

MARILYN BARDET
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(707) 745-9094 mjbardet@sbcglobal.net

April 10, 2008

Planning Commissioners: Chairman Fred Railsback,
Dan Healy, Rick Ernst, Richard Bortolazzo, Brad Thomas, Lee Syracuse,
Rod Sherry
250 East L Street
Benicia, CA 94510

Comments Regarding Benicia Business Park -
Vesting Tentative map, Master Plan and Rezoning

Dear Chairman Railsback and Commissioners,

To begin, I am incorporating by reference all comments submitted by members of Benicia First, as well as all comments submitted by myself and others on the DEIR and Supplement to Response to Comments, and all comments subsequently presented to the City Council and Planning Commission, in person and by written submittals.

The goal of Benicia First and many in our community is to ensure that we get an "alternative project" whose design would best reflect the general plan's goal for ecological and economic sustainability in the 21st century: to protect existing natural resources, create energy efficiencies and balance the needs of all living things.

While the principle of SUSTAINABILITY has been held in highest regard globally for decades now, the policy considerations that define it are fast-changing and adapting to new science. As a result, the response must be integrated, requiring cooperation and collaboration of various key disciplines: ECOLOGY, URBAN PLANNING, DESIGN, ENGINEERING and CONSTRUCTION.

DESIGNING for 21st Century DEVELOPMENT of a business park must be comprehensive: to address all matter of environmental concern from DESIGN to CONSTRUCTION, to minimize CARBON FOOTPRINT—that is, to significantly reduce GREENHOUSE GAS EMISSIONS.

It's interesting to note that throughout the applicant's proposed Addendum, the undeveloped areas of the project site are referred to as "vacant", implying that the only thing that would be recognized as "occupying" the land would be buildings and other human-built amenities such as roads. We are glad to see recent revisions to the project that reflect consciousness that "vacant land" is an existing resource worthy of protection and conservation within the framework of a development plan, for the sake of all living things.

The economics of designing and building "green" will pay off: right now, enormous money is having to be spent to "re hab" deteriorating and vacant strip malls and poorly designed developments that never had to

meet standards we now see as the only ones that make sense in a warming world.

Smart money is betting on a "green" "clean tech" companies. Why not invite Smart Money to Solano County—to Benicia, as the County's gateway? Why waste time and money and energy, doing the wrong thing or the most expedient thing?

How the currently proposed "revised" project would ultimately contribute to a "sustainable Benicia, and by extension, a "sustainable region" is the fundamental question, not easily answerable by assertions as made in the applicant's Addendum. We need to test these assertions against best principles of analysis and fact and recognized criteria of evaluation.

Any and all proposed new development in California must address AB32, the Global Warming Solutions Act. The best way to to achieve a reduced carbon footprint and ecologically superior project is to require "low impact" design, and also, require that the master plan and any future modifications, including, but not limited to grading plans, road layout and lot distribution, and with regard for traffic and air pollution impacts, be evaluated at the design level under the latest version of the LEED rating and certification system, called the "LEED Neighborhood Development". I will describe this system of evaluation further on, recommending "LEEDS" be made more than a possible cherry-picked "guideline" but that a requirement of any future project approval be hinged on certification under LEED-ND.

What is LEED Certification?

LEED stands for "Leadership in Energy and Environmental Design". It is a rating system that started out primarily to evaluate buildings and their immediate site plans for sustainability by addressing all aspects of design, engineering and construction with a focus on energy efficiency and resource conservation. Now, the LEED system has been expanded as a comprehensive tool for designing and evaluating and rating development proposals for whole neighborhoods, in relation to their surroundings and to a region, whether these neighborhoods are residential, mixed use, commercial or light industrial. Under sponsorship of the US Green Buildings Council, the Natural Resources Defense Council and the Congress for the New Urbanism, this newest LEED rating system called LEED-Neighborhood Development has been tested throughout the world, in a pilot study over the past year and a half, involving over 240 developments world-wide. This pilot study includes 35 projects in California and many elsewhere in the US.

Since LEEDS-ND officially establishes new comprehensive universally applicable standards for site design and building, certification of a business park plan under LEEDS-ND would guarantee interest in the business community among those high-value companies that subscribe to 21st century ecological principles and are developing technologies for reducing energy consumption and alternative energy supply.

It's difficult to imagine how we will achieve a campus-like development with a key "clean tech" tenant or tenants, without having the involvement of such potential tenants in the design and layout of the site. An example of the type of aggregate business concept would

be Oyster Point in South San Francisco where biotech companies located around a key tenant, Genentech. Oyster Point offers many recreational amenities including a marina, restaurants and hotel and transport hub near freeway. To my knowledge, Oyster Point is not a LEED certified development, but it was designed to attract certain kinds of tenants at the time the plan for the park was initiated.

The obvious location for such a consolidated design concept is in the area centrally located, above East 2nd St., in the Phase II area of the project. This area is prime for an office park development that would draw interest in the Bay Area if it were designed and evaluated under the LEEDS-ND rating system. Saving the hill within that area, eliminating as much as possible the current level of grading, would further save natural topography and make for a much more attractive design opportunity for a campus-style development.

The "revised" project now being proposed is an improvement over the unacceptable original one, combining elements of several of the environmentally superior alternatives recommended in the EIR. However, right now, we can't verify the statements and claims made about reductions in project impacts, especially those concerning traffic and air quality impacts, as well as grading.

The new project retains basic design features of the original project: for example, out-moded cul-du-sac suburban style road layout and location of primary commercial zone near the freeway, both concepts encouraging auto transit and lack of walkability.

We don't want our city to be left behind, out of the loop, with a 20th century business park plan that doesn't offer the kind of 21st century design innovations that "clean tech" businesses would see as a major compelling region to locate here.

IF WE GET IT RIGHT:

Our city has so much to offer potential "clean tech" businesses of the future, on which Bay Area venture capitalists and innovators are betting on. We offer attractive "natural capital" (hills, waterfront, views); our prime location between the Bay Area and Sacramento along I-680 corridor; our historic downtown; all our family-centered community amenities and good schools; and especially, a well-educated citizenry--our local "employment pool" for types of 21st century green businesses that would locate here, if. . .

To squander the opportunity now to make the best, most sustainable, attractive green business park in Solano County would be a colossal, costly error--a significant loss of inherent value in our resources, natural beauty and location. To do it "wrong", would represent a "mark down" against the welfare and well-being of our community. Cumulative traffic impacts and air pollution can be further reduced by a well-designed project.

FURTHER REQUIREMENTS for CONDITIONS of APPROVAL:

I understand that LSA and the applicant have agreed to do an official independent Addendum that would include additional analysis with regard to traffic analysis, AB32, and grading. It is imperative to REQUIRE rather than suggest conditions:

1. REQUIRE LEED-Neighborhood Development as a rating system and seek to achieve highest certification rating possible: silver, gold, platinum. [See LEED-ND Pilot rating system, pdf file, Introduction, "LEED Neighborhood Development Pilot Program, Certification Process, page2. Also US Green Building Council website.]
2. REQUIRE campus style development of East 2nd corridor in Phase II. Further reduce grading, to avoid destruction of hills along East 2nd in the Phase I and II areas, to provide opportunity for more aesthetic and conservation-oriented "campus-like" design features in the layout.
3. REQUIRE that the 15 acre parcel zoned commercial, in Phase I, be first considered for office development, with active recruiting of such potential tenants, to encourage "campus-style" office development along East 2nd.
4. REQUIRE further geotechnical studies that would analyze the newly revised, reduced project footprint with regard to the specific location of cuts and fills and projected engineered slopes, etc., to determine the safety and stability of all proposed changes and to avoid any possibility of future "on site" remedies that could include further grading. [Example: the current ridgeline grading violation problem at Seeno's San Marco development contested by Save Mt. Diablo and other groups. See CC Times reports, week of April 7th.]
5. REQUIRE that traffic impacts be further reduced by consideration of reduction of project scope in Phases III, IV and V, with aim to concentrate office park development and density of use along East 2nd.
6. REQUIRE analysis of air pollution impacts at Semple School, with current monitoring equipment available through community air monitor (UV Hound) at locations within the school buildings and also on the playing field, to identify current contaminant levels of ambient air attributable to cumulative daily traffic at I-780 and East 2nd intersection and along East 2nd corridor. So-called "unavoidable" air pollution attributable to increased traffic from the project area means increases in greenhouse gases, as well as, locally, threats to the health and safety for Semple School children and neighborhoods surrounding East Second Street.
7. REQUIRE provision and facility for more alternative public transport.
8. REQUIRE recreational bike and walking trails through the project area open spaces, connecting to Bay Trail and leading out of the park to Southampton residential neighborhoods.
9. REQUIRE that road layout be revised for all phases of the project, to ensure best accessibility and "walkability", according to LEED-ND criteria.
10. REQUIRE that commercial development be limited to tenants that would be compatible and contributive to the highest quality business office park along East 2nd, and serve the community.
11. REQUIRE a "resource manager" be assigned and paid for, to assure

the proper management and maintenance of the open space within the project footprint, including the open drainages, riparian corridors and seasonal wetlands as well as field habitat for special species.

* * * *

Thank you for consideration of my recommendations, especially with regard to LEED-ND evaluation and certification as a requirement for project approval.

Sincerely,

Marilyn Bardet

Rhonda Corey - Planning Commission Meeting and Seeno Project

From: <priswhite@aol.com>
To: <geleccion@ci.benicia.ca.us>
Date: 4/10/2008 2:55 PM
Subject: Planning Commission Meeting and Seeno Project

To The Members of the Planning Commission

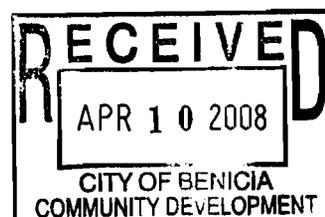
As a resident of Benicia I would like to request that you send the Seeno Project back to the Seeno people for a major revision. The project should conform to the City of Benicia's General Plan.(Could it actually be approved if it didn't?) As we all know, the EIR was approved separately from the Project. Personally, I did not understand that decision as the two pieces make up the whole. Many of the facts in the EIR, like traffic congestion, grading, and the effects on Robert Semple School, made me extremely concerned. I won't go on because clearly the Planning Commission is aware of the EIR.

