

MINUTES OF THE ARSENAL WORKING GROUP

MONDAY, OCTOBER 29, 2012

- I. CALL TO ORDER: Mayor Elizabeth Patterson opened the meeting at 3:06 PM.
- II. Mayor Patterson asked for sub-Committee Members to introduce themselves. She emphasized that for these meetings she was the facilitator. Attendant sub-Committee Members and staff were then introduced:
 - a. Council Members: Mayor Elizabeth Patterson and Alan Schwartzman
 - b. Committee Members: Jack Bell, Leeann Cawley, Cherie McCammon, Ron Myska, Randy Potter, Ed Ruszel and Bill Warren
 - c. Staff: City Attorney Heather Mc Laughlin, Community Development Director Charlie Knox, Council Mark O'Brian and Law Clerk Greg Henry
- III. Mayor Patterson then stated that the purpose of subcommittee was to provide a roadmap for Arsenal businesses and property owners in addressing the Department of Toxic Substances Control (DTSC) or other State agencies' contamination concerns. For this meeting in particular Mayor Patterson wished to focus on generating the Frequently Asked Questions (FAQ) document. She also reminded the committee that the meeting was scheduled to run from 3 PM to 5 PM. After 4 PM, she would ask the group if they would like to continue.
- IV. City Attorney Mc Laughlin identified the need for questions for the FAQ. Once Staff has collected a list, we would attempt to answer them. She also suggested some initial questions:
 - a. What is the Arsenal?
 - b. What is the Cortese List?
- V. At this time Dana Dean entered and introduced herself as a member of the public.
- VI. Mayor Patterson then asked to also create a Glossary and asked Mark O'Brian for the general background of the area of concern.
- VII. Mark O'Brian replied that 18 months ago the City received correspondence from DTSC regarding a cleanup order. Since then the project has moved from a potential cleanup order to more of a wait and see plan. He believed DTSC was waiting to give the City a chance to see what kind of progress can be made. Further, they are happy to see that we have come together to look into what we need to do via this meeting.
- VIII. Mayor Patterson then went over the ground rules for the sub-committee. She then asked for questions of Mark. Mr. O'Brian then emphasized that we have done a good job reducing the area of concern to a much smaller size. DTSC seems to have moved from a whole Arsenal approach to an individual site approach.
- IX. Committee Member Phil Garrett then arrived and introduced himself. Following that, Mayor Patterson reiterated her role.
- X. Committee Member Myska noted that the DTSC website still doesn't have the site reduction to specific areas. He cited a document that had recently been pulled from DTSC's website. The discussion then moved to the difference between DTCS's Envirostor which still has the whole area listed and the Cortese

List. The Cortese List is a list of sites which have access to federal superfund money. This lead Council Member Schwartzman to suggest two further questions for the FAQ:

- c. What is Envirostor?
- d. How does Envirostor differ from the Cortese List?

The discussion over areas which DTSC has particular interest lead Committee Member Potter to ask which five areas are is still under investigation. Mark O'Brian then responded that although he hadn't attended the previous meeting with DTSC where those areas were revealed and DTSC hadn't released the map used at the meeting he had heard from other members of the committee that those areas were shown. Mayor Patterson then used this discussion to suggest a new FAQ question:

- e. Are there specific sites which DTSC is interested?

XI. The discussion then turned to clean up responsibility. Mark O'Brian stated his belief that DTSC would find the Army responsible for some cleanup and properties but, for others the property owner would be responsible. Mayor Patterson commented that by law the Army is wholly responsible for unexploded munitions. City Attorney Mc Laughlin replied that though they said they would clean all of the ordnance. However, at this time, the time frame was completely open. Mayor Patterson reiterated that, the military has exclusive jurisdiction for unexploded ordnance. She then suggested the following for the FAQ:

- f. Who is responsible for ordnance cleanup? The Army.
- g. Who is responsible for chemical cleanup? At this time unclear.

She also wondered, how do we ask a question about which properties is DTSC interested in, when we can't make any greater clarification between cleanup types at this time. Council Member Schwartzman suggested splitting between people with ordinance on property and those in the greater area. Mayor Patterson and Council Member Schwartzman asked about areas with known pollution plumes of chemicals and the greater scope of contamination.

XII. Committee Member Myska asked for areas without unexploded ordnance, what are acceptable uses without any remediation? Mayor Patterson suggested that two questions:

- h. What are acceptable uses for properties with pollution plumes?
- i. What are acceptable uses for all properties in the Arsenal Area?

Committee Member Myska wished to avoid giving DTSC the chance to dictate all properties. Committee Member Potter wondered that since DTSC was unhappy with investigation by the Army would DTSC require further investigation which could reveal further properties with issues? Mayor then suggested the following question for the FAQ:

- j. Can status of a property of concern change?

