

SAN FRANCISCO Business Times

Friday, January 4, 2008

Bay Area in a league of its own

Tech, finance, weak dollar help region sidestep ills suffered elsewhere

San Francisco Business Times - by Mark Calvey

Spencer Brown

New game: "Cleantech didn't even have a name just five years ago," says IBM's Clark.

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The Bay Area is proving to be an economic oasis amid bleaker state and national landscapes, with technology's strong momentum and the dollar's weakness protecting the region from many of the forces ravaging other locales.

A turbulent 2007 has given way to an unsettled 2008, but signs of the Bay Area's relative strength abound. Exports, retail sales and employment continue to grow, emerging sectors like cleantech attract increased interest and venture financing still flows freely.

Are there reasons to worry? Absolutely: virtually everything's growing more slowly than it was a year ago, and the verdict is still out whether the Bay Area can continue to be insulated from the worst of the nation's housing meltdown and economic slowdown. But the region enters a new year with reasons for confidence.

"Job growth in most regions within the state has slowed since 2006 — the only exception is the San Francisco Bay Area," said Keitaro Matsuda, senior economist with **Union Bank of California** in San Francisco. He cited the tech sector's strength as a key factor contributing to the Bay Area's 1.9 percent payroll employment growth, based on figures from the Bureau of Labor Statistics that have not been seasonally adjusted. That pace of payroll growth in 2007 was flat from the previous year — but not getting worse now constitutes the state's best showing. The Central Valley, Los Angeles and San Diego regions saw dramatic declines from 2006 levels.

State figures show that the greater Bay Area comprises eight of the state's 12 counties with unemployment rates below 5 percent as of November, with the local counties of Marin (3.8 percent) and San Mateo (4.0 percent) posting California's lowest jobless rates. San Francisco (at 4.4 percent) wasn't far behind.

Bay Area cash registers ring up further evidence of the region's strength.

While year-over-year sales tax revenues fell 2.2 percent in the third quarter statewide, sales tax collections rose 1.1 percent in the Bay Area, with San Francisco posting a 4.5 percent gain and Santa Clara County jumping 5.2 percent from a year ago, according to figures from the HdL Cos., a consulting firm that analyzes sales tax data for local governments.



The weaker dollar is one factor contributing to the region's rise in sales tax collections. The greenback's loss of value compared to the euro and other currencies is luring more international visitors to the Bay Area -- evident in the recent proliferation of European accents in San Francisco's financial district and tourist hot spots. The number of international travelers arriving at **San Francisco International Airport** rose 7.1 percent in October 2007 from a year earlier, the airport's latest figures available. Total airport arrivals jumped 10.3 percent during the same period as a weaker dollar also prompted more Americans to stay closer to home, opting for San Francisco over a European destination.

And while market strategists might wring their hands over the long-term effects of the dollar's fall, exporters see rising demand for the technology, wine and other local goods that make the Bay Area the state's most active exporting region.

Other promising signs for the Bay Area's outlook in the year ahead include the region's juggernauts of growth hitting all-time highs. **Apple**, for instance, crossed the \$200-per-share mark for the first time last week as bullish investors bid up stock on the prospects of growth for the company's iPods and iPhones. **Google** shares recently hit an all-time high of almost \$750 a share; investors found the Internet company's stellar growth all the more appealing amid a credit crunch that shut off the tap of easy money that financed huge buyouts of lackluster stocks in recent years. Both companies were significant contributors to the Nasdaq's 10 percent gain last year, its best showing since 2003.

The strong performance of these stellar growth companies helps create substantial wealth among employees and investors that gets spread across the region. It also builds a cadre of wealthy investors eager to seed the next crop of promising growth companies -- many of them centered around cleantech. Google founders Larry Page and Sergey Brin and Pay Pal founder Elon Musk have been among those pouring millions in tech-generated wealth into environmentally grounded new ventures.

No wonder the Bay Area's investment banks, such as **ThinkEquity Partners** and Merriman Curhan Ford, attract standing-room-only crowds at conferences focused on cleantech and other green sectors. Cleantech venture investments hit a record last year. During the first nine months of 2007, VCs poured \$2.6 billion into 168 deals nationwide, according to figures from Thomson Financial and the **National Venture Capital Association**. That pace of investment exceeded all the money invested in the sector in 2006, when \$1.8 billion was invested in 180 deals.

"Cleantech didn't even have a name just five years ago," said Drew Clark, co-founder and director of the **IBM Venture Capital Group**, which works closely with VCs and their portfolio companies as a strategic partner.

The majority of cleantech investments in the United States went to California companies, with VCs investing \$726.2 million in 68 deals. Solar energy was cleantech's biggest subsector during the first three quarters of 2007.

"There are major opportunities for venture capitalists to totally reshape the energy market throughout the world," said Mark Heesen, president of the National Venture Capital Association.

Beyond cleantech, the pace of venture investments in 2007 was shaping up to make it the most active year since 2001, with VCs putting to work an estimated \$30 billion last year. That's particularly good news for the Bay Area, which typically receives a third of all venture dollars invested. The money fuels innovation and new jobs at promising young companies as well as

creating business for the region's investment banks that are these companies' lifeline to the global capital markets.

As in the last economic boom, national media are rife with stories on Bay Area stock-option millionaires (like Google's former in-house masseuse, now running a charitable foundation) and the fantastic valuations put on local tech companies, such as Facebook's \$15 billion.

Of course, the last boom proved ephemeral, and Bay Area bankers and economists are quick to caution that the region's economy is not completely insulated from the housing woes and related turmoil sweeping through the state and national economies.

Union Bank's Matsuda points to the relative strength of the "coastal Bay Area" with its strong showing in technology and venture capital while Alameda and Contra Costa counties face higher levels of home foreclosures. That's a point echoed by community bankers; where they stand depends on where they sit. John Conover, president and CEO of **Borel Private Bank & Trust** in San Mateo said he's not seeing trouble in the bank's home loan portfolio, reflecting his affluent customer base primarily on the Peninsula. But Steve Buster, president and CEO of the **Mechanics Bank** in Richmond sees a different picture from his East Bay vantage point.

"The Bay Area will not escape the pain of foreclosures," Buster said. It's a point that already hits home for troubled borrowers in Oakland, Antioch and Brentwood.

And the jury is still out on whether the credit crunch will spread into other areas of lending — such as business loans and commercial real estate mortgages, which would have a far greater impact on banks across the region and the nation.

If so, the Bay Area's oasis of prosperity could turn out to be simply a mirage.

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East Bay mayors, UC chancellor unite for 'Green Wave'

Carolyn Jones, Chronicle Staff Writer

Tuesday, December 4, 2007



East Bay leaders, hoping to capitalize on the energy research emerging from UC Berkeley and the Lawrence Berkeley lab, vowed Monday to create a regional environmental hub that would mirror the success of Silicon Valley.

The mayors of Oakland, Berkeley, Richmond and Emeryville, along with UC Berkeley Chancellor Robert Birgeneau and Lawrence Berkeley National Laboratory director Steven Chu, announced an agreement to promote the East Bay as the nucleus of a "green wave" of research and manufacturing.

"The Silicon Valley of the green economy is going to be here in the East Bay," Berkeley Mayor Tom Bates said at Monday's event, held at a solar power equipment factory in Richmond. "We're putting our cities' chauvinism aside and working together. We're stronger when we unite."

The East Bay is already home to many environmental firms and factories, many of which began as spin-offs from UC Berkeley and Lawrence Lab. But as the companies grow, they've tended to relocate to the South Bay, where lab space, technological support and high-tech employees are more plentiful, or to places with more vacant land.

The East Bay Green Corridor Partnership would create a variety of incentives for green businesses to stay put. Among the proposals: a job-training program for the less-skilled members of the workforce, such as a certification program at local community colleges in solar installation or biotechnology lab work.

Green business executives in the East Bay said they are thrilled with the move.

"For us, we see great opportunities in the East Bay because it's so close to the university and lab," said Ilan Gur, corporate development director of Seeo, a Berkeley startup that is studying ways to increase energy storage. "A lot of people don't want to commute to the South Bay, but the South Bay has a very well-established infrastructure to help young businesses," he said. "We'd like to create something similar here."

Oakland Mayor Ron Dellums and Richmond Mayor Gayle McLaughlin said the plan would be a boon to their cities because it could provide training and entry-level jobs, possibly reducing crime in the process. Oakland and Richmond also have ample space and industrial zones for companies that want to expand.

"This is a magnificent opportunity for us to simultaneously address the issues of pollution and poverty," Dellums said. "This kind of economic development can help a generation of people who've been left behind."

Birgeneau said that keeping energy startups close to UC Berkeley and the Lawrence lab will help further the university's goal of studying alternative energy and ultimately reducing global warming.

If the East Bay becomes fertile ground for green businesses to prosper, UC Berkeley would be a more attractive choice for "the best minds in the world" to study global energy production, he said.

In the past few months, UC Berkeley has been showered with funding for energy research.

In February, UC Berkeley and the Lawrence lab finalized plans for the Energy Biosciences Institute, funded with a \$500 million gift from the energy giant BP. In June, the university and lab, among other agencies, announced a \$125 million grant from the U.S. Department of Energy to create the Joint Bio Energy Institute, which will focus on biofuel research.

In October, the university announced a \$10 million gift from Dow Chemical to study sustainability.

Berkeley, Oakland, Emeryville and Richmond have also taken aggressive steps to combat global warming, ranging from Oakland's goal to be independent of oil by 2020 to Berkeley's plan to reduce greenhouse gas emissions by 80 percent by 2050.

So far, economic directors of the four cities, UC Berkeley and the Lawrence lab have agreed to meet quarterly to study regional labor needs and come up with solutions to business problems such as lack of space or workforce shortages. They're also planning to apply for federal money to fund job-training programs.

The East Bay Green Corridor eventually hopes to create a permanent council to study and promote the East Bay's green businesses.

E-mail Carolyn Jones at carolynjones@sfgate.com.

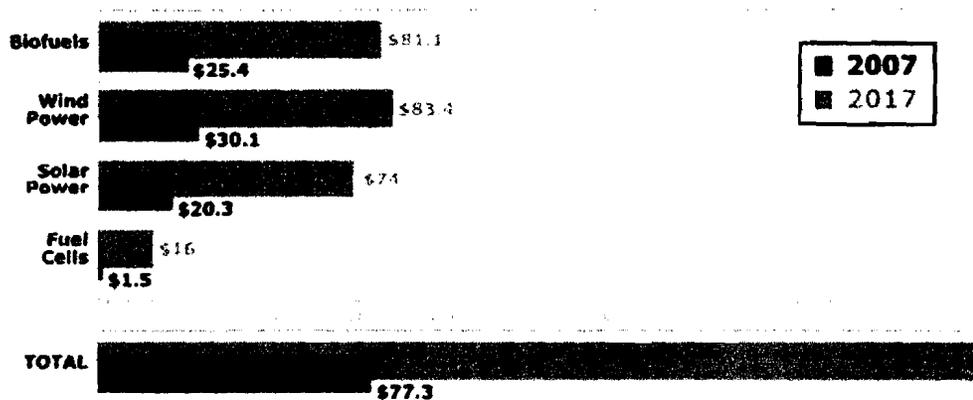
<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/12/04/BA9CTNJ5V.DTL>



Charts and Tables from Clean-Energy Trends 2008

The following is data from *Clean-Energy Trends 2008*. To read the full report, please download the PDF file by clicking on the link to the left.