However, I am counting on the Planning Commission members to do the right thing . When you deliberate this evening please take a long hard look at what is before you and request that Seeno gives Benicia a project we can all be proud of for a City we love. I know all of you have the best interests of Benicia at heart.. Many of us plan to live here for a long time and we are all going to either benefit from or endure the results of your decision. Couldn't you just simply say "This does not conform to our General Plan. You are going to have to give us something better?"

Sincerely

Priscilla Whitehead
288 W J St

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**347 Goldenslopes Court
Benicia, CA 94510**

Members, Planning Commission
City of Benicia
250 East L Street
Benicia, CA 94510

April 9, 2008

Dear Commissioners:

This letter addresses the public hearing item on the April 10th Planning Commission meeting for the review of the Benicia Business Park project. I have had an opportunity to review the information provided for this item. While I live several miles from the proposed project, its density is so great that it will overwhelm my neighborhood with traffic, noise and air pollution. The available information justifies rejecting the resolution proposed by staff and denying this project. The remainder of this letter will highlight some of this information for the Planning Commission.

1. The Addendum to the Environmental Impact Report (EIR) is inadequate and incomplete. The staff report concedes that the conclusory statements of the Addendum need to be supported by data and analysis. Without additional study, the Addendum cannot be used to determine whether the project will involve new significant environmental impacts or substantially increase the severity of previously identified impacts in the EIR. The staff report indicates the Addendum reflects the judgment of the developer. The determination of facts regarding the ecological impacts of the project is vested with the City, not the developer. The Planning Commission should recommend denial of the revised project because its approval is not adequately supported by the EIR.

2. Traffic congestion is worse than forecasted because the EIR assumes freeway capacities for I-780 that are not achievable. This issue was raised after reading EIR Response E 2-2 which addresses a question from Caltrans about the freeway capacities assumed in the EIR. A capacity of 2,200 vehicles per hour per lane is assumed for freeways with two lanes in each direction. This assumption overestimates capacity because it does not acknowledge conditions on I-780 that can reduce freeway capacity.

This freeway traverses a significant grade between East 2nd Street and Southampton Road, which carries the highest volumes on I-780 attributed to the project. This grade reduces the capacity of this freeway compared to other freeways on flat land. The project includes limited industrial uses that generate truck traffic. Trucks move slower than passenger vehicles, particularly when on grades. No response was provided in the EIR to these comments. The EIR should demonstrate that the condition prevailing on this section of I-780 (e.g. vertical grade and vehicle mix) is consistent with the freeway capacity assumed in the EIR. If the prevailing condition on I-780 is not consistent with the freeway capacity assumed in the EIR, then its findings on freeway congestion at this location would be underestimated.

3. The proposed resolution leaves the City solely responsible for ensuring that residents of Seaview and East Tennys can safely enter East 2nd Street under traffic conditions created by the project. The EIR forecasts that traffic on East 2nd Street north of I-780 will increase from 11,000 vehicles per day to 37,900 vehicles per day by the year 2030. Using the methodology of the developer's consultant, the revised project will reduce this forecast to about 34,000 vehicles per day. With such traffic volumes on East 2nd Street, it is reasonable to expect that traffic from the unsignalized intersections at Seaview and East Tennys may not be able to safely enter this street without signal controls or other mitigation. The EIR could easily determine if traffic signals would be warranted at these locations under Year 2030 conditions, yet it failed to provide such an analysis when requested to do so. Failure to address this issue in the Conditions of Approval will result in the City being solely responsible for funding corrective measures in the future for a traffic condition created by this project.

5. The proposed resolution provides inadequate mitigation for impacts to Lake Herman Road. Prior comments were made about the need to upgrade Lake Herman Road in order to safely accommodate the commute traffic generated by the project. Response E 7-7 in the EIR claims that the additional traffic generated by the project on Lake Herman Road will not alter the safety of a roadway such that a physical impact would result.

The EIR should acknowledge that it is required by state law to examine and analyze the effects of the physical change in the environment after the project is commenced and completed. The existing setting for Lake Herman Road as described in the EIR shows that it carries about 300 vehicles in the AM peak hour and 400 vehicles in the PM peak hour. The EIR shows the project will expand the use of Lake Herman Road by adding 1,200 more cars in each peak hour. Using the methodology of the developer's consultant, the revised project would contribute between 800 and 900 more cars in each peak hour. This is a physical impact on the environment that would result from the project. This project impact generates a commute load on Lake Herman Road that is incompatible with its current design as described in prior comments on the EIR. The consequence of this physical impact will be a greater number of collisions and increased pressure by the driving public to upgrade Lake Herman Road to serve the commute load generated by the project. Examples of upgrades typically sought for rural roads experiencing commuter traffic include shoulder widening, curve realignment, and median barrier construction.

Condition 89 requires the applicant to provide Class II bike lanes (e.g. widen shoulders) along Lake Herman Road between Industrial Way (presumably its extension) and A Boulevard. Condition 98fii requires the applicant to widen Lake Herman Road from A Boulevard to I-680. Condition 99iv requires the applicant to provide shoulders and Class II bike lanes on Lake Herman Road from Reservoir Rd (which presumably will be removed by the project) to the westerly city limit. These conditions leave a three-mile stretch of Lake Herman Road west of the city limit without any upgrades to accommodate this project's commute traffic. Failure to address this impact in the project

approval will shift to future taxpayers the burden of mitigating a significant physical impact on Lake Herman Road created by this project.

6. Approval of this project will blight the major entrance to downtown Benicia. Conditions 164 and 174 propose to add an additional lane to East 2nd Street under the freeway and modify the eastbound (EB) offramp to allow right turning vehicles to exit the freeway without stopping. Prior comments were made about the feasibility and effectiveness of this mitigation measure. Response E 7-10 relies on the 48-foot width of East 2nd Street under the freeway to demonstrate the feasibility of the proposed lane configuration. This response is inadequate for the following reasons:

- Four twelve-foot lanes will use all available roadway width, including the shoulder areas currently available to bicyclists as a bike route. Bicyclists will no longer have space available on East 2nd Street as they pass under the freeway. This mitigation measure works against Mitigation Measures TRANS-24 and AIR-2 which attempt to encourage more bicycle use.
- Northbound bicyclist traveling through the interchange area will become trapped between two lanes of traffic as vehicles enter East 2nd Street using the new northbound lane that will serve vehicles turning right from the EB offramp. Such a condition also seems counterproductive to Mitigation Measures TRANS-24 and AIR-2.
- This section of East 2nd Street is constrained by two intersections that are less than 500-feet apart. The left turn lanes cannot be extended so vehicles waiting to turn left onto the freeway could easily back up into the adjacent through lane.
- Installing signal controls on the EB offramp's "free right-turn lane" to accommodate pedestrians will reduce the ability of the free right turn lane to serve Cumulative Plus Project traffic volumes without causing backups onto the freeway.
- Caltrans controls the signals at the freeway ramps and will require that Conditions 164 and 174 meet Caltrans standards. Before the Planning Commission suggests Conditions 164 and 174, the City should identify the Caltrans standards that apply to this improvement and show that these standards can be met.

Given the above circumstances, the EIR does not provide a reasonable basis for finding that the proposed lane configurations and signal controls will reduce impacts to a less than significant level at the I-780/East 2nd Street interchange area. A feasible and effective mitigation measure needs to show that:

- a shoulder area for the bike route can be provided in each direction pursuant to the General Plan;
- the length of the northbound and southbound left-turn lanes between the ramp terminals will be sufficient to accommodate Cumulative Plus Project traffic volumes;
- the proposed signal control for the EB offramp's "free right-turn lane" will not cause vehicle queues to extend onto the freeway under Cumulative Plus Project conditions; and
- Caltrans design standards for this location can be met.

7. Conditions 164 and 174 do not assure impacts at the I-780/East 2nd St. interchange will be fully mitigated. These proposed Conditions of Approval fail to include installation of signal controls for the “free right turn lane” as referenced in Response E 7-10. Without this new signal, pedestrians on the east side of East 2nd Street would be unable to cross the “free-right turn lane” and proceed from one side of the freeway to the other side. No information has been provided to substantiate the claim that Condition 164 and 174 will result in acceptable levels of service by Year 2030, assuming signal controls for the “free right turn lane” and assuming the conditions Caltrans would impose.

8. The Commission’s resolution leaves the City responsible for funding the operating costs for extending bus service to the project. Under Condition 1031, the project is only responsible for the capital costs for extending bus service to the project and for operating costs for one-year. Response E 7-13 claims that requiring the project to provide additional funds to Benicia Transit “*would likely exceed constitutional nexus requirements*” and would be inconsistent with past approaches in Benicia to transit. The EIR provides no explanation of these constitutional nexus requirements to support this conclusion. Furthermore, these claims are puzzling given the EIR’s description of the transit impact on page 247 which states:

“The project includes no provision for transit and would conflict with City and regional policies supporting alternative transportation. Transit routes connecting the project site and Benicia with regional transportation centers are required to ensure adequate transit service for commuters to and from the proposed project.”

Providing bus stops and buses will not ensure adequate transit service if additional drivers are not available to drive the additional buses. The EIR’s unsubstantiated claim that tax revenue will be sufficient to operate these additional buses could also be used to claim that tax revenue will be sufficient to purchase the additional buses.

Response E-13 should have explained the constitutional nexus requirements for mitigation measures. Under these requirements the City must show that (1) the mitigation is directly related to the impacts of the development giving rise to the mitigation, and (2) the nature of the mitigation is roughly proportional to the impacts of the project. Operating funds are needed in addition to capital funds to provide adequate transit service, thus the mitigation is related to the project’s impact. The project’s contribution to operating funds would be limited to the amount necessary to provide the expanded service, thus the mitigation is roughly proportional to the impact of the project.