Committee Member Myska who had attended the previous meeting with DTSC discussed earlier claimed that the DTSC representative had accepted the Army report. Council Member Schwartzman recalled that, "It sounded to me when I heard that the potential of issues with non-munitions items were minimized." Mayor Patterson wondered about the status of the each of the regions.

Committee Member Myska wished to ask DTSC, "Do they accept or not accept

the army's report, if not why?" Mayor Patterson then suggested another subject for the FAQ:

- k. Include a map of the Arsenal which identifies each of the regions.

XIII. At this time, Rod Sherry entered the meeting and was introduced.

XIV. Committee Member Bell stated his belief that the difference between the Industrial Park and the Lower Arsenal has become confused. Mayor Patterson agreed saying that every agency defined a different area. It was noted that the Special Use Plan created the term "Lower Arsenal." Mayor Patterson suggested defining the Industrial Park and Lower Arsenal as an area for the FAQ. It was noted that the area of potential contamination goes beyond the legal boundaries of Arsenal. Mayor Patterson suggested the following for the FAQ:

- l. Who determines the boundaries of Arsenal for the purpose of cleanup?

Council Member Schwartzman and other Committee Members commented that the whole area currently called the Industrial Park by the City is called "The Arsenal" by DTSC. The next questions for the FAQ were then suggested:

- m. What does the term Arsenal mean and how are its boundaries defined on the federal, state and city level, as well as historical record?
- n. To what extent can the City define the boundaries of things?
- o. What do you need to know about Benicia Industrial Park?

It was asked, is the user of the FAQ going to be a new or existing business? To which the Mayor replied, "We need to make the FAQ fit different users."

Committee Member Garrett then added the following questions for consideration:

- p. How does being on the Cortese List affect use?
- q. How does it affect value and financing?
- r. What is the human risk?
- s. Can I purchase environmental insurance?
- t. How far back does this reach?
- u. Is the city at risk?
- v. What are the personal liability issues?
- w. What are non-recourse loans and what does no carve out mean?
- x. Can tenants be at financial risk?

XV. Council Member Schwartzman asked Committee Member Warren, a commercial banker, what would someone need to obtain a loan?

Committee Member Warren replied that it "Depends on the historical property record. A bank would need at least a Phase One maybe a Phase Two."

Mayor Patterson added that there would need perhaps also need "historic matching" and environmental contactors. Council Member Warren stated that a Phase One would inform the need for a Phase Two and further investigation.

Mayor Patterson suggested then the following for the FAQ:

- y. What does Phase One mean?
- z. When would a Phase Two be required?

Committee Member Warren noted that Broker/Buyer and Lenders were the ones who would be concerned with these issues and that he wished DTSC to make a statement about the area of concern. Mark O'Brian believes that DTSC would

never say, “We won’t be back to an area.” Mayor Patterson then added the following for consideration:

aa. What is DTSC’s level of confidence/risk about different areas?

Committee Member Bell then asked Committee Member Warren, “Do you always require a Phase One?”

To which Committee Member Warren replied that it depended upon the circumstance. Committee Member Bell followed up with, “Is there anywhere in the Industrial Park that you wouldn’t require a Phase One?”

To which Committee Member Warren replied, “At this time no.”

Mayor Patterson wondered what was required for a lender not to ask. She then said, “My vision is that staff would create an electronic list with questions and some answers for members to help with.”

- XVI. Mayor Patterson and Council Member Schwartzman both wished to know for property owners, how is it determined who is responsible for the problem followed by who is responsible for clean up?

Committee Member Bell felt that the Army stance was only to aid in clean up if fault could be proved in court.

- XVII. Mayor Patterson then asked the committee who citizens should call first to get information? Committee Member Myska felt that the City should be the clearing house for all calls. Council Member Schwartzman felt that the city should be the gate keeper, but wondered about properties in the “not” five or six main areas, what the best practice should be. Mayor Patterson added that all citizens in the area should be informed about restrictions on building permits. It was also suggested that whether tenant improvement require permits or are allowed by right or with approval be covered by the FAQ. It was felt that there was a need to create a process for builders to follow.

- XVIII. Some Committee Members wished to know if the City had this information from DTSC why didn’t the citizens. The mayor asked the City Attorney to respond. City Attorney who replied that DTSC had asked the City to pass an ordinance to limit depth of digging. The Mayor added that she believed that the occupancy permit process has been modified. Committee Member Myska reiterated the belief that City had information that it was not sharing. Mayor Patterson responded that it was her understanding that when a building permit in the Industrial Park is issued, DTSC then sent a letter providing additional requirements.