Global Clean-Energy Projected Growth 2007-2017 (\$US Billions)



Global Installation/Production Growth: Solar, Wind, Biofuels

	2003	2007	2017 (est.)
Solar PV Installations	620 MW	2,821 MW	22,760 MW
Wind Power Installed	8000 MW	20,060 MW	75,781 MW
Biofuels Produced	7 Billion Gallons	15.6 Billion Gallons	45.9 Billion Gallons

Source: Clean Edge, Inc. © 2008

22 Sustaining the Bay Area's Competitiveness in a Globalizing World

EXHIBIT 20

THE CARBON ABATEMENT POLICIES ARE CREATING A GROWING GREEN TECHNOLOGY MARKET AROUND THE WORLD

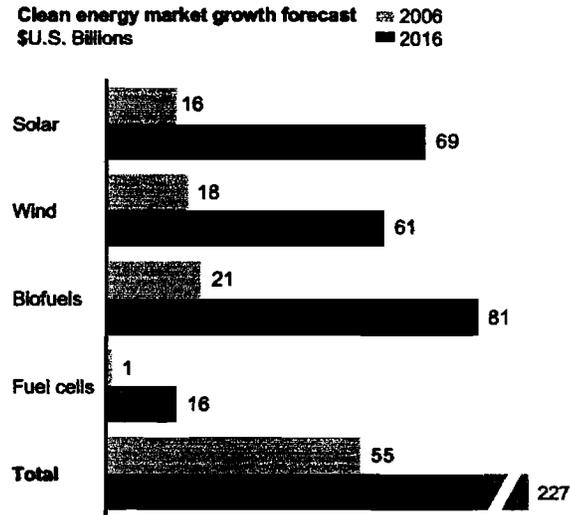
North America CO₂ reduction targets

- California
 - 2000 levels by 2010
 - 1990 levels by 2020
 - 80% below 1990 levels by 2050
- 10 Northeastern U.S. States
 - by 5Mt CO₂ by 2012
 - 10Mt by 2015
 - 30Mt by 2018
- Canada
 - 20% below current levels by 2020

Europe CO₂ reduction targets

- Europe as a whole
 - 20% by 2020 from 1990 levels
 - 60-80% up to 2050
- Germany
 - 40% by 2020 from 1990 levels
- UK
 - 60% by 2020 from 1990 levels

Clean energy market growth forecast \$U.S. Billions

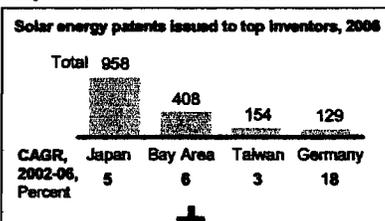


Source: The Clean Edge Market Authority; European Commission; U.K. government; German government; Office of the Governor of California; McKinsey analysis

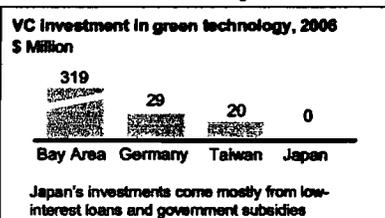
EXHIBIT 21

THE BAY AREA HAS THE POTENTIAL TO CAPTURE GREEN MARKET OPPORTUNITIES

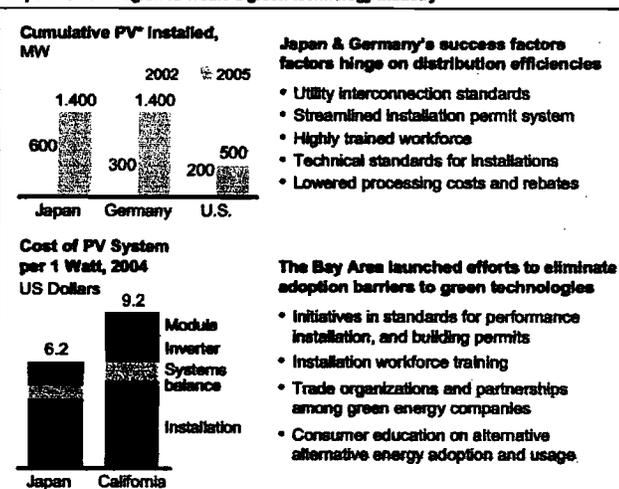
Bay Area research and investments...



... and abundance of VC funding ...



...position the region to create a green technology industry



* Photovoltaics (PV) is a low-maintenance and durable solar technology, in which photovoltaic cells produce electricity directly from sunlight
Source: Delphion; Venture Expert; Clean Edge; SolarBuzz; Silicon Valley Leadership Group; IEA Photovoltaic Systems Program; McKinsey analysis

WEST COAST HOME BUILDERS, INC.

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November 20, 2007

VIA EMAIL & FACSIMILE

Mayor Steve Messina
and Members of the City Council
City of Benicia
250 E. "L" Street
Benicia, CA 94510-3239

Re: City Council Hearing of November 20, 2007;
Agenda Item A – Traffic Impact Fee Program Update

Dear Mayor Messina and Members of the City Council:

I am writing on behalf of West Coast Home Builders, Inc., the owner of the property proposed for development as the Benicia Business Park.

We have reviewed the proposed update to the Citywide Traffic Impact Fee Program ("Traffic Fee Update") and offer the following comments for your consideration:

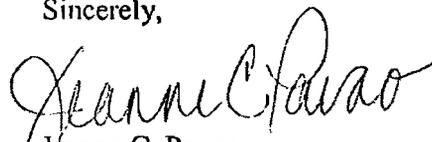
1. Table 3 which provides the calculation of PM peak hour trips generated by new development assumes 78 PM trips for residential development based on an assumed development of only 100 residential units left in the City. We are concerned that this Table significantly underestimates the number of residential units left for development within the City. It is our understanding that the City's General Plan anticipates more residential growth than the estimate set forth in the Traffic Fee Update. We also question whether such estimate also is consistent with ABAG's projections for the City. This estimate should be carefully reviewed so that the residential growth expectations are not underestimated thereby resulting in other users paying more than their equitable share of the improvement costs.
2. Figure 2 of the Traffic Fee Update identifies the street network and intersection improvements included in the 2007 Fee Program. The proposed fees will pay for these improvements and are allocated amongst the various

types of development within the City based on their estimated traffic trips. This program assumes that the Benicia Business Park will share in the costs of the improvements identified on Figure 2 as well as bearing costs associated with the improvements shown on Figure 3. It is our position that our property, and perhaps others, should not have to participate in any of the costs associated with the street improvement identified on Figure 2 as "Road Improvement 'd'". That improvement appears to be a new roadway connecting E. 2nd Street and Park Road. It is our position that the City cannot demonstrate any nexus between Road Improvement 'd' identified on Figure 2 and the Benicia Business Park and we therefore request that it be removed from the traffic fee program.

3. Table 3 of the Traffic Fee Update identifies the calculation of PM peak hour trips generated by new development. In assigning 5,949 PM trips to the Benicia Business Park, footnote 5 provides that the gross trip calculation in the EIR was adjusted to account for a typical 50% retail "pass-by" trip factor being applied to the project's retail development component. What is surprising about that assertion is that the EIR did not take into account the "pass-by" trip factor in assessing the traffic impacts of the Benicia Business Park project. In fact, in response to a comment to the EIR submitted by our traffic consultant, Abrams Associates, in which Mr. Abrams requested that the EIR take into account a "pass-by" trip factor for retail uses, the EIR preparer refused to do so stating that "any assumptions regarding pass-by trip reductions in the Draft EIR would be speculative" and that "it would not have been prudent to take pass-by trip reductions". This response is completely at odds with the footnote statement in Table 3 of the Traffic Fee Update.

We request that you consider the above comments in your deliberations on this matter this evening. We further request that you continue the matter and direct staff to revise the Traffic Fee Update in order to address our concerns.

Sincerely,



Jeanne C. Pavao
Senior Vice-President
and General Counsel

cc: Albert D. Seeno, III
Jay Torres-Muga
Sal Evola

MARILYN BARDET
333 East K St. Benicia, CA 94510
Tel (707) 745-9094
email mjbardet@sbcglobal.net

August 15, 2007

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

**SEENO "BENICIA BUSINESS PARK"
ADDITIONAL COMMENTS TO MY SUBMITTAL, AUGUST 6, 2007,
ON THE DEIR and RESPONSE TO COMMENTS**

Dear Mayor Messina, City Councilmembers Hughs, Whitney, Schwartzman and Patterson,

The Seeno Business Park will not be a "Benicia" Business Park, and should not be allowed, until we have an acceptable project that conforms *by intrinsic design* with General Plan goals and policies.

There can be no doubt that the DEIR and Response to Comments (RTC) are fatally flawed, with inadequate, incomplete, inaccurate and failed analyses of significant and cumulative impacts (categories of Land Use and Planning Policy, Hydrology and Water Quality, Air Quality, Biological Resources, Transportation and Circulation, Air Quality, Noise, Visual Resources, Utilities and Infrastructure and Urban Decay). The DEIR is without reference to adequate, *prepared and deliverable* mitigation plans. I incorporate here all comments that I and other citizens, as well as state agencies and the Sierra Club have previously submitted to support this statement. Obvious, irreversible and significant impacts identified by the DEIR point to the Project's fundamental lack of compliance with the Benicia General Plan. This is reason enough for you to reject the Proposed Project. Nothing in the Response to Comments would change that assessment. Nothing displayed by LSA at the August 7th hearing would convince otherwise.

However, how do you "get to a better project"? For example, if you accept and certify the final EIR as "sufficient", you may think that the brief descriptions and colored maps of project alternatives, (see DEIR, following page 364, Figures V-I, V-II and V-III), give you enough assurance that you won't be cheated of a better "environmentally superior" project. But if you certify the FEIR without setting limitations, standards, and insisting on valid mitigations, and without adequate information to assess the alternatives, you would be certifying your "hunches" with a hope and prayer.

If you vote to accept the Final EIR on the assumption that you can reject the Proposed Project in favor of the "environmentally superior alternative" or any other named alternative, you will not be *guaranteed* that you will get a *substantially* better-designed and *reduced project* that will *avoid* significant and irreversible, cumulative impacts.

Why? The maps in the DEIR for the project alternatives, Figures V-I“Waterway Preservation Alternative”; Figure V-II (“Hillside/Uplands Preservation Alternative”, and Figure V-III“Mixed Use Alternative”) do not give decision-makers and the public enough basic information to judge whether or not industrial uses or residential uses would encroach upon Lake Herman Road. The three maps do not indicate the location of Lake Herman Road; they do not have enough definition to tell how 80 lots would be alternatively distributed *as compared to the Proposed Project.* [Master Plan, Figure III-2, following page 63-64], The three maps’jig-saw puzzled colored areas—”purple” for industrial, “orange” for commercial, “green” for open space and “yellow” for medium density residential—*do not show the precise boundaries relative to known roads and landmarks.* What the alternative maps suggest is that the project alternatives would re-distribute the same number of lots, potentially where we would not want them, unless you require limitations. This means that the project alternatives do not substantially avoid cumulative impacts. Thus, to gain protection for water and biological resources, or, for preservation of hillsides, we could get *diminished protection* for our scenic rural route, from growth-inducing expansion of road system, signalized lights, road widening, etc. It also means we would NOT get reduction in cumulative traffic impacts and air pollution. With regard to getting an “improved project alternative”, this “trade-off” approach should be rejected.

At the very least, before voting whether to certify the Final EIR, I believe you should *require basic information about the project alternatives: specifically, where the various boundaries for proposed industrial, commercial and residential uses actually lie; AND how many industrial, commercial or residential lots each alternative would develop and the total number of lots proposed for each.* Without this information, neither decision-makers nor the public can fairly judge the merits of any of the DEIR’s suggested project alternatives with regard to significant, cumulative and irreversible impacts.

Why should you care?

It is fair and just for the public to ask of Councilmembers: What compensations do you envision that could redress the incredible losses signified by “irreversible impacts”—to air quality, biological resources, and community character and visual appearance? What would redress profoundly disturbing, unhealthy traffic impacts, especially in the vicinity of East Second Street? Do you accept the “phantom mitigations” suggested by the DEIR of widening of I-780 and Lake Herman Road and the creation of two new “boulevards”—one connecting to Lake Herman Road that would bring significant traffic from I-680 into town via our northern rural area? Do you accept the suggested mitigation of an 8 foot sound wall along East Second Street, our “central gateway” into Downtown?

What’s at stake? Benicia’s quality of life. No less.

To review and restate key failures of the DEIR and RTC with regard to the Proposed Project:

- The grading plan calls for mowing down 9 million cubic yards of northern hillsides for 80 flat pads, cul-du-sacs and creation of two new boulevards, one with signalized lights at Lake Herman Rd. The Project as described in the DEIR invites 27,000 more vehicle trips per day on East Second St,

affecting circulation into and through our city, and encourages more commuting, not less, with growth-inducing impacts along Lake Herman Road, our “rural scenic route” which is protected as such under the General Plan.