Finally, the need for this mitigation measure (TRANS-23) to be consistent with past approaches in Benicia to transit mitigation is irrelevant to determining the adequacy of a mitigation measure. Even if the City’s prior approach to mitigating transit impacts was limited to capital funding, this does not mean that such an approach was adequate then, or that it is adequate now given the facts as presented in the EIR for this project.

9. The City fails to meet its obligation to consider including the Intermodal Transit Facility as a condition of approval to help offset significant and unavoidable air quality impacts. The EIR has identified regional air pollution as a significant unavoidable impact of the project. The developer's addendum provides no evaluation of whether the revised project reduces the significant air quality impact to a less than significant level.

The purpose of Condition 186, as described in Mitigation Measure AIR-2, is to implement feasible and effective measures in further reducing vehicle trip generation and resulting emissions from the project. Response E 7-14 concedes that an intermodal transit facility within the project could increase transit use, much in the same way as providing bus turnouts, benches and shelters, which are already part of Mitigation Measure AIR-2. The EIR's conclusion that this additional mitigation measure would not reduce air quality impacts to a less than significant level does not deny the City's obligation to include in Condition 186 all feasible and effective mitigation measures that will help offset significant unavoidable impacts.

Alternatively, the City could have included the Intermodal Transit Facility as a project requirement similar to Condition 1031, which requires the applicant to provide a graded 7-acre minimum site for a future City corporation yard in Phase 2 of the project at the southeast corner of Industrial Way and A Boulevard. The EIR analysis supports a Condition of Approval that would require the applicant to provide a graded site for a future City Intermodal Transit Facility integrated into the development of Phase 1 of the project, to pay fees to fund construction of the facility, and to maintain any on-site landscaping in perpetuity. Unfortunately, no such condition is proposed by staff.

10. The City fails to mandate implementation of all measures from Mitigation Measure AIR-2 in Condition 186 to help offset significant and unavoidable air quality impacts. In reference to Mitigation Measure AIR-2, Condition 186 proposes that *"the project shall provide as many of the following measures as practicable"*. There is no evidence in the record of this project to suggest that any of these measures are not practicable in this circumstance. On the contrary, the EIR states that these measures *"are considered to be feasible and effective in further reducing vehicle trip generation and resulting emissions from the project. The project sponsor shall incorporate all of the following measures into the project."* Failure of the City to mandate implementation of Mitigation Measure AIR-2 as described in the Final EIR violates state law which requires the city to adopt all feasible and effective mitigation measures that will help offset significant unavoidable impacts.

11. Approval of this project could expose school children at Semple Elementary School to unhealthy air quality by causing a violation of state standards of protection. The EIR states that future traffic will comply with the state law that prohibits elementary schools to be located within 500 feet of roads carrying up to 100,000 vehicles per day. Response A 7-1 states that *"the modeled future plus project*

Average Daily Trips (ADT) would be 37,900 along East 2nd Street and 55,000 ADT on I-780”.

During review of the EIR it was pointed out that the future freeway volume referenced in Response A 7-1 represents existing traffic, not future traffic. It was argued that future ADT on the roads within 500 feet of Semple Elementary School could be as high as 130,900. Using the methodology of the developer’s consultant, the ADT on these roads under the revised project would be reduced to perhaps 127,200.

At the February 19th City Council meeting, the EIR consultant claimed the application of the state standard on school siting requires the 100,000 vehicle threshold to be measured on one road only. This claim was without substantiation and is comparable to assuming one cup of poison won’t be harmful if taken in two ½ cup containers.

This future volume significantly exceeds the state standard of 100,000 ADT. Why would the City want to create such a condition for our school children by approving this project?

12. The proposed conditions for noise impacts would create a visual blight or a long term maintenance liability for the City. In response to the concern about noise impacts on East 2nd Street from I-780 to East Tennys, the Final EIR proposed construction of soundwalls (at least eight feet high) along this prominent roadway or “*rubberized asphalt*” as a mitigation measure. This measure is incorporated into Condition 193.

Response E 7-19 concedes that soundwalls would not be desirable but it does not address the concern that rubberized asphalt would wear out and eventually become ineffective. If rubberized asphalt is pursued, should the project be required to maintain this measure in perpetuity in order to ensure its effectiveness over the long term? Unfortunately, Condition 193 leaves future taxpayers with the responsibility of repaving this road as the rubberized asphalt wears out.

In closing, I would like to convey my frustration in monitoring the City’s review of this important project. Despite significant concerns about the project’s potential impacts on adjacent neighborhoods, a majority of the City Council voted on February 19th to advance this application for a decision. The developer now comes forward with a revised project with very little substantive information and analysis to address the impacts raised during review of the initial project.

Furthermore, the developer is using the Subdivision Map Act to force the Planning Commission to make a report on the Vesting Tentative Map and a recommendation on the rezoning proposal within 50 days of the City Council action on February 19th. The applicant could request the City to waive the 50-day review period to provide time for a more thorough review and analysis of the revised project. Apparently the applicant has chosen not to give the Planning Commission that opportunity.

Members, Planning Commission

April 9, 2008

Page 7 of 7

The revised project still represents one of the largest development proposals in the city's history. It will establish the land use policy for a parcel of land that is of a size, location and development potential that is unmatched anywhere else in Solano County. If you are considering approving the proposed resolution, I would hope that you would ask questions of City staff about the issues described in this letter.

The applicant may have a right to expect the Planning Commission to act within 50 days of the City Council's action, but the applicant does not have a right to expect the Planning Commission to approve the proposed resolution. As the staff report says "*The Planning Commission may also make a more definitive recommendation regarding approval or denial of the proposed project.*" I hope you believe the information developed so far on this revised project (or lack thereof) supports denial of it.

Sincerely,



Steven Goetz, AICP

Cc: C. Knox, City of Benicia

Anne Cardwell - Fwd: Re: Letter NOT Supporting the Seeno Project

From: Jim Erickson
To: Anne Cardwell
Date: 4/9/2008 11:01 AM
Subject: Fwd: Re: Letter NOT Supporting the Seeno Project

Please follow-up - thanks, Jim

>>> Elizabeth Patterson <elopato@comcast.net> 4/9/2008 6:12 AM >>>
Jim,

Please share this with the council and add to record.

On Apr 8, 2008, at 10:31 PM, Mary Wehrle wrote:

I read the letter you had forwarded regarding the Seeno project and wanted to respond with an opposing view.

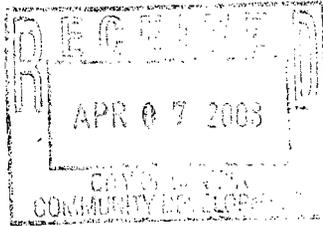
Dear City Council and Mayor,

Have any of the City Council members, Mayor or city staff spent an afternoon driving around in the industrial park area? There are, have been and continue to be many industrial spaces for rent throughout this whole area. When people speak of Benicia needing more business, I am not opposed to it but if there were so many businesses that wanted to be here than there would not be the large vacancy rate in this area. On top of that the vacancy rate has been like this for over two years and is increasing.

When Seeno and others speak of the need for this project, I am just not convinced and I am opposed to creating a mall or developing a big box store in this area. We do not have the population to support a big box store without harming the other retailers of all sizes in Benicia. If you would all please take a minute to read a book called The Walmart Effect, it will explain to you how when Walmart comes into a market, there is actually a loss of jobs, and revenue to the area. In addition to this, I would not want Benicia become like downtown Vacaville, deserted.

We have a fragile local economy that in recent months has seen several businesses and small independent retailers close their doors. We have several vacant retail spots in downtown and several others in the Raley's strip mall due to the high rent and CAM charges the leasing company from Texas ask. Please support your local retailers and businesses who are already here.

Mary Roberts
Benicia



Andrew F. Siri
716 West H Street
Benicia, CA 94510

April 7, 2008

Planning Department
City of Benicia
250 East L Street
Benicia, CA 94510

RE: Benicia Business Park Vesting
Tentative Map
Master Plan and Rezoning

Gentlemen:

Enclosed is a copy of my letter addressed to you dated
July 10, 2007.

Would you please include my comments and concerns from
this letter at your April 10th meeting.

A prior committment might delay my attending your meeting
in a timely fashion.

Thank you for your consideration.

Very truly yours,

Andy Siri

Enclosure

--- On Sun, 4/6/08, Elizabeth Patterson <elopato@comcast.net> wrote:

From: Elizabeth Patterson <elopato@comcast.net>
 Subject: Letter Supporting Seeno Project
 To: "Elizabeth Patterson" <elopato@comcast.net>
 Date: Sunday, April 6, 2008, 5:48 PM

From: <john-vicki@sbcglobal.net>
Date: April 4, 2008 8:28:58 AM PDT
To: <epatterson@ci.benicia.ca.us>
Cc: <tcampbell@ci.benicia.ca.us>, <mhughes@ci.benicia.ca.us>, <mioakimedes@ci.benicia.ca.us>, <aschwartzman@ci.benicia.ca.us>
Subject: Seeno Project

I read the article in Inside Benicia, by Tom Campbell and just want to let my opinion be heard, as he has asked.

I am in favor of moving forward with the Seeno project! Benicia needs more opportunities for business and tax revenue. Maybe some of the tax revenue from the business the park will generate will delay any further tax increases to homeowners in this town and maybe more people would do business here in Benicia instead of going to Vallejo, Concord, etc. I think the Seeno company has waited long enough and we should act to let them proceed, otherwise Vallejo will just continue to come a little closer to Benicia and expand with more business opportunities and all that Tom is worried about will happen anyway by their expansion up against our border. Lets take advantage of an opportunity here where people, business and nature can work together. Maybe if more business was out there, less traffic would be required to get to one of the two main shopping areas (only) in Benicia. Maybe less traffic congestion because traffic would not all be heading in the same direction to the same location. Obviously business needs have to be considered for the future of Benicia and for its residents. Tom we can also lessen pollution by driving closer instead of further, thus a positive impact to the environment. Thanks for suggestion that our opinions be heard. I say enough stalling, 20 years seems plenty, lets get on with it and approve the Seeno plan!

