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December 28, 2010

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

Re: Former Benicia Arsenal, Benicia California (Arsenal)

Dear Ms. McLaughlin:

Please find enclosed a copy of my letter to Mr. Raymond Leclerc, P.E., Assistant Deputy Director, Brownfields and Environmental Restoration, Department of Toxic Substances Control, dated December 28, 2010. Please be kind enough to circulate this letter to the list of attendees at the most recent meeting with Mayor Patterson, the City Manager, yourself and the rest of the City staff.

Thank you for your help to date.

Very truly yours,

CRAIG F. ANDERSEN
CFA:jk
Encl.

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CITY OF BENICIA

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December 28, 2010

Mr. Raymond Leclerc, P.E.
Assistant Deputy Director
Brownfields and Environmental Restoration
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826-3200

Re: Your Letter of Septmeber 15, 2010
Former Benicia Arsenal, Benicia California (Arsenal)

Dear Mr. Leclerc:

I really appreciate your letter of September 15, 2010 which has been circulated among all members of the Benicia Industrial Park. As you will see from my memorandum dated December 23, 2010 to Ms. Heather McLaughlin, City Attorney, City of Benicia (copy enclosed), the Mayor of Benicia, Ms. Elizabeth Patterson, her staff, Ms. Heather McLaughlin and a representative of ERS, Mr. Mark O'Brien, were kind enough to meet with us on December 22, 2010 to clarify the above-referenced matter. As you will see from my memorandum, there were a number of concerns from individuals representing past and present landowners within the Park and the business operators. Ms. McLaughlin, Mr. O'Brien, Ms. Patterson and members of staff were kind enough to answer a number of questions and clarify a number of issues relating to the Arsenal. Needless to say, we were more than satisfied, as you will see from the enclosed memorandum. If we can be of any help, just let us know. I will make sure and copy all the individuals that you copied on your letter to Ms. Patterson so that they are "in the loop" as far as the various past and present business operators within the Park.

Thanks, again, for your cooperation. If you have any questions, please give me a call.

Very truly yours,

CRAIG F. ANDERSEN
CFA:jk
Encl.

cc: Congressman George Miller
375 "G" Street, Suite 1
Vallejo, CA 94592

State Senator Patricia Wiggins
444 Georgia Street
Vallejo, CA 94590

Assemblymember Mariko Yamada
555 Mason Street, Suite 275
Vacaville, CA 95688

Jerry Vincent
BRAC/FUDS Section Chief
United States Army Corps of Engineers
Sacramento District
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Hon. Elizabeth Patterson, Mayor
City of Benicia
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Jenni Klueger

From: "Craig Andersen" <candersen@ablaw.com>
To: <jklueger@AandB.com>
Sent: Monday, December 27, 2010 3:07 PM
Subject: Fw: December 22, 2010 arsenel property owners meeting with members of City of Benicia staff, Mark O'Brien and Mayor Patterson

----- Original Message -----
From: Craig Andersen
To: Heather.McLaughlin@ci.benicia.ca.us
Cc: epatterson@ci.benicia.ca.us ; aschwartzman@ci.benicia.ca.us ; tcampbell@ci.benicia.ca.us ; mhughes@ci.benicicia.ca.us ; mioakimedes@ci.benicia.ca.us ; mobrien@erscorp.us
Sent: Thursday, December 23, 2010 2:40 PM
Subject: December 22, 2010 arsenel property owners meeting with members of City of Benicia staff, Mark O'Brien and Mayor Patterson