- There are no guarantees of any limitations on “unwelcome” tenants—so that long-term negative economic impacts to the Downtown Corridor commercial center cannot be fairly evaluated. Economic impacts could be chronically destructive of the Downtown as our commercial center.
- The lack of any attention to the East Second/East Military intersection—which was virtually dismissed as part of the traffic analysis—is a great oversight. The DEIR presumes that employees and users of the proposed business park would not venture Downtown and would therefore not contribute, or lead to, any potentially significant congestion south of I-780 on East Second (or on secondary neighborhood streets). This presumption is contrary to the assertion made elsewhere in the DEIR and RTC that the business park’s commercial zone would not contribute to urban decay in our Downtown commercial corridor. No analysis was made about cumulative increased traffic congestion at the East Second/East Military intersection, owing to location of new Mills Community Center located between East L and East K, within two blocks of the intersection.
- The DEIR cannot claim that health and safety impacts (circulation, air quality and noise impacts, as well as pedestrian and bike safety) have been sufficiently addressed by the traffic study and air quality analyses, especially in light of the above named oversight. Evaluation of traffic impacts to our Downtown are not analyzed, (restricted circulation, added air and noise pollution in neighborhoods, safety hazards for children walking to and from Semple School, etc.)
- The Project calls for the widening of Lake Herman Rd, with new 4-lane boulevard accessing the scenic route, with a signalized light at the new intersection of Industrial Way at Lake Herman Rd. This is not only destructive of the rural character of Lake Herman Recreation area and scenic approaches into town, it is also potentially growth-inducing. (Columbus Parkway in Vallejo is a prime example of cumulative growth-inducing consequences that large-scale development brings with expansion of road systems).
- The DEIR calls for adding a new lane to I-780, for “local traffic”, the new lane to stretch from East Second exit to Columbus Parkway. Public health and safety will be at increased risk: Widening of I-780 would encourage faster speeds and more traffic on “thru” lanes. Increased traffic loads at peak hours and throughout the day, including trucks supplying the business park from I-80 corridor, will impact air quality in the vicinity of already impacted local neighborhoods. The DEIR’s analysis of cumulative LOCAL air impacts is unsupportable: conclusions about cumulative impacts are erroneously based on limited REGIONAL statistics about the condition of the Air Basin generally, and on the wild assumption that BAAQMD’s single monitor in Vallejo—upwind of Benicia—can tell Benicians the ambient LOCALIZED and SPECIFIC concentration of pollutants in our air at any given time of day (or night) impacting neighborhoods and schoolyards. *This assumption demonstrates the fatal nature of the analysis of the DEIR’s cumulative air quality impacts on local residents.*

- The Project demonstrates a fundamental disregard for biologic and water resources and the hydrology of the northern area.
- The Project is not sufficiently analysed to account for the array of impacts contributing to accumulation of greenhouse gases (including carbon dioxide and nitrogen compounds) owing to the scale and design of the Proposed Project's master plan.
- Energy conservation and "sustainability" were not made fundamental to the Project's design concept (master plan).

Finally, CEQA requires that sufficient information be supplied to allow the public to understand the full scope of a project and its impacts when the project is fully developed at so-called "build-out". The scale and imaginable scope of the Seeno business park is such that we do not need a crystal ball to look 25 years deeper into this new century to fully realize its consequences: the City has thus far declined to put limitations on the extent and type of development permitted on the 527 acres.

You have reliable, informed commentary given to you by state agencies, the City of Benicia's Public Works Department, the Solano chapter of the Sierra Club, and many citizen commentators—some who are professional CEQA experts and experts in their respective fields related to environmental and urban planning, including Bob Berman, Steve Goetz, Don Dean, Sue Wickham and Councilmember Elizabeth Patterson, and others, by virtue of local experience, knowledge of local planning issues, city government and Benicia's General Plan are considered "local experts" under CEQA, including Bob Craft, Tom Campbell, Jan Cox-Golovich, Dan Smith, Kitty Griffin and myself). There are many others in our community who have lent their voices—their outpouring now on record from letters and public testimony at hearings—who are equally concerned about the fate of our community's quality of life, now in your hands, if the Seeno business park is permitted without concrete limitations, standards and mitigation measures.

For sake of the public's trust—*before* considering certification of the FEIR, and *at the very least*—**please request sufficient *basic* information (see comments above) to help ascertain at this stage in the process whether or not the several concepts portrayed as project alternatives in the DEIR, (including the environmentally superior "The Hillside/Uplands Preservation Alternative"), will avoid key, significant, irreversible impacts to our quality of life. Please ask to see committed boundaries for potential industrial, commercial and residential uses, and for the total number of lots each alternative would accommodate.** Without these basic facts and figures, you would be voting on your hunches to "get it right".

Only a better designed, reduced project—with a masterplan that reflects significant changes to avoid irreversible impacts and with standards and limitations set in accordance with the Benicia General Plan, can the public be assured that our decision-makers are acting in good faith to protect our topography, biological and water resources, protect Lake Herman Road's scenic rural character, avoid irreversible cumulative impacts of traffic and air pollution, and address the steep challenges of the 21st century.

Please do not sell off Benicia's quality of life— values protected by our General Plan and treasured by the community-at-large.

Thank you for your time, considering my comments.

Sincerely,

Marilyn Bardet

cc: Charlie Knox, Planning Director
Damon Golubics, Senior Planner
Jim Erickson, City Manager
Steve Goetz
Bob Berman
Don Dean
Bob Craft
Kitty Griffin
Tom Campbell
Jan Cox-Golovich
Dana Dean

File



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CITY ATTORNEY'S OFFICE
HEATHER C. Mc LAUGHLIN
City Attorney

August 8, 2007

Via Email

Jan Cox Golovich, Chair
Nancy Lund, Co-Chair
Susan Street, Co-Chair
Sabine Yates, Co-Chair
Benicia First
P.O. Box 119
Benicia, CA 94510

RE: Your Letter of June 8, 2007 on Benicia Business Park

Dear Jan, Nancy, Susan and Sabine:

Please accept my apologies for the delay in responding to you. I am unable to provide you with a formal legal opinion as you requested. The City Attorney is only able to provide legal advice to the Council and staff.

That being said, I can relay the advice I have given at public meetings. In short, the vesting tentative map has not been approved by the City. The map is part of the project being analyzed by the draft environmental impact report presently being considered. However, even though the vesting tentative map has not been approved by the City, the fact that the application for the project has been accepted as complete is important. Under state law, the only laws we can apply, basically, to the project are the ones in effect at the time the application was accepted as complete. Thus, the new big box ordinance does not apply to the project. State law does allow for the application of new rules to vesting tentative maps in a few limited circumstances such as to protect health and safety or to comply with state or federal law. These circumstances do not cover the big box ordinance.

Please note that it may be possible to achieve a similar result to the big box ordinance through the use of mitigation measures to address the impacts of the proposed project. For example, see Mitigation Measure DECA-1. I have attached a memo on this measure for your information.

STEVE MESSINA, *Mayor*
Members of the City Council
ALAN M. SCHWARTZMAN, *Vice Mayor* • MARK C. HUGHES • ELIZABETH PATTERSON • BILL WHITNEY

JIM ERICKSON, *City Manager*
VIRGINIA SOUZA, *City Treasurer*
LISA WOLFE, *City Clerk*

Benicia First
August 8, 2007
Page 2

Please accept my apologies for not responding sooner to you.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Heather C. Mc Laughlin". The signature is fluid and cursive, with a large initial "H" and "M".

Heather C. Mc Laughlin
City Attorney

Attachment

cc: City Council
City Manager
Community Development Director



City Attorney's Office
MEMORANDUM

Date: August 8, 2007
To: Charlie Knox, Community Development Director
From: Heather C. Mc Laughlin, City Attorney
Re: **Benicia Business Park-Proposed Mitigation Measure**

Please revise Mitigation Measure DECAY-1 as noted below.

Prior to issuance of a use building permit for any commercial development in the proposed project, the City shall review the anticipated tenant mix of the Business Park and determine whether the mix has substantially changed from the anticipated retail mix analyzed in this EIR. A substantial change in the anticipated retail mix would be a change that increases the potential for urban decay in Downtown Benicia or other local commercial centers, and could include (but would not be limited to) the addition of a big box retail tenant. If the City determines that the new tenant mix has substantially changed, the project sponsor shall update the economic analysis prepared for the project, or provide a letter prepared by an economic analyst that discusses changes to the previous analysis. The adequacy of the economic analysis shall be subject to review and approval by the City's Director of Community Development, who may require revisions and additional analysis if he or she deems it appropriate. In the event that the City's Director of Community Development finds that the new tenant mix has substantially changed, he or she shall hold a noticed public hearing at which the City shall consider whether the new tenant mix could contribute to urban decay. If the ~~economic analysis shows~~ Director finds, based upon the economic analysis and any other evidence submitted at the hearing, that the new tenant mix could contribute to urban decay, the City and project sponsor shall develop a mitigation measure to reduce this impact to a less-than-significant level. Following implementation of this mitigation measure, a use building permit could be issued. If the ~~economic analysis shows~~ Director finds that the new tenant mix would not result in significant urban decay impacts, the use building permit could be issued without further analysis or mitigation. Any findings of the Director shall be subject to appeal to the Planning Commission in accordance with section 1.44 of the Benicia Municipal Code.

Prior to recording of any final map for the commercial phase of the Benicia Business Park, the applicant shall enter into a recordable subdivision agreement or provide other adequate assurance acceptable to the City providing that it shall be bound by the requirements of this mitigation measure.

A revised economic analysis shall be similarly completed in conjunction with subsequent CEQA review of any changes to the project, if deemed necessary by the City.

Charlie Knox
August 8, 2007
Page 2

These changes address the fact that the occupancy permit stage is too late to do this analysis as well as the fact that a use permit is not required for the use in question.

Please let me know if you have any questions.

A handwritten signature in black ink, appearing to read "Charlie Knox", written over a horizontal line.

cc: City Council
City Manager



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August 6, 2007

VIA FACSIMILE AND EMAIL

Mayor Steve Messina and
Members of the City Council
City of Benicia
250 East L Street
Benicia, CA 94510

Re: August 7, 2007 Regular City Council Meeting, Agenda Item VIII.B - Hearing
to Determine Conformance of Benicia Business Park Draft Environmental
Impact Report With City of Benicia CEQA Environmental Review
Guidelines

Dear Honorable Mayor Messina and Members of the City Council:

As you know, this office represents West Coast Home Builders in connection with its proposed Benicia Business Park project. We have received and reviewed the agenda and the staff report for the continued hearing to be held this Tuesday, August 7, 2007, to determine the conformance of the Benicia Business Park Draft Environmental Impact Report ("DEIR") with the City of Benicia's CEQA Environmental Review Guidelines ("City's CEQA Guidelines").

On behalf of our client, this letter shall serve as formal, written objection to the inclusion in the conformance resolution of a recommended finding that:

[T]he certification of a Final Environmental Impact Report based on the project description in the Draft Environmental Impact Report for the Benicia Business Park likely will not allow the project as described in that document to be approved because 'the proposed project would substantially conflict with policies in the General Plan adopted for purposes of environmental protection' (Impact LU-1, DEIR, p. 104), thereby creating a significant and unavoidable impact.

Adoption of the above finding is contrary to the applicable law, outside of accepted entitlement or CEQA processing practice, and wholly lacking in the required evidentiary support. Accordingly, we respectfully request that you remove the

language quoted above from the draft resolution and proceed to conduct the noticed DEIR conformance hearing in accordance with the applicable law.

1. **At This Stage In The Entitlement Processing, The City Council Is Only Authorized To Determine Whether The DEIR Conforms With The City's CEQA Guidelines.**

The City's unorthodox and unique CEQA review process (which is likely preempted by CEQA state law¹) requires that the decision-making body hold a public hearing on the adequacy of the Draft EIR, and that upon completion of the public hearing, "the decision making body *shall* determine: (1) Whether to accept the Draft EIR after determining it is in conformance with the CEQA Guidelines and that there has been an adequate response to potential environmental impacts..." (City's CEQA Guidelines, § III.D.9.c. and d., *emph. added.*) **The City's CEQA Guidelines include no authorization for the additional finding proposed by staff, and adoption of such a finding by the City Council prior to preparation of a complete Final Environmental Impact Report for the project, or at any other time prior to City Council consideration of the merits of requested entitlements, would be contrary to CEQA, and to accepted entitlement processing due process requirements more generally.**

Moreover, despite several meetings between City staff and our client in anticipation of tomorrow's meeting, and our client's repeated assurances to City staff that it would be presenting additional information to the City Council at tomorrow's meeting, our client was never informed that staff intended to broaden the scope of the resolution presented to the City Council to unlawfully include matters beyond the conformance of the DEIR with the City's CEQA Guidelines. The City's "conformance" finding requirement is unique among all of the jurisdictions in which we have practiced. To expand the scope of Council consideration to include a finding of lack of conformity with certain General Plan policies prior to any substantive hearings on the subject have been conducted is improper, ill-advised, and illegal.