John Garcia
 125 Mountview Terrace
 Benicia, CA 94510

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Dana Dean
Amber Vierling Of Counsel
Venus Vilorina Berdan Associate

Law Offices of
DANA DEAN



835 First Street
Benicia, California 94510
p 707.747-5206 • f 707.747-5209

March 18, 2008

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

Re: Supplemental Comments for the City Council's Consideration of the
Benicia Business Park Proposed Project

Dear Council members:

Please recall that this office represents Citizens Considering the Consequences, an unincorporated association, (hereinafter, "CCC"). I submit these supplemental comments on its behalf regarding certification of the Environmental Impact Report (EIR) for the proposed Benicia Business Park (hereinafter, the "Proposed Project").

CCC had previously commented on the potentially significant unmitigated impacts pertaining to traffic, urban decay, and upland grasses. Additionally, at a previous public hearing on February 19, 2008, CCC, through its counsel, commented on other aspects of the Proposed Project's violation of CEQA.

This letter focuses on additional failures of the environmental review for the Proposed Project as well as issues raised at the February 19, 2008 City Council hearing.. In accordance with Public Resources Code §21177(a), these comments are presented prior to the posting of a Notice of Determination for the project.

Because the review process has been bifurcated, the City must continue to accept comments on the Environmental Review for the Project

CEQA instructs that the project approval should occur at the same time that the City considers the environmental review for the Proposed Project. See Guidelines, §15202 (b). However, in this case, the City has bifurcated such process, by first conducting a hearing on (and purportedly certifying) the EIR for the project well in advance of hearings on project approval.

While the City claims to have certified the EIR at the February 19, 2008 meeting,¹ it should be noted that when a public hearing is conducted on project approval, new environmental objections may be made until close of that hearing.²

¹ See City Council agenda item for March 18, 2008, "This item is on the agenda only to verify the resolution accurately reflects the City Council's action. It is not agendaized to change or modify the

Therefore, the City should disclose that the public may continue to comment on the environmental impacts of the project at anytime prior to project approval or denial.

The peculiar process used to date further illustrates the Unstable and Inaccurate Project Description

The EIR fails to maintain a stable project description. For example, on February 19, 2008, the City Council apparently resolved “that the proposed project considered by the Environmental Impact Report cannot be approved without significant modification due to numerous conflicts with the General Plan policies.”³ As such, the Council plainly foresees that the Project Description analyzed in the EIR is not suitable for consideration of the actual project without a significant modification of the project description.

Additionally, further mitigations for potentially significant impacts are still forthcoming, including but not limited to: traffic impacts on I780; LEEDS or LEEDS – ND, analysis of Greenhouse gases per AB32. Such failure to clearly identify what project was approved is confusing and should be clarified.

It is also confusing as to what was certified on February 19, 2008. – the Hillside/Upland preservation alternative was identified as the environmentally superior alternative and a future initial study is required to identify the impacts of it, especially growth inducing impacts and on Lake Herman.⁴ However, the EIR was certified for the Project as currently described – a description that we know is subject to change.

“An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.”⁵ In this case, since it is plain that the project description is in flux, then the EIR should analyze the *future* project based on a stable description, not this meaningless project that is destined to change and which ultimately will draw “a red herring across the path of public input.”⁶

Failure to accurately describe a stable project results in additional violations of CEQA because the Proposed Project fails to comport with realistic environmental analysis of the foreseeable project. As such, the potentially significant environmental impacts cannot properly be disclosed and analyzed at the earliest feasible time.⁷ Additionally,

decision made on February 19, 2008...[wherein] the City Council, by a 4-1 vote, adopted a resolution certifying the Benicia Business Park Environmental Impact Report.”

² Public Resources Code §21177 (b); Guidelines §15202(b); *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1263; and *Bakersfield Citizens for Local Control v. City of Bakersfield*, (2004) 124 Cal. App. 4th 1184, 1201.

³ See transcripts of February 19, 2008 hearing and City Attorney to City Council agenda item for March 18, 2008 with proposed resolutions.

⁴ Transcript February 19, 2008 City Council meeting, page 2, lines 25-28, page 3, lines 34-38.

⁵ *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185, 193.

⁶ *Ibid.* at 197-98.

⁷ Guidelines §15004(b).

such failure prohibits meaningful analysis of mitigations and alternatives. This is particularly apparent where, as here, no mitigation monitoring plan has been circulated with the mitigation analysis. Further yet, the future analysis of the actual project piecemeals the environmental analysis by not fully analyzing the project in a single environmental review document.

The Project's Potentially Significant Effects related to Global Warming must be analyzed now not at some future unknown date

A significant amount of attention has been paid to the possibility of implementing so – called “AB-32” mitigations and *future* analysis of the project environmental impacts as they relate to global warming. While it is true that the State is currently working to promulgate relevant standards which are expected in 2010, *it is not true that the City and Project applicants are until then free from any responsibility to analysis climate change impacts.*

Rather, the EIR must analyze the Proposed Project's impacts on global climate change now. Such analysis must provide meaningful public disclosure, promote informed decision-making and identify significant effects on the environment. The issues that are subject to this analysis include but are not limited to vehicle trips, energy consumption and construction – related activities that generate green house gases (hereafter “GHG”). Potentially significant environmental impacts of green house gases include but are not limited to: loss in snowpack, sea level rise, heat waves and wildfire risk. The EIR should quantify the GHGs, define a baseline in relation to GHGs and recognize that many of the activities contribute more GHGs than the baseline. The EIR fails to accurately identify the baseline because it fails to analyze the current state of GHGs in the vicinity.⁸

The Proposed Project should further analyze the connection between the residential areas and those of the industrial and commercial. For example, a shuttle system would eliminate private car use for people who live and work in that area. Further analysis should be undertaken to determine whether or not the type of job that would be offered at the Proposed Project is that which local residents could fill.

In conclusion, we continue to request that the City Council deny certification of the EIR for this Proposed Project for the reasons stated in this letter, in CCC's previous letter and in the public comments against the Proposed Project.

Respectfully Submitted,

Dana Dean



⁸ Guidelines §15125.

Dana Dean
Amber Vierling Of Counsel
Venus Viloria Berdan Associate

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Ⓡ See no
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March 18, 2008

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

Re: Supplemental Comments for the City Council's Consideration of the
Benicia Business Park Proposed Project
Alternative language

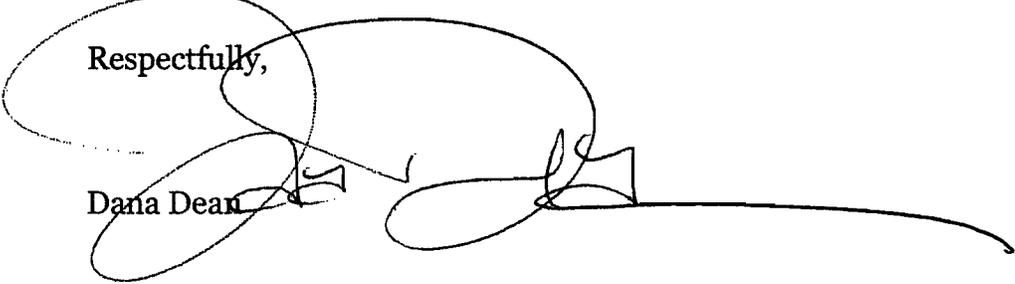
Dear Council members:

Please consider the following alternative language for your resolution regarding the
above referenced item.

BE IT FURTHER RESOLVED that the City Council directs that the Hillside/Upland
Preservation alternative be evaluated in an initial study that considers all potential
environmental impacts and the following issues in particular: Leadership Energy and
Environmental Design (LEED-ND), AB-32, traffic, sustainability, and urban decay; and
that appropriate mitigations for all potentially significant impacts of the project be
identified and discussed.

Respectfully,

Dana Dean



Heather McLaughlin - March 18, 2008 Regular City Council Meeting, Agenda Item IX.A - Confirmation of the Accuracy of the Resolution Certifying the Benicia Business Park EIR

From: "Susan Elwell" <VSE@msrlegal.com>
To: <epatterson@ci.benicia.ca.us>, <tcampbell@ci.benicia.ca.us>, <mhughes@ci.benicia.ca.us>, <mioakimedes@ci.benicia.ca.us>, <aschwartzman@ci.benicia.ca.us>
Date: 3/18/2008 1:55 PM
Subject: March 18, 2008 Regular City Council Meeting, Agenda Item IX.A - Confirmation of the Accuracy of the Resolution Certifying the Benicia Business Park EIR
CC: <Jim.Erickson@ci.benicia.ca.us>, <Heather.McLaughlin@ci.benicia.ca.us>, <cknox@ci.benicia.ca.us>, <sal@discoverybuilders.com>, <jpavao@seenohomes.com>, "Kristina Lawson" <KDL@msrlegal.com>

This email is sent at the request of Kristina D. Lawson.
Please reply to KDL@msrlegal.com

Susan Elwell
Assistant to Kristina D. Lawson
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March 18, 2008

VIA FACSIMILE AND E-MAIL

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

Re: March 18, 2008 Regular City Council Meeting, Agenda Item IX.A. -
Confirmation of the accuracy of the Resolution certifying the Benicia
Business Park EIR

Dear Honorable Mayor Patterson and Members of the City Council:

Over the past month, we have repeatedly requested from City staff a copy of the final Resolution certifying the Final Environmental Impact Report for the proposed Benicia Business Park (the "FEIR"). On several separate occasions we were advised by the City Attorney that the Resolution had been prepared and would be provided to us as soon as it was signed by the Mayor. Last Tuesday, we were notified by the City Attorney that we would not be provided with a copy of the final Resolution because the Mayor had not signed the Resolution prepared by the City Attorney based on the City Clerk's minutes, and the Resolution had instead been placed on the City Council's March 18, 2008 agenda for "confirmation of the language of the Resolution." We now understand that this matter has been agendaized because of a dispute between Mayor Patterson, the City Clerk, and other members of the City Council over the terms and provisions of the adopted Resolution. For the reasons set forth below, any further consideration of this matter is contrary to the City Council's adopted Rules of Procedure (the "Rules") and generally accepted land use processing procedures.

