

The Arnold Law Practice

San Francisco Office

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East Bay Office

3685 Mt. Diablo Boulevard
Suite 331
Lafayette, CA 94549
Telephone: 925-284-8887
Facsimile: 925-284-1387
*Please respond to our
East Bay Office*

BY EMAIL ONLY

December 23, 2014

Heather McLaughlin, Esq.
City Attorney
City of Benicia
250 East L Street
Benicia, CA 94510

Re: Tort claim in Benicia Arsenal – Historic Arsenal Park, LLC environmental
contamination & cleanup matter

Dear Heather:

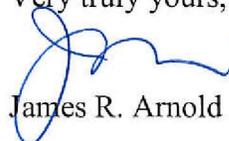
For your information, attached is a courtesy copy of Historic Arsenal Park, LLC's
claim against the City of Benicia.

We are serving this claim on the City Clerk today pursuant to the Government
Claims Act. Of course, we appreciate that the continuing environmental investigation
and cleanup of the Benicia Arsenal is a large and complex matter that will not be resolved
within the timeframe for the City's response prescribed by the statute. We continue to
anticipate an agreement with the City, pursuant to my November 7, 2014 email to you
and Mr. Rigau (for the Army), whereby the City will begin contributing to the rapidly
increasing costs from the DTSC's claims.

As for this tort claim, we would agree to a tolling agreement that would extend
the City's time to formally act, particularly if the City would agree to contributing to
these costs.

Please let me know as soon as possible.

Very truly yours,



James R. Arnold

Encl.: Gov. Code §910 claim by HAP, LLC against the City of Benicia

CLAIM AGAINST THE CITY OF BENICIA

Please return to the City Clerk, 250 East L Street, Benicia, CA 94510

Complete the following, adding additional sheets as necessary.

1. CLAIMANT'S NAME (Print): Historic Arsenal Park, LLC

2. CLAIMANT'S ADDRESS: P.O. Box 847, Benicia, CA 94510
(Street or P.O. Box Number, City, State, Zip Code)
c/o The Arnold Law Practice,
HOME PHONE: N/A WORK PHONE: (925) 284-8887

3. AMOUNT OF CLAIM: \$ Currently unknown, (Attach copies of bills/estimates)
but see Attachment, item 7.
If amount claimed is more than \$10,000, indicate where jurisdiction rests:
Limited Civil Case
Unlimited Civil Case Solano County Superior Court

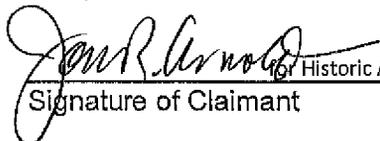
4. Address to which notices are to be sent, if different from lines 1 and 2 (Print):
James R. Arnold, Esq., The Arnold Law Practice
(Name)
3685 Mt. Diablo Blvd., Suite 331, Lafayette, CA 94549
(Street or P.O. Box Number, City, State, Zip Code)

5. DATE OF INCIDENT: Currently unknown. TIME OF INCIDENT: Currently unknown.
LOCATION OF INCIDENT: 50 Series Complex of the former Benicia Arsenal - see Attachment, item 5 for further details.

6. Describe the incident or accident including your reason for believing that the City is liable for your damages:
See Attachment, item 6.

7. Describe all damages which you believe you have incurred as a result of the incident:
See Attachment, item 7.

8. Names of public employee(s) causing the damages you are claiming:
Currently unknown.


Historic Arsenal Park, LLC 12/23/2014
Signature of Claimant Date

Any person who, with intent to defraud, presents any false or fraudulent claim may be punished by imprisonment or fine or both.

Note: YOU must file a claim in compliance with Government Code Section 911.2.

**CLAIM AGAINST THE CITY OF BENICIA
CLAIM FORM ATTACHMENT**

Claimant: Historic Arsenal Park, LLC

5. Date, Time, & Location of Incident

The actual date and time of day of the first incident which gave rise to this claim is unknown and cannot be known. Claimant became aware of the injury and the potential cause of the injury (damage or loss) when it received the California Department of Toxic Substances Control's Imminent and Substantial Endangerment Determination and Remedial Action Order dated June 24, 2014 (DTSC Docket No. I/SE RAO 13/14-008).

The general location of the "incident" is the former Benicia Arsenal, which was once owned in its entirety by the Surplus Property Authority of the City of Benicia. Specifically, the harm to Claimant arises from environmental contamination of the soil, groundwater, and air at real property currently owned by the Claimant, Solano County Assessor's Parcel Numbers 0080-28-0010, 0080-28-0030, 0080-28-0040, and 0080-48-0050, depicted in **Exhibit A** hereto (Exhibit A, Parcel Map and Vicinity Map, from the DTSC's Order). The property ("HAP property") is bordered on the south and west by Lincoln Street, on the northeast by Jackson Street, and on the southeast by Polk Street and Tyler Street.

The injury is ongoing.