2. **At The Appropriate Time, The City Council – Not The EIR Consultant – Must Determine Whether The Project Is Consistent With The City's General Plan.**

As we explained in detail in our lengthy comments on the DEIR (which we incorporate herein by this reference), the proposed Benicia Business Park is consistent with the City's adopted General Plan and requires no General Plan amendments. For the reasons set forth in our previous correspondence to the City,

¹ Because the City's CEQA Guidelines conflict with state law requirements, as set forth in the City's CEQA Guidelines, the conflict "shall be resolved in favor of the State Law and Regulations." (City's CEQA Guidelines, § I.A.)

and such others as may be advanced in the future, we continue to strongly disagree with the EIR consultant's determination that the project is not consistent with the City's General Plan. Please be advised that on more than one occasion, we have been informed by City staff that the determinations in the DEIR are the EIR consultant's alone, and that, in an effort to remain at "arm's length" with the EIR consultants, City staff has not, to date, offered its opinion as to the consistency of the project with the City's General Plan.

Further, it is the **City Council** that is vested with the legal authority to determine whether a project is consistent with the City's General Plan – **not the EIR consultant**. The EIR's strongly worded statements unlawfully encroach on the City Council's authority and discretion to interpret its own General Plan. Such a determination can only be made by the Council after consideration of the substantive elements of the project.

The CEQA Guidelines require only that an EIR "discuss" inconsistencies with applicable plans. This discussion is required to be included in the "environmental setting" section of an EIR – not in the consideration and discussion of environmental impacts. (See 14 Cal. Code Regs., §§ 15125, 15126, 15126.2.) As explained by the authors of two leading CEQA treatises, when a determination of consistency is uncertain or complex, the proper role of the EIR is to set forth the issue and to relate it to the discussion of environmental impacts. (1 Kostka & Zischke, Practice Under the California Environmental Quality Act, CEB 2006, § 12.35, p. 610); see also Guide to CEQA, Remy, et al., 11th ed., 2007, p. 194.) The ultimate determination of consistency must be made by the City Council and must be based on substantial evidence.² The determination may not be arbitrary or capricious, and evidence of consistency in the record cannot be ignored or disregarded.

3. **The EIR Consultant's Conclusion Is Wrong As A Matter of Law - An Inconsistency Between A Proposed Project And An Applicable Plan Is A Legal Determination, Not A Physical Impact On The Environment.**

Under CEQA, a plan inconsistency cannot, as a matter of law, be deemed a **physical environmental impact**. As set forth in section 15382 of the CEQA Guidelines, "significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna,

² As set forth in the CEQA Guidelines, "[s]ubstantial evidence" means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached...Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence." (14 Cal. Code Regs., § 15384(a).) Our detailed comments constitute substantial evidence of the project's consistency with the City's General Plan.

ambient noise, and objects of historic or aesthetic significance..." (see also 14 Cal. Code Regs., § 15358(b) ["Effects analyzed under CEQA *must* be related to a physical change."], *emph. added.*)³ Accordingly, the DEIR's purported conclusion that a potential conflict between the General Plan and the project is a "significant and unavoidable [environmental] impact" is improper, contrary to CEQA's clear requirements, and must be disregarded.

An inconsistency between a proposed project and an applicable plan is a legal determination, not a physical impact on the environment...Although it is appropriate to use plan policies as an aid in identifying impacts that merit particularly close scrutiny and as standards for determining the significance of the impacts, plan inconsistencies should not be treated as an environmental impact in themselves.

(1 Kostka & Zischke, Practice Under the California Environmental Quality Act, CEB, § 12.36, p. 611.) As further explained by the Sixth District Court of Appeal, assuming an inconsistency between a project and other land use controls exists, that inconsistency "does not in itself mandate a finding of significance. [] It is merely a factor to be considered in determining whether a particular project may cause a significant environmental effect." (*Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1208.)

4. Conclusion.

By including the proposed consistency finding in the conformance resolution, the City appears to disregard these clear CEQA mandates. CEQA "must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement." (14 Cal. Code Regs., § 15003(j); *Laurel Heights Improvement Assoc. v. Regents of the University of California* (1993) 6 Cal.4th 1112.) As we also indicated in our August 1, 2007 letter to City Manager Jim Erickson, we remain concerned that the City's CEQA Guidelines essentially permit a neverending infinite loop of environmental review that conflicts with numerous provisions of CEQA, including CEQA's finite and mandatory processing time limit.⁴

³ "Must" identifies a mandatory element of the CEQA Guidelines which all public agencies are required to follow. (14 Cal. Code Regs., § 15005(a).) See also City's CEQA Guidelines, § III.B.5. ["The definition of a 'significant effect' is any substantial adverse change in the *physical* conditions that exist around the proposed project."], *emph. added.*)

⁴ As set forth in section 15108 of the CEQA Guidelines, and in section III.D.16 of the City's CEQA Guidelines, the City must complete and certify a final EIR within one year from the date the project application is deemed complete. This one-year time limit may be extended

Mayor Steve Messina and Members of the City Council
August 6, 2007
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At this time, we respectfully request the City Council to fully comply with its CEQA Environmental Review Guidelines, the state CEQA Guidelines, and CEQA. For almost a quarter of a century the City of Benicia has planned for and anticipated development of the Benicia Business Park site in the manner proposed. While the lengthy and ongoing CEQA review process has, to date, precluded discussion of the merits of the project and the necessary entitlements, we look forward to an engaging, positive discussion about the merits of the project in the very near future. Beginning with a presentation by our client's architects at tomorrow's meeting, we are certain that you will be pleased with our client's vision for the Benicia Business Park, and that the City of Benicia will be benefited by its eventual development.

Very truly yours,

MILLER STARR REGALIA



Kristina D. Lawson

KDL:kdI

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

once for a period of not more than 90 days upon consent of the City and the applicant. We also refer you to the Letter Agreement dated February 24, 2005 between the City and our client wherein outstanding "incompleteness issues" were resolved, and wherein both the City and our client agreed that "time is of the essence."



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August 1, 2007

VIA FACSIMILE (707) 747-8120

Jim Erickson
City Manager
City of Benicia
250 East L Street
Benicia, CA 94510

Re: Benicia Business Park; Conformance Hearing Pursuant to City of Benicia
CEQA Environmental Review Guidelines Section III.D.9.d

Dear Mr. Erickson:

As you know, this office represents West Coast Home Builders in connection with its proposed Benicia Business Park project. Yesterday we received a copy of the notice of the upcoming City Council hearing to consider the conformance of the Benicia Business Park Draft Environmental Impact Report (DEIR) with the City of Benicia's CEQA Environmental Review Guidelines. We very much appreciate that after a three month continuance, both you and Mayor Messina have agreed to calendar this continued matter for consideration at next week's City Council meeting.

Pursuant to section III.D.9.d of the City's CEQA Environmental Review Guidelines, as the public hearing on this matter was closed on May 1, 2007, the City Council must determine on August 7, 2007 "[w]hether to accept the Draft EIR after determining it is in conformance with the CEQA Guidelines and that there has been an adequate response to potential environmental impacts." Consistent with our May 1, 2007 correspondence to the City Council and staff's previous recommendation to the City Council, it is our position that the DEIR fully conforms to the City's CEQA Guidelines. With the unconventional addition of the nearly 600-page Response to Comments document to the administrative record prior to preparation of a Final EIR, the City's environmental review of the Benicia Business Park project has now exceeded the City's requirements, and has gone above-and-beyond the environmental review required by CEQA. Accordingly, we would appreciate confirmation that, as stated in the staff report dated April 10, 2007, staff will again inform the City Council that "the DEIR is adequate in conformance with the applicable sections of the City CEQA Environmental Review Guidelines."

Jim Erickson
August 1, 2007
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We understand that over the past week you have discussed the scheduling of this continued matter on at least three occasions with Sal Evola, and that you have expressed concerns that our client has not provided staff with written material to review in advance of the City Council meeting. Please be assured that our client intends to make a full presentation of its vision for the Benicia Business Park to the City Council and the public next Tuesday, and will distribute written materials to the members of the City Council, City staff, and the public at the scheduled meeting. These materials (which we understand you were able to review, in part) and the formal presentation are currently in the process of being finalized by Loving & Campos Architects, Inc. Additionally, a model of the project site will be available for review prior to any hearing on the Final EIR. While our client plans to present additional information about its proposed project to the City Council and the public next Tuesday, the City's CEQA Environmental Review Guidelines (and the circulated notice of public hearing) make clear that the purpose of the hearing is to determine whether the City's consultants have conducted the environmental review of the proposed project in conformance with the City's requirements. We acknowledge that varying concerns about the project have been raised by staff and members of the public. While a discussion of the merits of the project, including the project's consistency with the City's General Plan is unwarranted and inappropriate at this time, our client is fully prepared to discuss such matters when those matters are properly before the City Council.

We remain concerned that the City's CEQA Guidelines essentially permit a neverending infinite loop of environmental review. Such a process burdens the City's resources, and our client's resources, and is in direct conflict with numerous provisions of CEQA, including CEQA's finite and mandatory processing time limit.¹ To date, our client has spent well over \$300,000 on more than two full years of environmental review conducted by LSA. At this time, we respectfully request the City to fully comply with its CEQA Environmental Review Guidelines, the state CEQA Guidelines (14 Cal. Code Regs., §§ 15000 et seq.), and CEQA (Pub. Resources Code, §§ 21000 et seq.), so that the merits of the project may finally be considered by the City.

¹ 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 a final EIR within one year from the date the project application is deemed complete. (14 Cal. Code Regs., § 15108.)

Jim Erickson
August 1, 2007
Page 3

We look forward to receiving a copy of the Final EIR in the very near future, and to continuing our positive dialogue with the City and the public about the merits of the project at the appropriate time.

Very truly yours,

MILLER STARR REGALIA

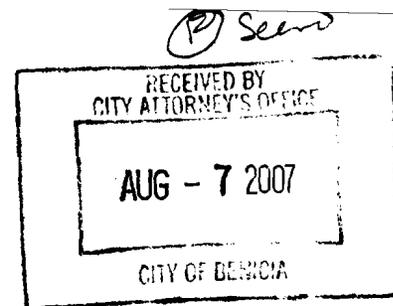


Kristina D. Lawson

KDL:kdI

cc: Heather McLaughlin, City Attorney
Charlie Knox, Community Development Director
Jeanne Pavao
Sai Evola

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August 6, 2007

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

SUBJECT : SEENO DEIR and RESPONSE TO COMMENTS: DEIR analyses seriously flawed; Reject the Proposed Project; get new alternative project (Hillside/Uplands Preservation Alternative, with supplemental DEIR for same.

NOTE: I incorporate by reference any and all comments submitted by Steve Goetz, Bob Craft, Bob Berman, Don Dean and Dana Dean.

Dear Mayor Messina and City Councilmember Hughs, Whitney, Schwartzman and Patterson

I believe neither the DEIR or the Response to Comments adequately addresses fundamental concerns the public expressed with regard the description of the proposed project and the cumulative and far-reaching impacts of the proposed business park/master plan. Since you are to vote on the sufficiency of the DEIR before making a determination of the adequacy of the final EIR (FEIR), I find it disconcerting that the Response to Comments must be part of the DEIR discussion, now that it has circulated for over two weeks. Thus, my comments address the inadequacy of both analyses in the DEIR as well as in the Response to Comments (RTC)

There are many instances in which LSA's formal responses in the RTC appear to blow off the consequences of significant and irreversible impacts, wherein either the analysis or mitigation recommended does not reflect General Plan policy. The recommended "environmentally superior alternative"—the Hillside/Uplands Preservation Alternative—is still not described in any detail and is nowhere depicted in any graphic form except a vague colored "flat map" of the property. (See the DEIR). LSA argues that CEQA does not require a more detailed description of the project alternatives than what minimal account they have rendered in the DEIR. It's not possible to judge via the descriptions offered, whether an even better "alternative project/master plan" could be devised, one that would best respect not only the topography of our northern area, but truly reflect the kind of 21st century project our city deserves.

The Response to Comments offers no new graphics as asked for by many of us. (If LSA uses the August 7th hearing to show new graphic material in powerpoint form, then those graphics should have appeared in the Response to Comments). To date, there are no cut-aways to show impacts and visual appearance of cuts and degree of slopes, grading, appearance of new roads, including the widening recommended for I-780, etc.; no 3-d model to show accurate topographical result of grading of the entire project at build-out; no simulations of vistas from along the whole length of East Second from Industrial Way to I-680. NO simulation of a recommended mitigation in the form of an "8 foot sound wall on East 2nd". (see below)

There is no substantially revised analysis presented in the Response to Comments that significantly alters LSA's analyses of cumulative impacts of the proposed project; nor help the public and Council evaluate the impacts of the "preferred environmentally superior alternative" recommended.