We are also very concerned with statements (apparently attributed to City staff) that appeared in an article in the Sunday edition of the Contra Costa Times regarding the Benicia Business Park project. Specifically, we are concerned with the erroneous statements in the article that the City Council's February 19, 2008 decision to certify the FEIR will be "resurrected" or "reconsidered at a later meeting."

As you know, on February 19, 2008, the City Council voted 4-1 to certify the FEIR. Apparently, a dispute has now arisen between the Mayor, the City Clerk, and other members of the City Council regarding the terms and provisions of the Resolution

certifying the FEIR. While we appreciate the City Attorney's desire to confirm the accuracy of the Resolution adopted on February 19, 2008, we note that the Council's adopted Rules of Procedure ("Rules") expressly preclude reconsideration of the February 19, 2008 decision.

Section V.C.3 of the Rules ("Reconsideration") provides that matters may only be reconsidered (1) at the same meeting in which the original decision was made or at the next following meeting, and (2) provided that no intervening rights will be prejudiced. The City Council has held two meetings since the FEIR was certified – on February 26, 2008, and on March 4, 2008 – and no motion for reconsideration was made at either meeting. Such a motion is therefore precluded by the City Council's Rules.¹

Furthermore, immediately following the February 19, 2008 City Council hearing, our client engaged consultants to work on refining the plans for the Benicia Business Park to conform with the City Council's direction. For over three weeks (and at substantial cost to our client), these consultants have been working diligently on an expedited basis to address the concerns raised by the City Council. As you may be aware, our client has scheduled a meeting with Community Development Director Charlie Knox for this Thursday, March 20, to deliver the refined plans. Any reconsideration or modification of the February 19, 2008 decision, in addition to being unlawful, would fundamentally prejudice our client and is therefore precluded by section V.C.3 of the Rules.

In our opinion, the Resolution certifying the FEIR was effective immediately upon adoption by the City Council, and may not be changed or modified. The staff report prepared by the City Attorney, and the attached transcript, accurately reflect the terms and provisions of the Resolution. We would appreciate receiving a signed copy of the Resolution prior to the scheduled meeting with Charlie Knox at 3:00 p.m.

¹ The March 16, 2008 Contra Costa Times article erroneously states: "And if another council member were to share [the Mayor's] opinion, the environmental report could be reconsidered at a later meeting." We are unclear whether the reporter intended that statement to be attributed to the City Attorney or to another party. Regardless of the source, the statement is factually and legally incorrect as any such reconsideration would violate the City Council's Rules and basis tenets of due process. Additionally, as set forth in section 15108 of the CEQA Guidelines, and in section III.D.16 of the City's CEQA Environmental Review Guidelines, the City must complete and certify an EIR within one year from the date the project application is deemed complete. While we believe the resolution became effective immediately upon its adoption by the City Council (and without regard to whether the Mayor has signed the resolution), until we receive a signed copy of the resolution certifying the FEIR, we consider the City in ongoing violation of section 15108's statutory mandate.

Honorable Mayor Elizabeth Patterson and Members of the City Council
March 18, 2008
Page 3

on March 20, 2008. Until such time as we receive a copy of the Resolution, we consider the City in ongoing violation of the CEQA Guidelines mandate to certify an EIR within one year. (14 Cal. Code Regs., § 15108.)

Very truly yours,

MILLER STARR REGALIA



Kristina D. Lawson

KDL:kdl

cc: Jim Erickson, City Manager
Heather McLaughlin, City Attorney
Charlie Knox, Community Development Director
Sal Evola
Jeanne C. Pavao

Heather McLaughlin - Re: SEENO FEIR conditions: "Addendum" or "Supplemental" CEQA review?

From: Heather McLaughlin
To: Marilyn Bardet
Date: 2/25/2008 4:56 PM
Subject: Re: SEENO FEIR conditions: "Addendum" or "Supplemental" CEQA review?
CC: Charlie Knox; Dana Dean; Elizabeth Patterson; Jan Cox-Golovich; Jim Erickson; Kittysmail@aol.com; Tom Campbell

Hi! I took off the Benicia First @ google groups since I don't know who they are and want to avoid any Brown Act issues. I've also added Jim Erickson.

1. Will further environmental review have public circulation/comment? Yes. The Initial Study phase doesn't have a particular public circulation or comment period. The Initial Study does, however, lead to an EIR, Mitigated Negative Declaration or Negative Declaration. Those all have public circulation comment periods. A subsequent EIR or Supplement to an EIR requires public comment and circulation. See 14 Cal. Code Reg. sections 15162 (d) and 15163(c). An Addendum to an EIR doesn't require circulation for public review. See Cal. Code Regs. section 15164 (c). See below for the text of these sections. I don't see how the Addendum requirement can be met.

2. What legal advice was given to Council regarding the conditions attached to the resolution? I can't disclose the advice they received in Closed Session. Only a majority of the council may direct that disclosure. As I noted at the meeting, the conditions tell staff to look at those areas in particular when doing the IS and analyzing the Hillside/Upland preservation based project.

Thanks, Heather

§ 15162. Subsequent EIRs and Negative Declarations.

(a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

- (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
- (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
- (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
- (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(b) If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subdivision (a). Otherwise the lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation.

(c) Once a project has been approved, the lead agency's role in project approval is completed, unless further discretionary approval on that project is required. Information appearing after an approval does not require reopening of that approval. If after the project is approved, any of the conditions described in subdivision (a) occurs, a subsequent EIR or negative declaration shall only be prepared by the public agency which grants the next discretionary approval for the project, if any. In this situation no other responsible agency shall grant an approval for the project until the subsequent EIR has been certified or subsequent negative declaration adopted.

(d) A subsequent EIR or subsequent negative declaration shall be given the same notice and public review as required under Section 15087 or Section 15072. A subsequent EIR or negative declaration shall state where the previous document is available and can be reviewed.

§ 15163. Supplement to an EIR.

(a) The lead or responsible agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if:

(1) Any of the conditions described in Section 15162 would require the preparation of a subsequent EIR, and

(2) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.

(b) The supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised.

(c) A supplement to an EIR shall be given the same kind of notice and public review as is given to a draft EIR under Section 15087.

(d) A supplement to an EIR may be circulated by itself without recirculating the previous draft or final EIR.

(e) When the agency decides whether to approve the project, the decision-making body shall consider the previous EIR as revised by the supplemental EIR. A finding under Section 15091 shall be made for each significant effect shown in the previous EIR as revised.

§ 15164. Addendum to an EIR or Negative Declaration.

(a) The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

(b) An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.

(c) An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration.

(d) The decision-making body shall consider the addendum with the final EIR or adopted negative declaration prior to making a decision on the project.

(e) A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's required findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence.

From: Marilyn Bardet <mjbardet@sbcglobal.net>
To: Heather McLaughlin <Heather.McLaughlin@ci.benicia.ca.us>
Date: Fri, Feb 22, 2008 9:44 AM
Subject: SEENO FEIR conditions: "Addendum" or "Supplemental" CEQA review?

Hello again this a.m., Heather—

Obviously, I'm very worried. I forgot to add one more question to my first message in regard the legal standing of "conditions" set in the vote to certify the FEIR. Could you please clarify whether an environmental review of any "altered" project that Seeno brings back to the Planning Commission will have to have public circulation and public comment opportunity?

It's my understanding, please correct me if I'm wrong, that a an "addendum" for additional CEQA review does NOT require public comment and circulation. I know the Council asked for an "initial study" to be done. I know what those are like-- usually so brief, so cursory, that unless we get further requirements nailed down legally, with opportunity to comment, we have no means within the process except legal challenge or initiative. Of course, we need your counsel here. How can we get a "Supplemental" review required, which, to my knowledge, requires public circulation of the doc and public comment?

Thanks again for your time,

Marilyn B

CC: Jan Cox-Golovich <janlcg@gmail.com>, Dana Dean <danamail@pacbell.net>, Charlie Knox <Charlie.Knox@ci.benicia.ca.us>, Tom Campbell <Bullwinkle94510@aol.com>, <Beniciafirst@googlegroups.com>, Elizabeth Patterson <elopato@comcast.net>, Kitty Griffin <Kittysmail@aol.com>

From: Marilyn Bardet <mjbardet@sbcglobal.net>
To: Heather McLaughlin <Heather.McLaughlin@ci.benicia.ca.us>
Date: Fri, Feb 22, 2008 9:12 AM
Subject: Are the SEENO EIR certification "conditions" binding?

Good morning, Heather,

I'm disturbed that the Council, in a second motion, after Tom Campbell's motion failed, voted to certify the FEIR before fully investigating Tom's assertion that the "conditions" they attached to their approval—e.g., for getting an environmentally superior alternative (Hillside/Preservation Alternative", coupled with an initial study that would consider LEED certification, AB 32, traffic mitigations, etc—are not enforceable.

Could you please verify for me what is the case here? I've read the letters, published in the final Response to Comments, that were exchanged between LSA and Seeno's attorney. Of critical concern: the point that Seeno doesn't agree that their proposed project violates our General Plan, and could possibly defend against any significant alteration to their initial project proposal on this basis.

I don't think the Council was made clear about the legal ramifications of certification, with regard their bid to get an alternative project through the gambit of certification.

