technical Advisor	Transferred *with Remedial Compensation*
Rough and Ready Island Navy Supply Center	Program/Technical Manager	Transferred *with Remedial Compensation*
Selfridge Air Force Base (Sebille Manor)	Program/Technical Manager	Transferred *with Remedial Compensation*
Badger Military Badger Military Ammunition Plant	Program Advisor	Transfer pending
Camp Bonneville Army Base	Program/Technical Manager	Transferred *with Remedial Compensation*
Concord Naval Weapons Stations	Technical Advisor	Transfer pending
Fitzsimmons Military Medical Center	Technical Advisor	Transferred *with Remedial Compensation*
Ft. McClellan Military Base	Technical Advisor	Transferred *with Remedial Compensation*
Mare Island Naval Shipyard Legacy Partners	Program Manager	Transferred *with Remedial Compensation*
Mare Island Naval Shipyard Weston Solutions	Program Manager	Transferred *with Remedial Compensation*
Presidio Army Base	Advisor	Transferred *with Remedial Compensation*

PROPOSED PROJECT SCHEDULE

Our proposed approach and scope of work contains two paths for the City to consider, and each path contains several critical decision points that will be based upon information that has not yet been developed. It is also very likely that new information will be revealed that will require the technical, legal, and insurance approaches and scopes of work to be modified. Consequently, it is premature to provide the City with a comprehensive schedule through to the Agreement.

While this may appear to be a process fraught with considerable uncertainty of success, it is not. The ERS Team has successfully implemented more than 50 similarly complicated projects involving the DoD, state regulatory agencies, municipalities, and insurance companies. Simply, it is critically important to remain flexible and to adapt to new information as it becomes available.

With that said, we can offer the following general schedule for the initial steps, assuming the necessary information is readily available. We expect that during the contracting phase that the City will determine with track or tracks they wish our team to follow. First, we will meet with DTSC to delay, if not eliminate, the issuance of the Imminent and Substantial Endangerment letter.

Insurance Track

We estimate that approximately 2 to 3 months will be required to evaluate documents transferring the Arsenal to the City, the insurance policies available to the City, and the lease and sale agreements and supporting insurance policies between the City, tenants, and private property owners. At the conclusion of this first step, we will advise the City as to the viability of pursuing insurance policies as a remedy for cleanup.

Technical Track

We estimate approximately 2 to 3 months will be required to evaluate the environmental history of the Arsenal and to review existing data describing environmental impacts that may have occurred after the Arsenal was transferred. This effort will first review the adequacy of the 1998 Records Research Report that identified 389 sites, many of which were dismissed in the 2004 Preliminary Assessment. This effort will also involve a review of files at the regulatory agencies to evaluate non-military impacts.

If we conclude that the military's effort was inadequate, we may recommend an independent review of the available records, as described above, to identify potential sites, which will likely require another 2 to 3 months. We would then compare our findings with those of the military to identify critical data gaps, which would require approximately 1 to 2 months.

If there are no critical data gaps, we would then begin to assess comingled contamination and allocation of environmental liability, and this effort could require approximately 2 to 3 months. If there are critical data gaps, we would provide recommended options on the next steps.

Agreement Track

We could begin discussions with the USACE concurrent with the above tracks. However, we suggest delaying the start of these discussions until the first steps of the insurance and technical tracks are completed. Information obtained from these two tracks will help the City to decide on the best course of action, insurance or agreement, or both in the event that adequate insurance is not available for all sites.

PROPOSED BUDGET

Similar to the above caveats on the project, it is premature to provide the City with a proposed budget until the City decides on the course of action it chooses to prioritize. In addition, the RFP is unclear on the payment mechanism, be it performance based, or time and materials as indicated in the contract. Performance based payments may also have options, that would provide payment upon completing interim milestones, partial payment until completion, financing, etc.

REFERENCES, RELATED EXPERIENCE and EXAMPLES OF WORK

The following lists relevant references for ERS. Many more references can be provided for our team members.

▪ Charles Foster - Former Executive Director, Port of Oakland	925.997.0185
▪ Richard Ascheris - Executive Director, Port of Stockton	209.946.0246
▪ Isabella Alasti – Senior Legal Counsel DTSC	714.484.5405
▪ Michael Waters –Senior Legal Counsel Department of the Navy	619.532.2312
▪ Ted Mankowski - Engineering Manager, Lawrence Livermore Laboratory	510.495.2012
▪ Jose Salcedo-Office of Military Facilities DTSC	916.255.3741
▪ Dr. Phillip Giovinnini-Senior Scientist RWQCB	916.464.4812
▪ David Knisley - BRAC Legal Counsel	617.367.3990
▪ Wayne Arny - Former Deputy Assistant Secretary of the Navy	703.697.6811
▪ Bill Baron - City Manager Clark County	360.397.2000
▪ William Cassidy - Former Deputy Assistant Secretary of the Navy,	202.255.2273
▪ Robert Davenport - Former Army Office of Legal Counsel	703.693.3665
▪ Howard Kelsey - Former Director of Navy Real Estate	202.685.9198
▪ Gordon Palmer - City Manager, City of Stockton	290.937.8212
▪ Miki Schneider - Director of Joint Powers Authority, Fort McClellan	256.236.2011
▪ Harry Zimmerman - Former Navy Director of BRAC	571.216.6716