I will give examples of still glaring problems in analyses that I believe LSA still skates over, and that should give you, as decision-makers, great pause, in assessing the "sufficiency" of the DEIR and Response to Comments, thus the FEIR.

1) LSA's argument discounting the public's concern regarding growth inducing impacts is unacceptable and dismissive. For example, the plan to signalize the intersection at Lake Herman Road will inevitably change the character of our rural scenic route at a most significant new "gateway" into Benicia from the northern road: e.g., at the newly proposed junction at Lake Herman Rd of a new 4-lane boulevard extension of Industrial Way. Obviously, Seeno envisions Industrial Way Blvd as a major entrance and exit into the proposed business park. (Why should this be assumed as a best design solution to traffic flow issue, with regard to preservation of Lake Herman Road's rural character?) The response LSA offers with regard to the aesthetic loss and value of rural character of our scenic route by an arterial intersection is by contrast, to the value of reducing LOS on Lake Herman Rd, at I-680 etc. They cite the General Plan policy to reduce LOS (for efficient flow of traffic in and around town), AND, in a nod to the problem of loss of scenic rural character, they acknowledge what they consider to be a policy "contradiction": the GP says to keep Lake Herman Road "rural, 2-lane scenic route". By their response, LSA seems to assert that reducing LOS trumps maintaining the scenic and aesthetic value of Lake Herman Road for future generations and for current residents. They insist that we consider that the scenic portion of Lake Herman Rd should begin west of the proposed new intersection of Industrial Way. The question of how to manage increased traffic at Lake Herman Road proposes a design problem for the whole project. **Clearly, a bad design leads to unwanted significant impacts.** We should look at the traffic flow problem not as one to simply "manage" with signalized lights that sacrifice scenic rural values as means to reduce LOS further down the road at I-680. What we could be in for is a creeping "Columbus Parkway" situation.

Most worrisome: LSA's Response to Comments still discounts as "speculation" the widely held concern that widening Lake Herman Rd or allowing a signalized intersection will be growth-inducing in the future, encouraging more future development north of Lake Herman Rd and west of Industrial Way. The Solano Transportation Authority assumes and identifies that Lake Herman Rd will become a "feeder" route from Vallejo to I-680; STA has claimed, in a meeting I attended over a year ago (as I described in my formal comments on the DEIR), that Lake Herman will be widened to accommodate that increased traffic. **Clearly, the STA's opinions and plans are not in accord with Benicia's General Plan.** Also, it's clear, via the resounding public outcry in the form of the Sky Valley Initiative, that the community at large wants to preserve the integrity of a rural Sky Valley. If the General Plan needs to be clarified as to the importance of maintaining the scenic rural character of Lake Herman Rd, then this should be taken up immediately, to protect against the kinds of project "master plan" decisions put forward by Seeno.

2) In Response to Comments about cumulative LOCAL air quality impacts owing to increases in traffic on East Second especially, LSA's response simply doesn't take up the main points about the **lack of LOCAL air quality monitoring data, upon which to base assumptions, that Bob Craft and I legitimately raised, and with which Dana Dean and Steve Goetz concur.** We made our comments on Air Quality impacts and **the insufficient and flawed analysis of cumulative LOCAL impacts**, based our claims on the legal challenge the Good Neighbor Steering Committee presented to Valero, on the analysis of cumulative air impacts owing to the Valero VIP project, that represents an expansion in production at the refinery. Our challenge considered that the cumulative local air impacts were significant and unavoidable, but that they could not be quantified, given the lack of basic data on which to build evidence of **local** air quality impacts that are not accounted for through the Air District's Bay Area monitoring program for ozone "attainment".

3) LSA simply cannot justify their response to public concern, expressed by Bob Craft, Steve Goetz, BUSD District Superintendent Janice Adams and BUSD School Board President, Dirk Fulton and myself regarding the **CUMULATIVE long-term risk to sensitive receptors, and especially children, at Semple School and surrounding neighborhoods, from increased traffic extending from Military East, along the entire length of East Second Street. This traffic will further**

degrade air quality in the vicinity of East Second. Cumulative increases in truck, therefore diesel emissions, would be attributable to the business park development as well as Valero's VIP expansion project, which anticipates increased truck traffic on East Second. Such cumulative impacts of increased diesel emissions and PM 10 and PM 2.5 have not been accounted for, especially with regard the fact that particulate matter attracts to itself "volatile organic compounds" (VOCs) and NO2. This array of contaminants enter deep into the lungs of sensitive receptors via particulate matter, especially affecting lung development of young children.

4) **LSA bases its primary DEIR analysis and Response to Comments on cumulative Air Quality impacts on BAAQMD data from a single station in Vallejo, which monitors for limited number of pollutants regulated by BAAQMD, for measurement of ozone "attainment" of the Bay Area Air Basin generally.** I have tried to exhaustively explain in my original comments on the DEIR, why the Air District's data is NOT SUFFICIENT for analysis of LOCAL cumulative impacts to our ambient air quality. **As yet, the Air District is not mandated to address ambient air quality conditions in specific "neighborhoods of concern" in the Bay Area.** In any case, BAAQMD data collected at any given station is "averaged" with other data gathered from around the Bay. This means, the Air District is neither equipped or mandated to collect routine "real time" data that would tell us what's in our air on a daily on-going basis, data that would form the basis of any analysis of cumulative impacts to local air quality. Right now, we have no way to assess either ambient local "base-line" conditions, nor "spikes" in concentrations of air contaminants from varied sources. Only a select panel of "criteria pollutants" are measured at existing BAAQMD monitoring sites. **Therefore, LSA cannot legitimately address the public's concern about LOCAL cumulative chronic increases in air pollution that could be attributable to the proposed business park development.** LSA apparently seeks to avoid addressing LOCAL cumulative air quality impacts. They go so far as to imply that the conditions of Benicia's air around East Second Street and I-780 (near I-780 freeway, Valero refinery and asphalt plant, East Second Street, City Corporation Yard and gas station) is virtually no different than what is recorded at the Air District's Tuolumne Street monitor UPWIND of Benicia. This cannot be true, by common sense! **Yet, LSA wants us to accept their contention that whatever limited data comes from the BAAQMD air monitor in Vallejo on Tuolumne Street is "sufficient" to indicate, under CEQA, that any number of air contaminants coming from the proposed business park's traffic and various business park users, will not contribute to a CUMULATIVE increase above acceptable levels set by Cal-EPA's Air Resources Board for "criteria pollutants" and any other TAC emissions or VOCs and PM10 or PM 2.5. But standards developed to measure Bay Area "attainment" for ozone is not a defensible standard for measuring LOCAL impacts in LOCAL neighborhoods for daily and chronic cumulative impacts to sensitive receptors.**

5) When questioned about the NOISE increases in the vicinity of East Second, especially around the Semple school site, LSA's response is to suggest a mitigation of putting up 8 ft sound walls along East Second or repaving the entire section from I-780 to Rose Drive with porous asphalt to reduce traffic noise impacts. Suggesting sound walls, LSA evidently didn't consult our General Plan, which specifically recommends avoidance of sound walls. (I will have the citation for Tuesday.) **Resurfacing the roadway with porous asphalt is no guarantee of reduced noise impacts, considering all factors that participate in amplification of noise. Decibel level increases as projected in the Response to Comments are considerable impacts, especially when there are noise spikes from increased truck traffic, some of which may service the business park coming from I-780 during the night. Cumulative noise impacts on "sensitive receptors" from increases in truck traffic on East Second St, owing to refinery's VIP expansion project as well as traffic from the proposed business park development, have not been accounted for.**

6) The Response to Comments fails to foresee, so does not address, significant traffic impacts at the intersection of East 2nd and Military East, and other residential intersections along East Second. (See Steve Goetz comments, letter August 5th and in Response to Comments.)

The Response to Comments indicates that LSA still dismisses public concern that the intersection at

Military East and East 2nd intersection will be affected by increased traffic from the business park: significantly more noise, more pollution, (CO, NO2, PM10, PM2.5, diesel, VOC's) and more backup at the light. LSA assumes that traffic increases will ONLY be felt along East Second, NORTH of the I-780/East Second junction. This assumption means that little regard has been given to the most heavily trafficked intersection in the downtown area, one critical as an entrance to our City administrative offices, police station, library, historic district and First Street commercial, including Davies and Solano squares. No reasonable answer is given why analysis of traffic impacts does **not assume that prospective business park employees will drive to First Street for lunch (or dinner) and other shopping activity. It's highly improbable that no significant increase in traffic will occur at this signalized intersection from over 7,000 expected new employees of the business park, with over 240% increase in daily traffic trips on East Second by 2030. (See DEIR, and Steve Goetz, letter August 5th).** Since the concern for our busiest downtown intersection is brushed aside in the DEIR, there is no proposed mitigation.

These are only a few examples. There are many more I could cite.

I hope you will thoroughly review the Response to Comments. I believe that Council should be asking for a fleshed out new "alternative project", built on the suggested "Hillsides/Uplands Preservation Alternative recommended as the "environmentally superior alternative". A supplemental DEIR should be required to correct the assumptions and faults in analysis of the DEIR where appropriate to the new project alternative, a new master plan must be designed, and, we need visual simulations and new graphics to explain the project alternative to the public to accurately judge the project. Grading plans should include 3-d model, cut-aways, visual simulations, etc. The necessity of extending Industrial Way to Lake Herman Road should be vigorously debated. All mitigation plans should be available for review.

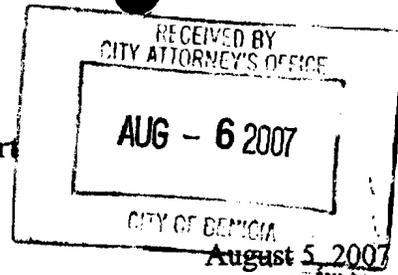
Benicia deserves a much better project than the one proposed in this second "go around" DEIR. It's unconscionable that the project proponents so ignored our General Plan that they thought they could remake our city in the guise of Antioch or Pittsburg. That this DEIR could be considered "sufficient", given the failures of so much of its analysis, is beyond belief and such a conclusion demeans CEQA. The only redress is to wholeheartedly reject the proposed project and send the master plan back to the drawing board for a much more articulated "project alternative" that would comply in letter and spirit with Benicia's General Plan. We need a better designed, reduced project that reflects our city's demographic and our desire to achieve sustainability through best design practices that reflect and respond to the environmental challenges we now face.

Sincerely,

Marilyn Bardet



347 Goldenlopes Court
Benicia, CA 94510



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

Dear Council Members:

This letter addresses the public hearing item on the August 7th City Council meeting for the review of the Draft 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). This transmittal provides additional information that I believe is important for you to consider before taking action on this item on August 7th. The information is presented in the remainder of this letter, which is organized according to the numbered responses to my comments.

HYDROLOGY AND WATER QUALITY

Mitigation Measure HYDRO-3 lacks standards and criteria to prevent erosion. Response C2-6 addresses my comment about the incomplete evaluation of potential erosion from the proposed grading. The Final EIR states that final drainage and grading plans would need to fully comply with City requirements and Mitigation Measure HYDRO-3, and a landscape plan prepared by a professional would be required. However, no information is provided to show that the City requirements or HYDRO-3 contain standards or criteria that would effectively prevent the conditions described in my comment.

Mitigation Measure HYDRO-3 should include standards and criteria that will:

- require the applicant to limit the steepness or length of proposed slopes sufficient to prevent erodability;
- ensure that soil conditions will sustain desired landscaping; and
- ensure that landscaping on slopes can and will be maintained.

Without such standards and criteria, new slopes created by this project will not be adequately protected from erosion.

TRAFFIC/CIRCULATION

Potential safety impacts are not evaluated at East 2nd Street intersections. Response C2-9 addresses my comment about the Draft EIR's failure to evaluate all intersections along East 2nd Street that could be impacted by this project. The Final EIR states that these intersections are designed to modern standards and that all project trips would obey the law and travel at the posted speed limit of 25 miles per hour through the school zone. If this assumption was reasonable the City would have no need for its Traffic Calming

Program because everyone driving on residential streets would obey the 25 mph speed limit. If this assumption was reasonable there would have been no need for a concrete median along State Route 37 between Vallejo and Sears Point because drivers would have obeyed the speed limit and would have only passed cars if it were safe to do so. If this assumption was reasonable the EIR would be able to identify in the Bay Area at least one four-lane arterial that serves at least 37,900 vehicles a day that has a signalized school crossing for elementary school children designed to the same standards that exist on East 2nd Street.