6. Description of Incident; Basis for Liability

It is Claimant's information and belief that a variety of substances and their byproducts, potentially including but not limited to trichloroethylene, cis-1,2-dichloroethylene, vinyl chloride, benzene, ethylbenzene, and lead, have been released throughout the former Arsenal, including into and under the HAP property, and that the City of Benicia is liable for the releases which occurred during its ownership of the Arsenal property. The City of Benicia is liable in its own capacity and as the successor in interest to the Surplus Property Authority of the City of Benicia.

The City of Benicia (through the Surplus Property Authority of the City of Benicia) purchased the Arsenal from the U.S. Army around 1964 or 1965. Pursuant to a January 7, 1964 Master Lease with Benicia Industries, Inc., the City leased the Arsenal, including the area which is now the HAP property, to various industrial tenants. The City owned the Arsenal for about a decade, until it transferred title to Benicia Industries, Inc. in 1975. During the time that the City owned the Arsenal, its tenants released toxic substances on the property, causing injury to the environment and creating conditions that may be injurious to health. Those substances spread—and continue to spread—into the groundwater, soil gas, soil, indoor air, and outdoor air of the HAP property.

In addition, at all times relevant to this claim, the City of Benicia has owned and controlled the sewer and storm drain systems which service the Arsenal, including the HAP property. Until around 1969 or 1970, these systems discharged untreated industrial waste from

the Arsenal directly into the nearby Carquinez Strait. Thereafter, and continuing until the present, the Arsenal's sewer waste has been routed through City's waste treatment system. Claimant believes that the storm drain system continues to discharge into the Carquinez Strait.

Through this document, Claimant is filing continuing nuisance, trespass, and negligence claims against the City pursuant to various statutes, rules and regulations, including but not limited to the California Government Claims Act, California Government Code §§815.6 and 835; California Civil Code §§3479, 3480, and 3481; California Health & Safety Code §5411; the Porter-Cologne Water Quality Control Act, California Water Code §§13000 et seq.; the Nonvehicular Air Pollution Control Act, California Health and Safety Code §§41500 et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code §§25300 et seq.; the Hazardous Waste Control Act, California Health and Safety Code §§25100 et seq.; and California Civil Code §3422. Claimant seeks damages and/or injunctive relief for the investigation and remediation necessary to comply with the DTSC enforcement action, Docket No. I/SE RAO 13/14-008.

The release of toxic substances into and from properties owned by the City has caused, and continues to cause, injury to the environment and has interfered with the Claimant's free use of its property. According to the DTSC, business workers and construction workers at the HAP property could be exposed to the toxic substances via vapor intrusion and construction activities. According to California law and the DTSC, the groundwater beneath the HAP property is a potential source of public drinking water and, therefore, the release of toxic substances is also potentially injurious to public health.

Claimant will incur significant expenses investigating and remediating the injury caused by the releases of toxic substances in the Arsenal and the current presence of toxic substances at the HAP property. Extensive investigation and remediation will be required. The continuing nuisance can be abated at a reasonable cost by reasonable means.

7. Description of Damages

So far as is known at the time of filing this Claim, Claimant has suffered and continues to suffer damages, both general and special, the amount of which is unknown at this time. Claimant believes that these damages are, and will continue to be, in excess \$10,000 and in excess of the jurisdictional limits of a limited civil case.

The categories of damages which Claimant continues to suffer include, but are not limited to:

General Damages: Costs of environmental investigations, sampling, monitoring, cleanup, and related activities.

Incurred to date:

DTSC oversight costs through September 2014 ----- \$67,365.05

First two rounds of air sampling by
HAP's environmental consultant (AEI) ----- \$29,947.50 (est.)

Initial mitigation work done by AEI
after first round of air sampling ----- \$30,000 (est.)

Future:

Continuing oversight by DTSC ----- Unknown

Third round of air sampling
by environmental consultant (AEI) ----- \$14,000 (est.)

Remedial investigation ----- \$750,000 (est.)
Estimate by ERS Corp., environmental consultants for the City of Benicia.

Further investigation, remediation, etc. ----- Unknown

Special Damages: Lost business profits, including rental value, and/or loss of sale; costs of investigation and legal representation on behalf of Historic Arsenal Park, LLC, the City of Benicia, and other potentially responsible parties. Amount unknown.

Equitable Relief: Injunctive relief to have the City perform any further investigation and remediation, and/or related activities, necessary to comply with the DTSC's requirements.

EXHIBIT A
HISTORIC
ARSENAL
PARK, LTD

Solano Co.
Assessor's
Parcel Nos.
0080-028-010
0080-028-030
0080-028-040
0080-028-050