- XIX. Committee Member Myska wished to know where the city stood on the investigation of insurance coverage of effected properties. He believed that starting in the 80s environmental polices no longer possible. Further, he asked, if at some point the city owned the whole thing and was thus responsible? Committee Member Ruszel asked if the city was willing to participate in research on which properties were once owned by the City. Committee Member Bell expressed his belief that there was a point in time when the City owned the whole thing?

- XX. Concerning DTSC Committee Member Myska wanted to know if given the vast amount of information given at the DTSC meeting mentioned above, was there a way to hold DTSC to those statements?

- XXI. It was suggested that individuals who are looking at the FAQ would have a specific property in mind, and thus it was possible to limit the questions presented by the FAQ based upon location. Committee Member Cawley agreed but wonder how to do that without a better understanding of which areas are affected?
- XXII. Committee Member Potter then asked, if it was better to look at a whole area clean up plan, or is it better to go site by site? The Mayor then suggested the following for the FAQ:
- bb. **What is the status for the plan?**
- Committee Member Potter commented stated, “We believed that we needed to work together to work against the Army to force them to pay? Is that where we still stand?” He further expressed his belief that even though the Army had said it was done investigating; DTSC was not and felt that plenty hadn’t been documented. His concern was for area not currently in the limited zone but with potential future issues. Committee Member Warren reiterated his belief that the FAQ should have **“Zones of Concerns.”**
- XXIII. Committee Member Ruszel asked **when and how is this information to be disseminated?** City Attorney Mc Laughlin replied that by the end of week staff would have just a list of questions for review by Committee Members. Committee Member Cowley wished to know when it would be released to the public. Mayor Patterson replied that she felt one week to make questions, one week for review and create the decision tree. She felt the committee should cover the topic of how to disseminate at the next meeting. Committee Member McCammon felt that the purpose of the FAQ would be to promote growth. Committee Member Sherry stated that minutes would be useless and that the FAQ should be organized by site type. The Mayor then considered revising the timeline to allow more time for Staff to directly create a FAQ. She would give staff two weeks to create the document. The committee would then need to meet during the second Monday of November at 3:00 PM. City Attorney Mc Laughlin replied any answers could only be draft if required in such a short amount of time. Mayor Patterson gave the committee homework, asking that Committee Members think of more questions and send them to Heather. Also to think about the glossary.
- XXIV. Committee Member Bell asked about the quarterly Arsenal meetings. Council Member Schwartzman suggested postponing the quarterly meetings until after working group was done. Committee Member Bell felt that a commitment was made and that the City should either have the meeting or make a statement saying the meetings were on hold. **The Mayor asked if it was okay to announce that the quarterly meetings would be postponed until the FAQ document is ready.**
- XXV. The committee wished to know why the Arsenal was on the agenda if Staff wasn’t going to add information. The Mayor stated that as a procedural issue it must be kept on the agenda. It was then suggested that the agenda item should include the phrase “Nothing to report,” when that was the case adding better consistency.

XXVI. Committee Member Myska asked Mark O'Brian about his involvement. Mark O'Brian replied that it was his firm's intent to see this through with insurance companies. Committee Member Myska felt that part of FAQ should include how Mark O'Brian was going to be paid and how properties that do end up need monies could recover. The Mayor wished to add:

cc. What work took place which brought us to where we are today?

dd. What is the position of DTSC at this time?

Committee Member Potter added, "Mark was hired by the City to help the property owners."

Mr. O'Brian replied that he was hired by the City to work for the City and reiterated his work thus far.

Committee Members stated their concern that they didn't know Mr. O'Brian's purpose.

XXVII. Mayor Patterson closed the meeting at 4:57.

XXVIII. Additional Questions (suggested after the meeting):

ee. What do lenders need to know?

ff. How does one locate a historical issue?

gg. Will "use" be an issue with properties that may be affected?

hh. Will the city remove any possibility of residential in the "affected" areas?

ii. Will value be affected?

jj. Will the ability to either finance or refinance be an issue?

kk. If so, how should it best be dealt with?

ll. Can the affected area change?

mm. Particularly, areas with a plume?

nn. Are prior owners in the mix?

oo. If so, is it from the time the contamination occurred to the present?

pp. If the city was once in the chain of title, is the City and any insurance the City may have had in the mix?

qq. Is there any personal liability even in the event of non-recourse loans?

rr. Can Tenants be named as a Potentially Responsible Party (PRP)? Both owners that lease property and Tenant's themselves will need to know.

ss. How did we get into this mess and how and when do we get out?

tt. What is the nature of the contamination?

uu. How do I make sure I'm not named as a contributor?

vv. Can the "affected" areas be reasonably isolated from the balance of the BIP?