It is not reasonable to assume that East 2nd Street could carry an additional 27,000 vehicles per day in 2030 and expect that no further actions would be needed to maintain the safety conditions that currently exist at these school crossings. Considering the magnitude of the traffic increases estimated in the Draft EIR, it is not speculative to say that residents, if not the City Council, would want additional traffic control devices, road design features, operational measures, or a reduction in the size of permitted traffic increases to maintain the safety conditions that exist now.

My comment on the Draft EIR noted that some of these intersections have no traffic signals (i.e. at Seaview Drive, and at East Tennys Drive). I asked how vehicles turning to or from East 2nd Street would be protected when the road will be carrying 37,900 vehicles per day. The Final EIR provides no response to this concern. The EIR fails to evaluate the potential for significant adverse traffic impacts at these two locations.

The Project will cause traffic on I-780 to exceed its planned capacity, violating General Plan policy and the Master Plan Overlay District requirements. Response C2-10 addresses my comment that the Draft EIR does not acknowledge the General Plan policy to encourage the preservation of I-780 as a four-lane freeway and to not widen it. The Final EIR says the General Plan supports spot widening at locations to address future capacity problems and asserts that Mitigation Measure TRANS-22 only proposes spot widening. However, page 249 in the Draft EIR describes TRANS-22 as "*widen the freeway segment to three lanes, or provide an auxiliary lane for all or portions of I-780 between East 2nd Street and Columbus Parkway.*" This portion of I-780 is over three miles long. The entire length of the freeway through Benicia is 4.8 miles. A mitigation measure to add additional lanes along 65 percent of this freeway in Benicia would be viewed by most people as inconsistent with preserving I-780 as a four-lane freeway and would not be considered a "spot widening." The Cumulative Plus Project Conditions are clearly beyond the capacity of I-780, and approval of this project would violate the General Plan policy to encourage the preservation of I-780 as a four-lane freeway.

The EIR underestimates traffic impacts by assuming future road improvements that are unlikely to occur. Response C2-11 addresses this comment. The Final EIR states that "*only a reasonable set of projects likely to be implemented by 2030 are included...for the analysis of Cumulative Plus Project Conditions.*" The Final EIR further states that "*the Solano Transportation Authority...has determined that these are a*

reasonable set of projects for the cumulative horizon," and goes on to refer the reader to the *2005 Congestion Management Program (CMP)* for more information.

These statements are conclusory. They provide no explanation on why the Solano Transportation Authority's determination is equal to or more valid than the contradictory determinations made by the Metropolitan Transportation Commission (MTC), the agency responsible for transportation planning and financing policy in the nine-county Bay Area. MTC's determinations were specifically made to comply with Federal law and California Environmental Quality Act (CEQA) requirements.

I indicated that: 1) the *2005 CMP Capital Improvement Program* is not financially constrained, 2) the *2005 CMP* has no requirement to comply with CEQA, and 3) the *2005 CMP* identified the costs of the I-80/I-680/I-780 Corridor mid and long-term improvements at \$1.06 billion and found that only \$102 million is "committed" to these improvements.

In contrast, my comment indicated that MTC had prepared the *Transportation 2030 Plan*, which estimated the local, regional, state and federal funds that are likely to be available by 2030. The *Transportation 2030 Plan* verified that Solano County is only likely to receive \$94 million by 2030 for the improvements identified in the *2005 CMP* and assumed in the Draft EIR. The *Transportation 2030 Plan* had to comply with CEQA and provides a relevant basis for preparing reasonable forecasts of the additional road capacity likely to be available to serve the 70,000 daily trips generated by the proposed business park.

The Final EIR does not dispute these facts which were disclosed in my comment letter. Furthermore, the Final EIR does not explain why the project list from the *2005 CMP*, which is 90% unfunded, is relevant or appropriate to the City's CEQA obligation to provide a reasonable forecast of the traffic congestion likely to occur with this project.

By making such unreasonable assumptions for the additional highway capacity likely to be available in 2030 to serve the project, the EIR grossly underestimates the level of traffic congestion likely to occur once the proposed project is built. The EIR assumes the capacity of the I-680 freeway in Solano County will be increased by 50 percent and will be available for all vehicles. Surprisingly, even this assumption in the EIR conflicts with the *2005 CMP* which assumes this widening will be limited to high occupancy vehicles (*I-80/I-680/I-780 Major Investment and Corridor Study*, July 14, 2004, page 7-3).

Upon further examination of the estimated Cumulative Plus Project Conditions on the I-680 freeway in Table IV.G-18 of the Draft EIR, it can be determined that the traffic forecasts themselves appear to be in error and significantly underestimated. The Draft EIR estimates that 4,777 peak hour trips will leave the project site in the PM peak hour. The Draft EIR further assumes that 24 percent of these trips will be destined for locations south of the Benicia Bridge. This would mean that in the PM peak hour approximately

1,146 trips would leave the project and enter I-680 southbound via the Bayshore Road on-ramp ($4,777 \times .24 = 1,146$). Yet, by subtracting the traffic volumes for Cumulative Conditions on this section of freeway (in Table IV.G-8) from the corresponding traffic volumes for Cumulative Plus Project Conditions (in Table IV.G-18), it shows the project adding only 287 trips southbound on I-680 toward the Bridge during the PM peak hour. This finding adds to the substantial evidence that the potential for significant adverse impacts to the freeway is significantly underestimated in this EIR.

The EIR fails to evaluate the potential for additional collisions on Lake Herman Road. Response C2-14 addresses this comment. The response asserts that the project sponsor will make improvements to Lake Herman Road, although no improvements can be found in the Draft EIR in either the Project Description (page 70) or the Transportation Section (page 220). The mitigation measures to Lake Herman Road that are imposed on the project are limited to intersections at Industrial Way, at East 2nd Street, and between "A" Street and I-680 (as verified in Response A8-7). No improvements to Lake Herman Road are described west of the project, even though the project will add 1,200 vehicles to this stretch of road in each peak hour.

The Final EIR explains that the project will not create any design features that will be dangerous to motorists, bicyclists or pedestrians. This explanation is meaningless to my argument that Lake Herman Road, in its current condition, is unlikely to be able to safely handle the traffic generated by the project. The unsafe condition is not created by a design feature of the project. The unsafe condition is a result of the project adding a substantial number of commuters to a rural road not designed to handle commuter traffic.

Finally, the Final EIR asserts that "*project drivers will obey the posted speed limits.*" This is the same assumption used to avoid evaluating the potential for safety impacts at the intersections on East 2nd Street near Semple Elementary School. This assumption is equally wrong when applied to Lake Herman Road. This assumption ignores substantial evidence that rural roads can become unsafe when they are heavily used by commute traffic. Many commuters on these roads do not obey the basic speed law in California and practice unsafe passing maneuvers. These conditions can be found here in Solano County on State Route 12 between Suisun City and Rio Vista. Even if commuters drove no faster than the 45 mph speed limit on Lake Herman Road, that speed alone could be unsafe given the conditions that are likely to prevail in 2030 with the additional traffic generated by the project. Failure to evaluate the potential for increased collisions on Lake Herman Road is a significant flaw in this EIR.

The EIR fails to evaluate the potential for hazardous conditions on East 2nd Street adjacent to the project. Response C2-14 is also used to address this comment, which identified the potential for an unsafe condition on the section of East 2nd Street adjacent to the project's 30 percent sloped embankment. My comment referred to Caltrans' design standards which state that a high percentage of vehicles will reach the toe of these

slopes when they are located adjacent to the roadway, triggering the need to provide a recovery area.

The Final EIR asserts that the project will not create any design features that will be dangerous to motorists, bicyclist or pedestrians. No information or analysis is provided to support this assertion or to indicate that the project's embankment would be constructed in a manner consistent with the Caltrans guidance. Consequently, this EIR fails to evaluate another potentially hazardous traffic condition from this project.

The EIR underestimates future traffic congestion on East 2nd Street. Response C2-16 addresses my comment that the EIR underestimates traffic impacts because vehicle storage capacity at intersections is ignored. The response explains that the City does not require this analysis. The response further states that this should not pose a problem to children crossing the streets. These explanations are inadequate when considering the following facts:

- the response does not deny that several intersections along East 2nd Street have limited vehicle storage capacity because they are closely spaced;
- the EIR predicts 2030 traffic volumes on East 2nd Street will grow by over 240 percent with this project which creates the potential for vehicle queues to extend into adjacent intersections;
- the EIR shows that these intersections will work in isolation, but it doesn't evaluate whether intersections will be blocked with cars waiting to get through the next intersection;
- the Draft EIR acknowledges that a traffic impact would exist if the vehicle storage capacity for an intersection is exceeded;
- at least two comments were received requesting this evaluation, including one from the California Department of Transportation;
- this is a project-level EIR for the one of the largest projects in the City's history and it is unlikely this issue will be reviewed later.

The effectiveness and feasibility of the revised mitigation measure at the I-780/East 2nd Street Interchange is not adequately evaluated. Response C2-18 addresses my comment that the EIR fails to disclose the adverse impacts of Mitigation Measure TRANS-15 on East 2nd Street. This response also responds to a similar comment made by the City's Public Works Director. The Final EIR replaces the mitigation measure in the Draft EIR (three right-turn lanes from the eastbound off-ramp), with one free right-turn lane. The response does not describe how the free right-turn lane will operate, but I will assume it will allow vehicles to turn right from the eastbound freeway off-ramp without being delayed by a red traffic signal.

Response C2-18 asserts that there is enough room to construct this new mitigation measure so that it is effective and does not infringe on the bicycle/pedestrian facilities already in place. No drawing is shown to demonstrate this assertion. Alternatively, no dimensions are provided to demonstrate that there is sufficient merging distance for the

projected peak hour volumes from the free right-turn lane to merge with the East 2nd Street northbound through traffic before reaching the freeway bridge abutment. No dimensions are provided to show that there is no infringement to existing shoulder areas for the Class III bike route that extends through the area pursuant to the General Plan (Figure 2-4). There is no explanation of how there will be no infringement to a pedestrian's ability to cross the freeway off-ramp as vehicles turn right unimpeded by any traffic signal. Right-turning vehicles are likely to hit a pedestrian or bicyclists crossing the freeway ramp since they are not expecting to stop.

In addition, there are no drawings or dimensions provided in this response to demonstrate this new mitigation measure will work in concert with Mitigation Measure TRANS-14 at the adjacent intersection on the north side of the freeway underpass and without infringing on the bicycle/pedestrian facilities already in place. TRANS-14 requires the addition of a new northbound through lane at the East 2nd Street/I-780 Westbound Ramps intersection.

Response C2-18 is clearly inadequate as presented in the Final EIR. It is unclear if this mitigation measure can actually be implemented in the manner described given the circumstances that exist in the vicinity of the impact. Implementation of this mitigation measure requires the approval of Caltrans since it affects freeway ramps. No evidence is provided that shows appropriate methodologies and standards were used to estimate the effectiveness of this mitigation measure given the volumes that need to be accommodated and the constraints that exist north of the East 2nd Street/I-780 Eastbound Ramps intersection. This information is needed for the lead agency to demonstrate that:

- Caltrans can and should approve implementation of this mitigation measure;
- this traffic impact can be mitigated to a less than significant level; and
- the mitigation measure itself will not create significant adverse impacts to pedestrians and bicyclists.

Lead Agency comments on the Draft EIR raise doubt on its adequacy. Response C2-18 also raises a question of whether the City's preparation of the EIR was proper, particularly with respect to the information on infrastructure. The Final EIR shows that the lead agency's Public Works Director felt compelled to comment on the Draft EIR on the following points:

- the project sponsor's failure to provide the lead agency, prior to release of the Draft EIR, the necessary technical information to verify the adequacy of mitigation measures to address stormwater runoff;
- the project sponsor's failure to provide the lead agency with a grading plan, circulation system map, and drainage plan necessary for an adequate project description;
- identification of information in the Draft EIR on water supply, drainage, grading and transportation that required further analysis or clarification.
- the feasibility of Mitigation Measure TRANS-5 and TRANS-15 which address traffic impacts on East 2nd Street; and

- the adequacy of the evaluation of wastewater collection system in the Draft EIR.

The existence of this letter casts doubt on the adequacy of the project description and the adequacy of the EIR's analysis of the project's environmental effects. The public must wonder if this EIR reflects a good faith effort by the lead agency to exercise its independent judgment, or if the lead agency seeks to confuse the public by knowingly releasing a deficient document.