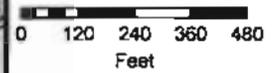
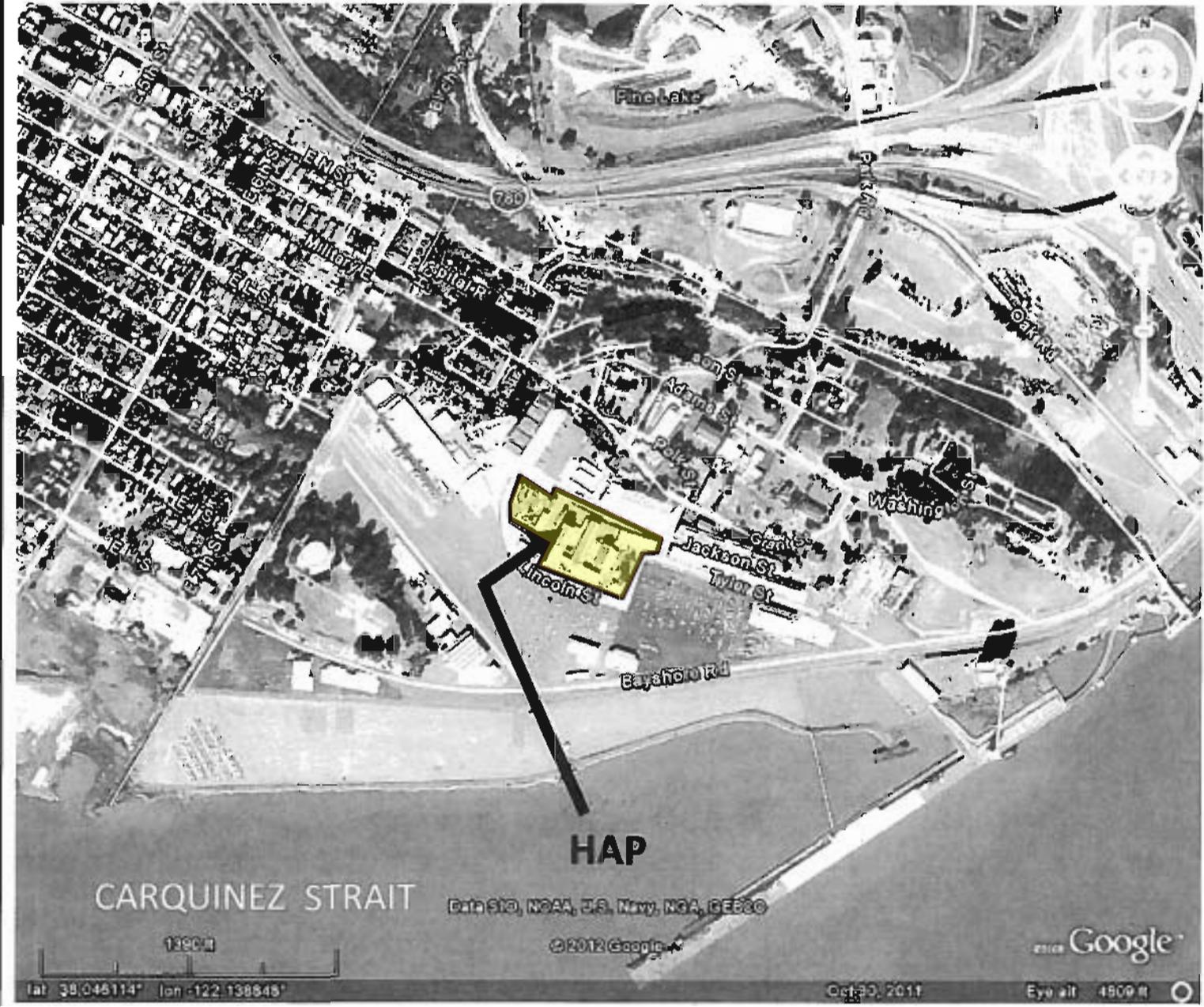


Exhibit A
Claim against City of Benicia by HAP, LLC
12/23/14

EXHIBIT A

HISTORIC ARSENAL PARK, LTD



1 CERTIFICATE OF SERVICE

2 I am employed in the County of Contra Costa, State of California. I am over the age of 18 and
3 am not a party to this claim. My business address is The Arnold Law Practice (East Bay
Office), 3685 Mt. Diablo Blvd., Ste. 331, Lafayette, CA 94549.

4 On December 23, 2014, I served the attached:

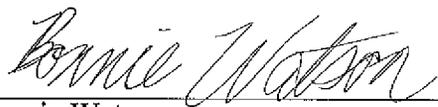
5 **CLAIM BY HISTORIC ARSENAL PARK, LLC**
6 **AGAINST THE CITY OF BENICIA IN ITS OWN CAPACITY**
7 **AND AS THE SUCCESSOR IN INTEREST TO THE SURPLUS PROPERTY**
8 **AUTHORITY OF THE CITY OF BENICIA**

9 on the City of Benicia by mailing a true copy thereof, enclosed in a sealed envelope with
10 postage thereon fully prepaid, via certified U.S. Mail, tracking number 7006 0100 0005 0008
11 6735, addressed as follows:

12 City Clerk
13 City of Benicia
14 250 East L Street
15 Benicia, CA 94510-3239

16 I deposited such envelope in the mail at Lafayette, California. I am "readily familiar" with the
17 firm's practice of collection and processing correspondence for mailing. Under the practice it
18 would be deposited with the U.S. Postal Service on that same day with postage thereon fully
19 prepaid at Lafayette, California in the ordinary course of business.

20 I declare under penalty of perjury under the laws of the State of California that the above is true
21 and correct, and that this declaration was executed on December 23, 2014, at Lafayette,
22 California.

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Bonnie Watson