It has always been my worry and concern that Seeno is not a "negotiator" in these matters and once they have their "certified FEIR" they will damn the torpedoes full speed ahead and go to court to prove they can do just about whatever they want to ignore the community's and council's desires for a truly alternative "environmentally superior project".

I need to know what legal advise has been given the Council on this extremely serious matter, with regards especially the legal status of the "conditions" attached to approval of the FEIR.

Thank you,

Marilyn B

CC: Dana Dean <danamail@pacbell.net>, Tom Campbell <Bullwinkle94510@aol.com>, Charlie Knox <cknox@ci.benicia.ca.us>, <Beniciafirst@googlegroups.com>, Elizabeth Patterson <elopato@comcast.net>, Jan Cox-Golovich <janlcg@gmail.com>



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FAX TRANSMISSION COVER SHEET

February 19, 2008

TO: Honorable Mayor Elizabeth Patterson and Members of the City Council City of Benicia	FAX: (707) 747-8120
Jim Erickson, City Manager City of Benicia	FAX: (707) 747-8120
Heather McLaughlin, City Attorney City of Benicia	FAX: (707) 746-1196
Charlie Knox Community Development Director City of Benicia	FAX: (707) 747-8121

FROM: Kristina D. Lawson

RE: Benicia City Council Meeting, February 19, 2008 - Agenda Item VIII.A.

COMMENTS: Please see attached letter dated February 19, 2008

Total Number of Pages (including this page) 3

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February 19, 2008

VIA FACSIMILE (707) 747-8120

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

Re: Benicia City Council Meeting, February 19, 2008 - Agenda Item VIII.A.,
Review of the Benicia Business Park Environmental Impact Report

Dear Honorable Mayor Patterson and Members of the City Council:

Before you for consideration and certification this evening is the Benicia Business Park Final Environmental Impact Report ("FEIR"). On August 7, 2007, the City Council accepted the draft environmental impact report ("DEIR") and determined that the DEIR complied with the City of Benicia CEQA Environmental Review Guidelines (the "City's CEQA Guidelines").

This evening, we respectfully request that the City Council take the final necessary step of certifying the FEIR, as is required by section III.D.12 of the City's CEQA Guidelines, and the CEQA Guidelines. (See 14 Cal. Code Regs., § 15108.) The FEIR contains a comprehensive, detailed, and legally adequate analysis of the potentially significant environmental impacts that may result from the proposed Benicia Business Park, and the requisite alternatives analysis. Substantial evidence in the record supports a determination by the City Council that the FEIR has been completed in compliance with CEQA. (See 14 Cal. Code Regs., § 15090(a).)

Over the past year, we have submitted various letters to the City Council and to City staff regarding the propriety of the City's CEQA review process generally, and regarding the legality of various components of the process (including the scope of the environmental review) specifically related to the proposed Benicia Business Park. We hereby incorporate into this letter by reference the complete contents of those previously submitted documents, including, but not limited to, our previous letters dated March 12, 2007, May 1, 2007, August 1, 2007, August 7, 2007, and December 19, 2007. We also hereby remind the City Council that discussion and public comment this evening should be strictly limited to the environmental document and not any project that will be considered at a later date.

Honorable Mayor Elizabeth Patterson and Members of the City Council
February 19, 2008
Page 2

We look forward to the certification of the FEIR by the City Council. We further look forward to the eventual consideration of the merits of the Benicia Business Park project by the public and the City.

Very truly yours,

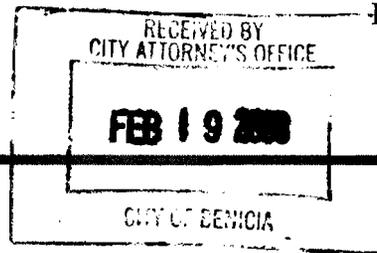
MILLER STARR REGALIA



Kristina D. Lawson

KDL:kdI

cc: Jim Erickson, City Manager (via fax (707) 747-8120)
Heather McLaughlin (via fax (707) 746-1196)
Charlie Knox, Community Development Director (via fax (707) 747-8121)
Jeanne Pavao, Esq.



Jayne York - Seeno Proposal

From: <Donoben@aol.com>
To: <epatterson@ci.benicia.ca.us>
Date: 2/18/2008 2:05 PM
Subject: Seeno Proposal

Dear Madam Mayor:

You will soon be soon casting one of your most significant votes during you tenure on the city council and this relates to the Seeno proposal. I am not against the development of this land but we certainly can come up with a much better plan. Benicia deserves better than an industrial type development. It is at this juncture that the city decision makers must move this project in a different direction. Based on their past track record, which I am sure you are familiar with, Seeno does not care a fig about what it best for our town. They are only interested in the bottom line and have broken the law on several occasions in an attempt to have their way.

We need a more forward looking creative project that would be viable for decades. Such a project might focus on business related to research and development and one that preserves the beauty of the landscape rather than destroys it. And as it has been pointed out, this plan violates both the spirit and the letter of the General Plan.

Please do not allow yourself to be rushed into approved the current plan. A significant number of the local citizens are counting on you to make careful and considered decisions in this regard.

Don and Pat Obendorf
600 East I St.
Benicia

Delicious ideas to please the pickiest eaters. [Watch the video on AOL Living.](#)

347 Goldenslopes Court
Benicia, CA 94510

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

February 13, 2008

Dear Council Members:

This letter addresses the public hearing item on the February 19th City Council meeting for the review of the Environmental Impact Report (EIR) for the Benicia Business Park project. I have had an opportunity to review the Final EIR which includes responses to my comments on the Draft EIR (Individual Comment C2), and the Final EIR (Comment E 7).

After reading the Supplemental Response to Comment, I feel compelled to write to you again. When the City released the Draft EIR which included several hundred pages describing the project and its effects on the environment, I provided many pages of comments and questions. When the City released the proposed Final EIR and after reviewing the City's response to my comments and those of many other individuals and organizations I was still very concerned about the picture being painted for my neighborhood and the rest of the City. I provided written comments again. Even with the opportunity to ask questions, review responses and receive clarification of statements made about the impacts of this project, the picture for my neighborhood and for Benicia is not getting significantly better with the release of the Supplemental Response to Comments document.

As City leaders, I hope you would want the City's EIR to accurately reflect your judgment regarding acceptable ways to address the environmental effects of this project on the City. I am pleased that the EIR acknowledges that there are significant impacts that the project is not capable of avoiding. However, I am very concerned that the City is still willing to make certain changes in Benicia to accommodate this project that would be very damaging to the quality of life currently enjoyed by our residents and visitors.

I am expressing these concerns first as a resident who lives several miles away from the proposed project. Even with this distance I find this project is developed at such a density that it will overwhelm my neighborhood with traffic congestion, noise and air pollution. I also have these concerns when I think about how visitors will view Benicia if this project is approved. Visitors will travel down a channelized freeway with little greenery, exit the "Central Benicia" offramp to find East. 2nd Street squeezed with as many lanes of traffic as possible and bordered by soundwalls like many other communities. Then the visitor will need to navigate more traffic as the attempt to reach our downtown. Things will no longer be Better in Benicia.

Hopefully, the comments in this letter will be the last time I feel the need to point out to you the information in the EIR that concerns me and that should concern you. These additional comments are presented in the remainder of this letter, which is organized according to the significant outstanding environmental issues associated with the Benicia Business Park project. Those issues are traffic, air quality and noise. The letter concludes with some comments on the alternatives to the project that you may be considering for the site.

TRAFFIC IMPACTS

1. Traffic congestion may be worse than forecasted because the EIR assumes freeway capacities for I-780 that may not be achievable. This issue is raised after reading Response E 2-2 which addresses a question from Caltrans about the freeway capacities assumed in the EIR. A capacity of 2,200 vehicles per hour per lane is assumed for freeways with two lanes in each direction. My concern is that this may be the maximum capacity technically achievable for freeways and assumes the freeway has no significant curves or grades.

The I-780 freeway traverses a significant grade between East 2nd Street and Southampton Road, which is a critical location for project impacts. This grade can reduce the capacity of the freeway compared to a freeway on flat land. The EIR should demonstrate that the condition prevailing on this section of I-780 is consistent with the freeway capacity assumed in the EIR. If the prevailing condition on I-780 is not consistent with the freeway capacity assumed in the EIR, then its findings on freeway congestion at this location would be underestimated.

2. The EIR leaves the City solely responsible for mitigating potential safety impacts to school children from the traffic increases generated by the project on East 2nd Street. The EIR estimates that about 2,200 vehicles will be driving between the project and the freeway past Semple Elementary School during the morning peak hour as our children are going to school. It is not speculative to say that many of these commuters will be ignoring the posted 25 mile-per-hour speed limit on East 2nd Street by Semple Elementary School. Response E 7-3 assumes that if speeding were to occur, additional police enforcement or design changes would reduce the problem. The EIR assumes the project would not be responsible for implementing these measures because such behavior is not an impact of the project. This response fails to acknowledge that the project will be responsible, in part, for generating the additional traffic that will trigger the need for these additional measures.

The EIR fails to acknowledge the project's environmental setting along East 2nd Street. The Cumulative Plus Project forecast shows traffic increasing over 240% above current conditions on East 2nd Street in the vicinity of numerous school crossings that serve Semple Elementary School. The EIR forecasts traffic increases from 11,000 vehicles per day to 37,900 vehicles per day at this location by 2030. The sheer volume of traffic

generated by the project, in and of itself, requires consideration of the ability to safely accommodate school children crossing at these locations. The EIR provides no information that safe conditions for school children can be maintained at these locations under these conditions, or that "*additional police enforcement or (unspecified) design changes made independent of the proposed project*" could feasibly maintain safe conditions for elementary school children using crosswalks on or adjacent to East 2nd Street.