The EIR fails to justify assumptions for massive freeway widening that underestimate the project's impact to our freeways. Response C2-22 addresses my comment that the freeway impacts are underestimated because the EIR assumes freeway widening that is unlikely to occur by 2030. This response is a repeat of Response C2-11. Response C2-22 suffers from the same inadequacies as suffered by Response C2-11. Transportation models are used for a variety of purposes, from designing highway improvements to preparing CEQA documents for development projects. A lead agency is obligated to use its independent judgment to determine if assumptions in a model will provide the information needed to make intelligent decisions, and to make adjustments to the model if appropriate. Comments have been made concerning the highly speculative nature of the model's assumptions for the transportation capacity likely to be available to serve the project in 2030. The Final EIR provides no facts or analysis for comparing against the financial difficulties that were identified to build most of the highway projects assumed in the transportation model and in the *2005 CMP*. The EIR is basing its evaluation of freeway impacts on the construction of billions of dollars of new freeway lanes in Solano County that have no prospect of being funded by 2030. If my conclusion is not correct and the EIR's assumption is correct, then why has the Solano Transportation Authority put to the voters two times since 2002 the need to increase the county sales tax rate in order to have enough money to build these projects?

Mitigation measures to address transit impacts are inadequate. Response C2-24 addresses my question on why Mitigation Measure TRANS-23 is limited to funding capital costs only for the required expansion of bus service, and why it doesn't include relocating the proposed Intermodal Transit Facility to a location on-site to serve the project's 7,680 jobs. The response assumes that operating costs for extending Benicia Transit to the project site will be part of the Benicia Transit budget, which is paid for by tax dollars, to which the project would contribute. The Final EIR provides no information to show that these tax dollars are sufficient to operate this expanded service, or that these tax dollars are not sufficient to also fund the capital costs for this expanded service.

Response C2-24 further explains that the Intermodal Transit Facility cannot be located on-site because there is no rail connection. Why is a rail connection needed? Does the City currently have a viable site for a rail connection? Can an Intermodal Transit Facility operate efficiently without a rail connection if it were located within the project? An Intermodal Transit Station can typically include bus stops and parking for carpools,

vanpools and bicyclists. Locating such a facility on-site would make it easier for workers to take the bus to/from the business park. Would development of an Intermodal Transit Facility on the project site be a feasible mitigation measure to help reduce the significant but unavoidable air quality impacts identified in AIR-2? Currently, Mitigation Measure AIR-2 fails to reduce this impact to a less than significant level.

Mitigation measure to address bicycle and pedestrian impacts is inadequate.

Response C2-26 addresses my comment that Mitigation Measure TRANS-24 should be expanded to include trail facilities that connect the project to adjacent trail facilities. Response C2-26 says such an enhancement is not needed to reduce the project's impacts to a less-than-significant level. Response C2-26 contradicts responses made to similar comments by others. Response A8-5 modifies TRANS-24 in the Final EIR to include these connecting trail facilities.

Response C2-26 contradicts Response B4-7 which says that the project's "*proposed roadway network which features cul-de-sacs, would not encourage the use of alternative transportation modes and would be inconsistent with General Plan.*" TRANS-24 only includes pedestrian paths between major building and parking areas, and does nothing to address the barriers presented by cul-de-sacs. Expanding TRANS-25 to include provision of on-site shortcuts for pedestrians and bicyclists between these cul-de-sacs and to adjacent parcels will help minimize out-of-direction travel for walking and biking trips made within the project.

Response C2-26 does not deny that the requested mitigations are feasible and effective. On that basis alone, the on-site shortcuts for pedestrians and bicyclists should be added to improve Mitigation Measure AIR-2, which the EIR proposes to help reduce long-term project-related air pollution from motor vehicles. This impact remains significant and unavoidable even with implementation of AIR-2. CEQA obligates the lead agency to consider all feasible mitigation measures that can further minimize significant unavoidable impacts.

AIR QUALITY

Mitigation measures should address the harmful effects of exhaust emissions from construction activity. Response C2-27 addresses my comment that Mitigation Measure AIR-1 does nothing to reduce the project's significant exhaust emissions from construction activity. This response asserts that the regulatory agencies don't require reductions in exhaust emissions if their control measures are implemented. This response asserts that the exhaust emissions are considered short term impacts. The dust generated during construction is a short term activity as well, yet it is the focus of Mitigation Measure AIR-1.

Response C2-27 seems to hide behind the idiosyncrasies of the Air District's regulations. Given the General Plan's emphasis on sustainability, it would be appropriate for the City

to act on the General Plan goals for community health and safety, and require mitigation for the exhaust emissions from construction equipment that is identified in this EIR. This logic was used in the Final EIR to defend the City's involvement in mitigation measures for project impacts on hydrology, water quality and biological resources, which the project sponsor claims can only be regulated by state/federal regulatory agencies. Just because the Air District is not concerned about these local air quality impacts, does not mean the City should not be concerned and exercise its own authority to identify and mitigate these impacts.

Harmful effects of carbon monoxide (CO) pollution generated by the project-related traffic are not adequately evaluated. Response C2-28 addresses my comment on the EIR's failure to adequately evaluate harmful CO concentrations resulting from traffic generated by the project. This response asserts that the Draft EIR evaluated the intersections that have the potential for the most severe project impacts, and the East 2nd/Military intersection is identified as one of these intersections. The evaluation of the CO concentration at this intersection is meaningless, since Response C2-20 of the Final EIR claims that no project trips would ever go south of the freeway through this intersection to downtown Benicia.

The East 2nd/Rose intersection is the only other intersection relied upon for demonstrating the adequacy of the EIR's evaluation of harmful CO concentrations. Page 258 of the Draft EIR indicates that high CO concentrations are typically associated with intersections operating at unacceptable levels of service or with extremely high traffic volumes. Below is a table comparing these attributes for the intersection identified in Response C2-28 with an intersection closer to Semple Elementary School and residences. This comparison shows the Draft EIR's evaluation of CO concentration ignored the intersection most likely to have a harmful CO concentration. The omitted intersection of East 2nd/I-780 Westbound Ramps is also much closer to sensitive receptors such as the school children and residents along East 2nd Street who could be harmed by the carbon monoxide. The Final EIR's assertion that *the "school would be expected to be exposed to similar or lower CO concentrations"* is baseless. This kind of oversight could have been avoided if the EIR evaluated the same intersections for both the CO analysis and the traffic analysis.

Intersection	Peak Hour	Mitigated LOS ¹	Approach Volumes	Distance from School
E. 2 nd /Rose	AM	B	4,172 vehicles	6,300 feet
	PM	D	4,404 vehicles	
E. 2 nd /I-780 WB Ramps	AM	D	4,523 vehicles	0 feet
	PM	D	4,759 vehicles	

¹ Draft EIR, Table IV.G-17, page 248

² DEIR, Appendix B, Transportation and Circulation Data, Level of Service Calculation Sheets, Cumulative Plus Project.

The EIR fails to evaluate potentially hazardous vehicle emissions on residents and school children along East 2nd Street. Response C2-29 addresses my comment that the EIR fails to evaluate exposure of sensitive receptors to substantial pollutant concentrations of other emissions generated on heavily traveled roads. The response claims that state law allows elementary schools to be located within 500 feet of roads carrying up to 100,000 vehicles per day. It said that the project would not be expected to expose children at Semple Elementary School to hazardous levels of vehicle emissions based on future levels of carbon monoxide that were estimated to occur over a mile away. I demonstrated previously that the CO analysis was inadequate, so any conclusions drawn from that analysis would also be inadequate. According to Response C2-29, the EIR doesn't address localized impacts of particulate matter because its not required by the Air District, even though comments on the Draft EIR provided documentation that particulate matter from diesel exhaust can be particularly harmful to young children.

Response C2-29 is hiding behind judgments made by state agencies. The question to ask is *does the Benicia City Council want to expose Benicia school children to these emissions by approving a project of this size?* Of particular concern is the EIR's admitted qualitative evaluation of the health impacts from diesel exhaust (see page 260 of the Draft EIR). Commenters have expressed significant concern about the impacts of vehicle exhaust on school children. The General Plan includes goals and polices to protect sensitive receptors from hazards, to evaluate potential hazards and environmental risks to sensitive receptors before approving development, and to develop our own clean air plan and programs. The City Council should exercise its authority under CEQA to undertake a quantitative evaluation of diesel exhaust in the vicinity of Semple Elementary School. The City Council should consider developing their own standards for traffic on roads adjacent to our schools before approving this project.

NOISE IMPACTS

The most effective mitigation for traffic noise on East 2nd Street is to reduce the size of the project. Response C2-30 addresses my comment on the noise impact from traffic on the homes and school on East 2nd Street. The Final EIR proposes eight-foot soundwalls or rubberized asphalt to mitigate noise impacts on East 2nd Street. Soundwalls are a visual blight, as acknowledged in the General Plan. Has rubberized asphalt been effectively used in Benicia and can its effectiveness be sustained for the long term with typical maintenance? A mitigation measure that reduces the size of the project could not only provide effective noise mitigation, but also help minimize potential air quality impacts along this corridor.

VISUAL RESOURCES

Effective mitigation of the project's impact to scenic vistas requires removing proposed buildings from these vistas. Response C2-32 addresses my comment on the

inadequacy of the use of landscaping to mitigate the project's impact to scenic vistas. This response says impacts from grading are evaluated in VIS-2. This response does not address the comment, which focuses on the project's impact to scenic vistas. How can the visual impact of introducing a building into a scenic vista be fully mitigated through landscaping? An effective mitigation would be to eliminate the building from the scenic vista. If that cannot be done, the VIS-1 should be considered a significant unavoidable impact.

The project's impacts to visual resources demonstrates the applicant's disregard for the City's General Plan and zoning. Response C2-35 addresses my comment on the EIR's failure to demonstrate the impracticality of additional mitigation measures for impacts on the visual character of the project site. The response states that effective mitigation would require involvement of the services of a multi-disciplinary design and engineering team, as well as substantial collaboration with the City. Any project of this size in a Master Plan Overlay Zoning District would require such a team and such collaborative efforts. The fact that the applicant has not employed this strategy at this point demonstrates an attitude of extreme arrogance toward the City and the applicant's unwillingness to make a good-faith attempt to comply with City codes and regulations.

ALTERNATIVES TO THE PROJECT

The EIR substantiates that feasible alternatives exist to avoid or reduce the project's significant and unavoidable impacts on the environment. Response C2-36 addresses my comment on the availability of feasible mitigation measures to reduce impacts on visual resources. The response states that any of the four project alternatives would reduce certain impacts of the proposed project, including effects associated with grading, filling-in or culverting of creeks and wetlands, and changes to scenic landscapes. The alternatives would achieve impact reduction through either maintenance of the project site as open space or substantial reconfiguration of the land uses proposed as part of the project. The reconfiguration of land uses in the four project alternatives would consolidate development on lands that are less environmentally-sensitive (e.g., relatively flat areas without wetlands) and would preserve areas with important environmental resources or significant development constraints (e.g., creeks, steep slopes, and habitat for sensitive species).

Response C2-36 states that the City, as lead agency, may adopt one of four alternatives as a way of avoiding the adverse environmental effects of the proposed project. This response finds the project as proposed is not capable of avoiding these adverse impacts. State law requires the City to mitigate or avoid environmental impacts when it is feasible to do so. A major purpose of CEQA is to prevent significant avoidable damage to the environment by encouraging agencies to require changes in projects, or include approval of alternatives to the project. (CEQA Guidelines § 15002 and 15021). These facts support a finding by the City to reject the proposed project in favor of the environmentally superior Hillside/Upland Preservation alternative.

This EIR is adequate for the City Council to approve one of the project alternatives instead of the proposed project. Response C2-41 addresses my comment for the EIR to provide additional detail on the feasible alternatives to the project. This response claims that the discussion of the alternatives complies with CEQA guidelines. It also refers to Response C1-15 which discloses that *"the level of detail provided for each of these alternatives is consistent with the level of detail provided by the project sponsor of the proposed project"*; this point itself gives the public cause for concern since this is a project-level EIR. But more importantly, Response C1-15 says *"if an alternative is approved by the City instead of the proposed project, this alternative would undergo detailed CEQA review (likely in the form of an Addendum to the Draft EIR or a Supplemental/Subsequent EIR). This CEQA review would include a detailed description and analysis of the alternative (including detailed modeling of anticipated air quality, traffic, and noise effects)."* This next stage of environmental review can occur once an application is completed for the approved project and submitted to the City.