Dear Ms. McLaughlin, On behalf of several former property owners in the Benicia Industrial "Park" which we represent, several current property owners within the Park, which we represent and myself, as a current operator of a business within the Park, I wish to thank Mark O'Brien of ERS, City of Benicia staff, Mayor Patterson and yourself for the joint presentation 12-22-10 for 1 hour to a number of current property owners/prior property owners/business operators within the Park for information re the proposed consulting agreement the City of Benicia contemplates entering into with ERS relating to potential arsenal cleanup. I apologize for the style of this memorandum in that our office is closed until next week, i.e. no elves and I must utilize ***"Dragon"*** to transmit my concerns as I am a terrible typist. I will forward to you a formal memorandum on our stationary next week. I did want to get this out today since it is evident you're on a very, very, very short timeline regarding the proposed contract for consulting and potential remediation. Evidently the proposed contract with ERS is on for the first City Council meeting of 2012, (I believe 1-5-11). In my opinion, the timeline of the proposed contract, (both in scope and cost), is much too short, (about 10 days from our meeting over the Christmas Holidays). It was evident from the meeting that most affected individuals/entities did not know the nature and extent of the potential issues facing their properties/businesses. However, a short timeline has been set, (I trust for justifiable reasons), and I will attempt to respond with our comments and suggestions prior to the 2011 meeting and a potential approval of the ERS proposal. Again, yesterday's meeting was very informative and I must say consoling to most in attendance on behalf of landowners/prior landowners and business operators within the Park. **Based on the representations of the City and ERS**, it is my understanding that in no way will the landowners/previous landowners/ business operators in the affected Arsenal area including of course those in the Park, be responsible for the $10,000 payment to ERS or any future payments to ERS regarding their proposed consulting agreement/services nor will they bear the cost of potential remediation. I'm not sure if I had the correct copy of the agreement, but I believe section 3B mentioned "landowners" and I trust this will be removed by your office and the appropriate clarification re non-liability for the consulting services as to landowners/prior landowners and businesses will be made. I would also like to mention that none of us in the Park are privy to the consulting agreement and thus are making no representations to ERS regarding payment or any conduct on our part. Likewise, the reference to insurance companies, **as per the ERS and City representations, only refers to those insuring the City of Benicia, (as was represented to all by the City staff and Mr. O'Brien), and does not refer to any past or present insurer or their agents of landowners/prior landowners or business operators within Park**. This will also be clarified in the final document. As was stated at the meeting landowners/previous landowners or business operators within the Park are not privy to the consulting contract nor are we assigning any of our potential insurance benefits to any consultants or the City. In other words, ERS, the City of Benicia or anyone else, (DOD, DTSC etc.) , will not proceed against any landowners/prior landowners/business operations within the Park in order to reach the insurance of landowners/prior landowners/business operators within the Park. Again, such assurance is very comforting to all landowners/prior landowners/business operations within the Park. As you can well imagine, the insurance carriers play a vital role in business lives to all of us as property owners/ businesspersons and unfortunately business survival requires that we be "cooperative" with our past/present carriers in order to protect our existing and future relationships which are vital to our operations/properties. Again, I thank you and Mayor Patterson for looking out for our best interests especially when it comes to insurance requirements. Also, in my copy, the **Indemnity section** obviously protects us and ensures that ERS and the City will comply with the

aforementioned representations and the indemnities set forth in the consulting agreement and will inure to us. Thank you for including such a provision in the proposed consulting agreement. It was very comforting. Mr. O'Brien of ERS was extremely helpful in his presentation and answered a number of questions and his answers were informative to all, however, one thing doesn't seem to make sense, (yes, a little " Columbo" in me.....). When asked regarding a potential conflict of interest relating to the remediation survey and the potential project cleanup, Mr. O'Brien responded to have the ERS **do both** would **not be** a conflict . With 30+ years in the construction/ engineering/remediation services industry, **I believe there is a significant conflic**t. To put it simply, absent a design/build situation, it is not common practice to have the architect/engineer design/review the **potential** remediation and then have the architect/engineer complete the **potential** work unless he/she is the successful bidder of the work. The **potential** remediation work, if any should go to a separate bid to protect the public/payees from both a financial and performance standpoint. In fact, I'm not sure if the City can enter into a **potential** remediation contract without going through the public bid process absent an exception to the general rule, i.e. an emergency etc., (which does not appear to exist - at least there are no "findings of such"). Again thank you for your time and continued attention to this project. I am certain that all landowners/prior landowners and business operators in the Park are thankful for the assurances they received from both ERS and the City of Benicia. The meeting was very informative and I wish the City the best of luck in pursuit of the Benicia Arsenal investigation and **potential** cleanup project and of course dealings with S. F. Bay Regional Water Quality Control Board, U.S. Fish and Wildlife, Calif. Fish and Game, Labor Commission, (State and Federal), Bureau of Reclamation, U.S. Army, EPA., DOD, DTSC, Cal - EPA, Solano Health Dept, Various Solano Co. agencies having jurisdiction, Bay Area Air Quality, Cal. Fire, DOJ, DOT, State Lands, Corps of Engineers, Bureau of Reclamation, U.S. Attys. et.al. Thanks again for all your help and my "hats off" to Mayor Patterson and her continued commitment to all us involved in the Park. If you would be so kind, please forward this memorandum on to those who signed up at the meeting of 12-2210. Unfortunately I do not have a list of those individuals or their respective e-mails. Thank you, Craig Andersen

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