A reasonable argument can be made that this project will create a potential safety impact at the school crossings along East 2nd Street. The EIR should include a mitigation measure that requires the project to help guarantee the funding of crossing guards at all school crossings along E. 2nd Street, and installation of "design changes" to calm traffic speeds. Without this mitigation measure, parents will have little incentive to allow their children to walk to school under these conditions. Traffic congestion at Semple School will worsen as more parents feel compelled to drive their children to school, and children will be less able to lead the physically active lives we hope for them.

In a prior comment about the EIR's disregard for the project's safety impacts, I asked if the EIR could identify in the Bay Area at least one four-lane arterial that serves about 37,000 vehicles a day that has signalized school crossings for elementary school children designed to the same standards that exist on East 2nd Street. The Supplemental Response to Comment document did not respond to that question.

3. The EIR leaves it to the City to be solely responsible for ensuring that residents of Seaview and East Tennys can safely enter East 2nd Street under traffic conditions created by the project. With such traffic volumes on East 2nd Street, it is reasonable to expect that traffic from the unsignalized intersections at Seaview and East Tennys may not be able to safely enter this street without signal controls or other mitigation. The EIR could easily determine if traffic signals would be warranted at these locations under the projected conditions, yet it fails to provide such an analysis. Failure to address this issue now may result in the City being solely responsible for funding corrective measures in the future for conditions created by this project.

4. The EIR proposes to allow channelizing of the I-780 freeway and eliminate greenery along this major entrance to the City. Response E 7-4 states that Mitigation Measure TRANS 22 contains flexibility on the portions of the freeway to widen. However, it is speculative to claim that widening of I-780 from East 2nd to Columbus Parkway would not occur. The EIR is not proposing to restrict this flexibility in any way so Mitigation Measure TRANS 22, as currently written, will allow widening of I-780 to occur as described.

Response E 7-4 asserts that the General Plan contains numerous, sometimes conflicting policies that pertain to I-780. No information is provided to support this assertion. To the contrary, the EIR contains General Plan goals, policies and programs which seek to

balance new development with planned future road and highway capacity (General Plan Program 2.20.B), consider alternatives to road widening (General Plan Policy 2.20.2), and ensure that large undeveloped areas of the city develop consistent with land use designations and other policies of the General Plan (General Plan Goal 2.3).

The EIR asserts that the proposed freeway widening would be an appropriate mitigation measure because this widening would occur within the existing freeway right-of-way. The EIR speculates that this mitigation measure "*could require innovative engineering*" and that "*it is expected that associated impacts would be reduced to a less-than-significant level with implementation of standard City conditions of approval.*" Can the EIR provide evidence that such innovative engineering exists or is feasible to implement on I-780? Can the EIR provide examples of standard City conditions of approval that would ensure that widening of I-780 could be accomplished in a manner consistent with the General Plan?

The EIR fails to show how widening of I-780 within the existing freeway right-of-way can be accomplished without the removal of existing landscaping and unfinished cut banks and without the use of extensive retaining walls and soundwalls which could conflict with the following General Plan guidance:

- GOAL 2.26: Ensure that scenic and environmental amenities of I-680 and I-780 are not compromised.
- PROGRAM 3.9.B: Investigate and apply for State Scenic Highway designation of Interstate Highways I-780 and I-680.
- POLICY 3.9.2: Work with the State to complete and maintain landscaping of I-680 and I-780. First priority should be planting the various unfinished cut banks facing I-680 and I-780. Planting that blocks views from I-780 to the Carquinez Strait should be avoided. Ground cover and shrubs are appropriate for purposes of erosion control and appearance.
- GOAL 3.7: Maintain and reinforce Benicia's small-town visual characteristics.

5. The EIR's description of freeway improvements confuses the project's freeway impacts. Response E 7-5 serves to confuse rather than inform the public or decision makers regarding the likely impacts of the project on freeways. While the EIR discusses many future transportation improvements for the region, Response E 7-5 states that only three highway projects were forecast to be completed for the Cumulative Plus Project conditions. These projects are: (1) the second Benicia-Martinez span; (2) Public road connecting through the lower Arsenal and port areas to include Bayshore Road, Adams Street and Oak Street; and (3) I-80/I-680/SR 12 improvements.

Response E 7-5 conflicts with other responses in the EIR. Letter C2 commented that freeway impacts are underestimated because the EIR assumes freeway widening that is unlikely to occur by 2030. The letter pointed out that Table IV.G-18 describes Cumulative Plus Project Conditions on the freeway and that it assumes I-680 will be widened to three lanes each way. Response to Comment C2-22 states that "*The widening*

of I-680 to three lanes in each direction was included in the Solano/Napa County travel demand model, meaning that this improvement is assumed to be implemented by 2030." However, widening of I-680 is not included in Response E 7-5.

The EIR's description of the Solano/Napa County travel demand model on page 220 states that *"A model run was performed for the year 2030, capturing the traffic growth expected in Benicia due to land use changes, shifts in travel behavior, planned transportation improvements and other considerations"*. The list of *"planned roadway improvements"* on this page is far more extensive than the three projects listed in Response E 7-5.

The EIR fails to provide the public and decision makers with a stable description of the environmental setting that the project's impacts can be measured against and mitigation responsibilities identified. This confusion plays out most clearly regarding the project's impact on I-680 through Benicia. Tables IV.G-8 and IV.G-18 assume the entire stretch of I-680 north of the Bridge will be widened to three lanes each way under Cumulative and Cumulative Plus Project conditions. This transportation improvement is not included in Response 7-5, which claims to reiterate the transportation improvements assumed in the analysis of future traffic conditions for the EIR. Is the public or a decision maker to assume that future freeway capacity for I-680 is overstated in the EIR and that the project impact would be more significant? Would a mitigation measure not currently shown in the EIR be required?

6. Approving the project as currently proposed in the EIR will leave the City solely responsible for off-site upgrades to Lake Herman Road. Prior comments were made about the need to upgrade Lake Herman Road in order to safely accommodate the commute traffic generated by the project. Response E 7-7 claims that the additional traffic generated by the project on Lake Herman Road will not alter the safety of a roadway such that a physical impact would result.

The EIR should acknowledge that it is required by state law to examine and analyze the effects of the physical change in the environment after the project is commenced and completed. The existing setting for Lake Herman Road as described in the EIR shows that it carries about 300 vehicles in the AM peak hour and 400 vehicles in the PM peak hour. The EIR shows the project will expand the use of Lake Herman Road by adding 1,200 more cars in each peak hour. This is a physical impact on the environment that would result from the project. This project impact generates a commute load on Lake Herman Road that is incompatible with its current design as described in prior comments. The consequence of this physical impact will be a greater number of collisions and increased pressure by the driving public to upgrade Lake Herman Road to serve the commute load generated by the project. Examples of upgrades typically sought for rural roads experiencing commuter traffic include shoulder widening, curve realignment, and median barrier construction. Failure to address this impact now in the EIR may result in the City being solely responsible for funding upgrades to Lake Herman Road in the future for a physical impact created by this project.

7. As currently proposed, the 30% maximum sloped embankment to be constructed along East 2nd Street could be a visual blight on this major roadway. The EIR says there is little detail on the design for this embankment. Prior comments suggested that the embankment represents a potential hazard to motorists on East 2nd Street if it is not set back a sufficient distance from the wider roadway. Response E 7-8 indicates a need to review appropriate mitigation measures at subsequent approval stages. Such a mitigation measure should be proposed now in the EIR. Specifically, the EIR should require the applicant to provide as part of the grading plan, a diagram that will show the proposed berm will be constructed in a manner that will allow the improvements on East 2nd Street to be designed consistent with Caltrans standards. The City may have few options for modifying the embankment once grading is completed. The project proponent's track record of implementing mitigation measures requires that such impacts be identified and addressed at the earliest possible opportunity.

8. The EIR's evaluation of future traffic congestion on East 2nd Street needs clarification. Response E 7-9 claims that the EIR's evaluation of East 2nd Street is sound, based on an evaluation of East 2nd/I-780 WB Ramps intersection. Future traffic volumes for this intersection on Figure IV.G-10 of the EIR show very little traffic making the through movement toward northbound East 2nd Street from the off-ramp. This offramp has a left turn lane and a combination through/right turn lane. The EIR shows three or fewer vehicles traveling from this offramp through the intersection and continuing northbound on East 2nd Street for every scenario analyzed in the EIR.

9. The EIR's evaluation of delays on East 2nd Street do not address the potential for excessive delays at the Seaview and East Tennys intersections. The statements in Response E 7-9 regarding minimal delays at the Seaview and the E. Tennys intersections are not substantiated. Delays at the East 2nd/I-780 WB Ramps intersection have no relation to the excessive delays that could occur to sidestreet traffic at Seaview and East Tennys intersections as vehicles attempt to safely enter East 2nd Street without signal controls or other mitigation. In this case, delays on East 2nd Street are not the problem.

10. Approval of this project will blight the major entrance to downtown Benicia. To accommodate the project, the EIR proposes to add an additional lane to East 2nd Street under the freeway and modify the EB offramp to allow right turning vehicles to exit the freeway without stopping. Prior comments were made about the feasibility and effectiveness of this mitigation measures. Response E 7-10 relies on the 48-foot width of East 2nd Street under the freeway to demonstrate the feasibility of the proposed lane configuration. This response is inadequate for the following reasons:

- Four twelve-foot lanes use all available roadway width, including the existing shoulder areas currently available to bicyclists as a bike route. A northbound bicyclist traveling through the interchange area would be forced to use the northbound through traffic lane and be caught in the middle of traffic as vehicles enter East 2nd Street using the second northbound through lane that will serve the free right-turning vehicles from the EB off

ramp. Such a condition also seems counterproductive to Mitigation Measures TRANS-24 and AIR-2 which attempt to encourage more bicycle use.

- This section of road is constrained by intersections at each end which are less than 500-feet apart. This section of road must accommodate a southbound through lane, a southbound left turn lane, a northbound left turn lane and two northbound through lanes. The left turn lanes cannot be extended so left-turning vehicles could easily spill over into the adjacent through lane.
- Installing signal controls on the EB offramp's "free right turn lane" to accommodate pedestrians will reduce the ability of the free right turn lane to serve Cumulative Plus Project demand without causing backups onto the freeway.
- Caltrans controls the signals at the freeway ramps and will require that this mitigation measure meet Caltrans standards. The Mitigation Measure should identify the Caltrans standards and show that these standards can be met.

Given the above circumstances, the EIR's cursory approach to describing this mitigation measure does not provide a reasonable basis for finding that the proposed lane configurations and signal controls will reduce impacts to a less than significant level at the East 2nd/I-780 interchange area. A feasible and effective mitigation measure needs to show that:

- a shoulder area for the bike route can be provided in each direction;
- the length of the northbound and southbound left turn lanes between the ramp terminals will be sufficient to accommodate Cumulative Plus Project demand;
- the proposed signal control for the EB offramp's "free right turn lane" will not cause vehicle queues to extend onto the freeway under Cumulative Plus Project conditions;
- and
- Caltrans design standards for this location can be met.

11. The EIR leaves the City solely responsible for funding the operating costs for extending bus service to the project. Under Mitigation Measure TRANS-23, the project is only responsible for the capital costs for extending bus service to the project. Response E 7-13 claims that requiring the project to provide additional funds to Benicia Transit "*would likely exceed constitutional nexus requirements*" and would be inconsistent with past approaches in Benicia to transit. The EIR provide no explanation of these constitutional nexus requirements to support this conclusion. Furthermore, these claims are puzzling given the EIR's description of the transit impact on page 247 which states:

"The project includes no provision for transit and would conflict with City and regional policies supporting alternative transportation. Transit routes connecting the project site and Benicia with regional transportation centers are required to ensure adequate transit service for commuters to and from the proposed project."

Providing bus stops and buses as proposed in TRANS-23 will not ensure adequate transit service for commuters to and from the proposed project if additional drivers are not

available to drive the additional buses. The EIR's unsubstantiated claim that tax revenue will be sufficient to operate these additional buses could also be used to claim that tax revenue would also be sufficient to purchase the additional buses. Nevertheless, gas taxes exist to fund highway expansion, yet mitigation fees are assessed on new development to fund the highway expansion needed to serve that development. Expansion of transit service is no different.

Response E-13 should have explained the constitutional nexus requirements for mitigation measures. Under these requirements the City must show that (1) the mitigation is directly related to the impacts of the development giving rise to the mitigation, and (2) the nature of the mitigation is roughly proportional to the impacts of the project. Expanding Mitigation Measure TRANS-23 to fund operating costs for the required expansion of transit service satisfies constitutional nexus requirements in the same manner as the requirement to fund capital costs for this expansion. Operating funds are needed in addition to capital funds to provide adequate transit service, thus the mitigation is related to the project's impact. The project's contribution to operating funds would be limited to the amount necessary to provide the expanded service, thus the mitigation is roughly proportional to the impact of the project.

Finally, the need for TRANS-23 to be consistent with past approaches in Benicia to transit mitigation is irrelevant to determining the adequacy of a mitigation measure. Why is the City's evaluation of prior projects and any related mitigation measure considered to be relevant to this project? Even if the City's prior approach to mitigating transit impacts was limited to capital funding, this does not mean that such an approach was adequate then, or that it is adequate now given the facts as presented in the EIR for this project.

AIR QUALITY IMPACTS

12. The City is obligated to consider including the Intermodal Transit Facility as a mitigation measure to help offset significant and unavoidable air quality impacts. The EIR has identified regional air pollution as a significant unavoidable impact of the project. The purpose of Mitigation Measure AIR-2 is to implement feasible and effective measures in further reducing vehicle trip generation and resulting emissions from the project. Response E 7-14 concedes that an intermodal facility within the project could increase transit use, much in the same way as providing bus turnouts, benches and shelters, which are already part of Mitigation Measure AIR-2. The fact that this additional mitigation measure would not reduce air quality impacts to a less than significant level has no bearing on the City's obligation to adopt all feasible and effective mitigation measures that will help offset significant unavoidable impacts.

13. The EIR should protect public health by requiring an evaluation of potential carbon monoxide (CO) impacts adjacent to Semple Elementary School. The EIR states that high CO concentrations are associated with poor level-of-service and extremely high traffic levels. Response E 7-17 considers only traffic volumes when

assessing the adequacy of the EIR's CO analysis for sensitive populations such as the school children at Semple Elementary School. Both traffic volumes and congestion levels are higher at the East 2nd/I-780 WB Ramps intersection than at the East 2nd/Rose intersection. Given this comparison in the EIR, it is reasonable to expect the EIR to provide a CO analysis for the most heavily traveled and congested intersection on East 2nd Street, which also happens to be adjacent to Semple Elementary School.

14. Approval of this project could expose school children at Semple Elementary School to unhealthy air quality by causing a violation of state standards of protection. The EIR states that future traffic will comply with the state law that prohibits elementary schools to be located within 500 feet of roads carrying up to 100,000 vehicles per day. Response A 7-1 states that *"the modeled future plus project Average Daily Trips (ADT) would be 37,900 along East 2nd Street and 55,000 ADT on I-780"*.

It must be pointed out that the future freeway volume referenced in this response represents existing traffic, not future traffic. This can be substantiated by viewing the following link to the Caltrans website:

<http://www.dot.ca.gov/hq/traffops/saferesr/trafdata/2006all/505980i.htm>

The EIR needs to prove that the future daily traffic volume for the freeway, when combined with the future daily traffic volume on East 2nd Street, will be below the state standard that regulates the siting of school campuses.

A quick estimate of future daily traffic volumes on the freeway can be made by looking at the relationship between peak hour volumes and daily volumes that can be seen from Caltrans data for I-780. The Caltrans website shows peak hour traffic to be about 8% of daily traffic on I-780. Assuming that relationship would exist for Cumulative Plus Project conditions, Table IV.G-18 of the Draft EIR shows PM Peak Hour traffic on I-780 east of East 2nd St. = 7365 vehicles, which translates to 93,000 daily vehicle traffic. Adding 93,000 ADT from the freeway to 37,900 ADT from East 2nd equals 130,900 ADT on the roads within 500 feet of Semple Elementary School. This future volume significantly exceeds the state standard of 100,000 ADT. Why would the City want to create such a condition for our school children by approving this project?

NOISE IMPACTS

15. The EIR's mitigation measure for noise on East 2nd Street would create a visual blight or a long term maintenance liability for the City. The Draft EIR failed to identify any noise impacts from the massive traffic increases forecast on East 2nd Street. Only in response to this concern did the Final EIR propose construction of soundwalls (at least eight feet high) along the City's most prominent roadway or "rubberized asphalt" as a mitigation measure. Response E 7-19 concedes that soundwalls would not be desirable but it does not address the concern that rubberized asphalt would wear out and

eventually become ineffective. If rubberized asphalt is pursued, should the project be required to maintain this measure in perpetuity in order to ensure its effectiveness over the long term?

ALTERNATIVES TO THE PROJECT

16 Approval of the Hillside/Upland Preservation Alternative would still significantly impact our quality of life in Benicia.. The EIR does an effective job of identifying a feasible alternative to avoid or reduce most of the project's significant unavoidable impacts on the environment. However, the EIR fails to acknowledge certain constraints to development on the project site. These constraints become obvious after reviewing the information provided by the EIR. First, development of the project site needs to respect the existing capacity of I-780 so it can be preserved as a four lane freeway. Second, development of the project site should not risk the health and safety of students, pedestrians and bicyclists by overloading the roads adjacent to Semple Elementary School. Finally, the rural nature of Lake Herman Road cannot accommodate commute traffic. How can the City Council support the Hillside/Upland Preservation Alternative that does not respect these environmental constraints to development on the project site?

Approval of the Hillside/Upland Preservation Alternative needs to consider new or modified mitigation measures:

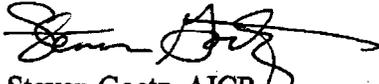
- **A new mitigation measure should be adopted that limits development on the project site so that Cumulative Plus Project traffic volumes adjacent to Semple Elementary School would remain below 100,000 vehicles per day.** Limiting development in this manner provides a number of environmental benefits. It would protect public health since it would keep traffic volumes within the limits established by the state for roads adjacent to school facilities. The need for increasing freeway capacity would be reduced. The amount of traffic coming off I-780 would be reduced so that pedestrians and bicyclists on East 2nd Street could travel from one side of I-780 to the other more safely. The traffic volumes on East 2nd Street could be more effectively managed for the safety of school children crossing this road, and perhaps the need for noise mitigation along this prominent roadway could be eliminated.
- **Mitigation Measure AIR-2 should be expanded to include locating Benicia's Intermodal Transit Facility on the project site.** Incorporating this facility into the design of the project will maximize the opportunity to reduce vehicles trips and help address the need for reducing greenhouse gas emissions.
- **Finally, a mitigation measure should be developed to address the impact of commuter traffic on Lake Herman Road.** The City should not be solely responsible for upgrading Lake Herman Road to respond to increases in the number and severity of collisions on this road that will become inevitable after a business park is developed on

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this site. The project should help fund upgrades such as shoulder widening, curve realignment, and median barrier construction at strategic locations.

In closing, I would like to convey my frustration in monitoring the City's review of this important project. As your constituent, my expectation is that you will carefully review the information that is provided to you and ask questions about problems that are of concern. Unfortunately, I have seen little of that from a majority of the City Council that has been directing this process. Consequently, I have spent an inordinate amount of time as an average citizen trying to provide information that in most cases should be obvious to the City Council or the responsibility of the EIR preparers to provide. Nevertheless, I remain hopeful that this City Council will do the right thing and provide us a first-class business park project that will respect the qualities in Benicia that we value and be an asset to our town rather than a liability.

Sincerely,



Steven Goetz, AICP

Cc: C. Knox, City of Benicia