The City Council can use the EIR in its present form to reject the proposed project, approve the Hillside/Upland Preservation Alternative, and direct staff to report to the Council when an application for the approved project is received. Based on all the above information and the entire record before the City Council that has been made available to the public, the City Council should direct staff to prepare the following findings on the review of the *Benicia Business Park Draft Environmental Impact Report*:

- The Proposed Project as mitigated in the EIR has significant unavoidable adverse impacts on the environment;
- The Hillside/Upland Preservation alternative avoids or substantially lessens these adverse impacts on the environment when compared to the Proposed Project;
- The Hillside/Upland Preservation alternative is the approved project as it satisfies project objectives and is feasible, taking into account environmental, economic, legal, social, technological and other considerations; and
- The proposed project is rejected since there is no overriding benefit that outweighs its significant unavoidable adverse impacts on the environment.

Finally, the City Council should direct staff to report on the ability to prepare a Supplemental EIR should the City receive a development application to implement the Hillside/Upland Preservation alternative.

There is substantial evidence in the public record of this EIR to enable the City Council to take the above actions on August 7th. The project sponsor has had ample opportunity to change their project. The current application is substantially the same project that was evaluated in the 2001 Draft EIR for this site. No substantive changes have been made to the project since the previous City Council meeting on May 1. By taking the above actions, the City Council will:

- demonstrate to an apprehensive citizenry that the City Council has analyzed and considered the ecological implications of its action and weighed competing policies and objectives;
- publicly disclose the City Council's environmental and economic values; and
- exercise its independent judgment and leadership by identifying a project for this site that is capable of being accomplished in a successful manner within a reasonable period of time and taking into account the goals, policies and objectives of the General Plan.

Why wait any longer to fulfill the purpose of this EIR? Reject the project proposed by the applicant and identify a path for moving forward.

Sincerely,


Steven Goetz, AICP

Cc: C. Knox, City of Benicia

From: Marilyn Bardet <mjbardet@sbcglobal.net>
To: Alan Schwartzman <ams@advancedmtg.com>, Steve Messina <Steve.Messina@ci.benicia.ca.us>, Mark Hughes <MxH3@pge.com>, Elizabeth Patterson <elopato@comcast.net>, Bill Whitney <wwhitney@adventmortgage.com>
Date: Fri, Aug 3, 2007 3:17 PM
Subject: Seeno hearing, Tuesday the 7th

Dear Mayor Messina and Councilmembers Hughs, Whitney, Schwartzman and Patterson,

In anticipation of Tuesday's Council continued hearing on the Seeno DEIR, could you please clarify what the parameters of discussion will be? The review process at this juncture is confusing. I'm assuming—please correct me if I'm wrong—that approval of the DEIR for "sufficiency" should precede discussion of the DEIR's followup document, the "Response to Comments", which coupled to an approved DEIR, would constitute the Final EIR (FEIR) according to LSA. If this is so, why was the Response To Comments circulated before a second hearing on the sufficiency of the DEIR? Will councilmembers have read the "Response to Comments" before the Tuesday hearing? If so, how can Councilmembers determine the sufficiency of the DEIR, which should be evaluated as a "stand alone" document? It would appear that a vote now to approve the DEIR would be colored, one way or the other, by knowledge of LSA's Response to Comments, which has been in circulation for two weeks. I'm assuming here that a vote on the FEIR would occur at yet another hearing. But am I wrong about this?

On Tuesday, could Council approve the DEIR, then discuss the Response to Comments, and decide immediately thereafter to approve the FEIR? In other words, could Council "wrap it up" Tuesday night with a vote to approve the FEIR? If this "fast track" scenario is legally possible, I would certainly advise that this path not be taken, considering the high level of public concern, and because so many people are out of town on vacation and will not have had a chance to comment before Council's discussion.

I understand that LSA is seeking to give another presentation at Tuesday's hearing, presumably to convince Council to approve the DEIR, with the idea of negotiating other details later. If at Tuesday's hearing they add any additional material, substantive information, including graphics, illustrations, etc—in Powerpoint or in any other forms such as photo displays—how will the public get a chance to evaluate these materials if they are "new" and therefore did not appear already in the DEIR? How would "new information" be incorporated at this point into discussion of a final EIR, (the DEIR + Response to Comments), since the Response to Comments has already been published and circulated? Please consider the public's right to consider ALL information fully before decisions are made by Council.

The public, in spoken and written comments, certainly expressed serious concern to have more graphic representations of the project and project alternatives (cut-aways, simulations, 3-d models, clearer plan view maps) to better understand the ultimate appearance of the proposed business park at build-out, to assess the grading plan, new roads, the depth and slopes of "cuts" and their location, the extent of fill areas

(pads), the landscape plans, the appearance of signalized intersections, etc. The full scope of cumulative impacts has not been adequately addressed by the DEIR. The proposed project has not been designed to comply with General Plan goals and policies and the DEIR does not adequately address the public's serious concerns regarding the significant, irreversible and cumulative environmental impacts of the project. I cannot see how the DEIR can be voted "sufficient". The DEIR, as we all concurred at the May 1st hearing, was patently "insufficient" for all the reasons cited then and in public comment. AND, without further information pertaining to the "environmentally superior alternative", the Hillside/Uplands Preservation Alternative—how it will look, how it will accord with our General Plan for environmental protection and sustainability, etc—the DEIR cannot be determined to be adequate for understanding the scope and magnitude of cumulative impacts of the proposed project, nor how the recommended alternative in would be the "better choice".

Regarding LSA's Response to Comments: I'm distressed reading the responses, in light of the public's testimony to Council at the May 1st hearing and through all submitted comments. An enormous discrepancy remains between the proposed project and the intent of our General Plan goals and policies, which must guide project design and development in all phases, to AVOID significant and irreversible impacts and to ENHANCE Benicia's quality of life. I'm sure you'll find, as I have, that the RTC does very little to revise the DEIR in light of Council's and the public's key concerns. In fact, many of the public's comments are virtually blown off, without sound basis in fact, by LSA's assertions that their expert judgments and interpretations are correct.

Analyses of "growth-inducing" impacts, traffic and noise analyses, cumulative local air quality impacts, hydrology and "urban decay" remain, in my view and in the view of other commentators, insufficient, incomplete, fatally flawed and/or in some instances specious. The extent of grading, even in the recommended alternative, is still a major impact, owing to the basic design of the project. Recommended mitigations in some cases (for instance, for 8 foot "sound wall" along East Second for reducing noise owing to significantly increased daily traffic on East Second from I-780) are not in accordance with General Plan policies. LSA argues that their summary descriptions of the "alternative projects" are sufficiently spelled out in accordance with CEQA's (minimum?) requirements. In my view, Council should question LSA's interpretation of CEQA standards of "sufficiency".

What's at stake? The long-range 25 year development of the Seeno business park will alter the physical topography, environmental qualities and aesthetic character of Benicia forever.

If Council votes to approve the FEIR (the DEIR + Response to Comments), the City will be faced with a harrowing uphill course to "get a better project", which is what the public insists upon. We cannot permit Benicia to be sold as an Antioch or Pittsburg, and we do not want to see our northern area deformed into a Columbus Parkway-like "mall" that we see in Vallejo.

The public wants to see a "revised environmentally superior project alternative" that will answer myriad concerns through BETTER DESIGN and a REDUCED "FOOTPRINT", to avoid cumulative, irreversible

impacts. We want to maintain the natural topography of the land as much as possible for sake of environmental quality and aesthetic, cultural values intrinsic to Benicia's identity and historical distinctiveness as a small town. We want a "low impact" business park for the 21st century that matches our demographic and contributes to Benicia's quality of life. I believe the City should take a highly cautious approach in considering approval of the DEIR and Response to Comments.

Thank you for your time and consideration here, and for answers to my questions, regarding the parameters of Tuesday night's hearing. Does Council expect to discuss the Response to Comments on Tuesday as part of the hearing on the DEIR? Will discussion of approval of the Final EIR be entertained? I suggest that whatever else is on the agenda, that the Seeno hearing be held first for benefit of the public.

Most sincerely,

Marilyn Bardet
745-9094
333 East K Street

CC: Jim Erickson <Jim.Erickson@ci.benicia.ca.us>, Charlie Knox <Charlie.Knox@ci.benicia.ca.us>, Dana Dean <danamail@pacbell.net>, Heather McLaughlin <Heather.McLaughlin@ci.benicia.ca.us>

From: Marilyn Bardet <mjbardet@sbcglobal.net>
To: "Charlie Knox" <Charlie.Knox@ci.benicia.ca.us>
Date: Fri, Aug 3, 2007 6:00 PM
Subject: Re: Seeno hearing, Tuesday the 7th

*for
Catherine's
binder
for tonight*

Thank you, Charlie, for this clarification. It's very important that any new information provided be accessible to the public for consideration. If Seeno does "get access to Council without providing requested information in advance with ample time for public review", what is the City's answer? Will it come to a council vote on whether to accept new information without public review time and opportunity for public response?

It's sophistic, I think, to say an environmental document is sufficient by saying it "provides the level of analysis required by CEQA": what is meant by "level"? Does "level" imply the degree of "quality" of analysis sought, or "accuracy" of analysis? Is an DEIR deemed "sufficient" as long as it "appears to be professional"? What standards guide judgment of "sufficiency"? If you've read my comments on the flawed assumptions of the analysis of cumulative air quality impacts, and see how LSA responded in the RTC, you will know why I raise these questions. Bob Craft agrees, as does Dana, that the DEIR's discussion of air quality impacts is completely unacceptable and inadequate. So, simply given that example, what is meant by "level of analysis" deemed "sufficient" in this case?

Of course, I'm assuming that whatever way we get there, the proposed project should be rejected and a new project alternative be devised that takes up where the vaguely described "Hillside/Uplands Preservation Alternative" leaves off. I still see so little deference to the request for a revised footprint that avoids cul-de-sac development scheme, that requires much less grading, that protects topography and surroundings grassland, and does not call for an extension of Industrial Way to Lake Herman Rd. I'm also concerned about the traffic increase inevitable at East Second and East Military, which did NOT get discussed, simply because LSA assumed that there would be minimal increase flow there, owing to the project.

So, I hope the City will use all its leverage to get a better project. It's one of the wonders of CEQA that decision-makers can judge an EIR to be "sufficient", then turn around and reject the project. But if decision-makers agree to approve the FEIR, aren't they then agreeing to the substance of arguments upholding the project, from small details to large issue of cumulative impacts? For example: "signalized lights at Lake Herman Road" are considered "okay" by LSA's analysis because they reduce "LOS" down the road east, (at key intersection at I-680); but commentators view such changes as potentially "growth-inducing" and aesthetically degrading of the qualities of our scenic rural route. LSA responds that future considerations for "growth" north of Lake Herman Rd is "speculation" outside the frame of CEQA requirements for discussion. But haven't 20 "ranchettes" being proposed for Sky Valley? Didn't we do a citizen's initiative to protect from getting a 5,000 home development in Sky Valley? The cumulative impact to Lake Herman Road is dismissed or "mitigated" by LSA's rationale that the "scenic" portion of Lake Herman Rd should be considered to be limited to WEST of the proposed new signalized intersection at Industrial Way. A rationale

is not a mitigation: they can't say that since we've "allowed a church to be built" on the eastward part of Lake Herman Rd that its basically no longer worth considering "scenic" along that stretch of road. A mitigation for the enormous potential impacts of a signalized light with extended boulevard to Lake Herman Rd has not seriously been considered as a fundamental design consideration of traffic flow to and from the project. The underlying assumption of the DEIR is that Lake Herman will eventually be widened according to STA "feeder route" designation, a designation out of compliance with our General Plan.

These are just a few of my reasons for NOT assuming that okaying the DEIR as "sufficient" will necessarily lead to a voting down of basic design features of the project master plan.

Have a nice weekend!

Marilyn

On Aug 3, 2007, at 4:35 PM, Charlie Knox wrote:

- > Any additional comment received at the continued hearing will be
- > responded to in a supplement to the response to comments.
- > If the applicant revises the project or proposes an alternative, a
- > supplement to the DEIR will need to be prepared, commented on and
- > responded to.
- > If not, the existing DEIR+Response to Comments+additional response to
- > comments will comprise the final EIR, which (as noted in the staff
- > report and resolution), likely will result in denial of the project.
- > Council can't rule on a final EIR Tuesday; a separate subsequent
- > hearing is required.
- > LSA has no interest in the outcome of any of these hearings.
- > That the applicant wants access to Council without providing requested
- > information in advance with ample time for public review is difficult
- > to accept.
- > The DEIR IS sufficient: it provides the level of analysis required by
- > CEQA and the City CEQA guidelines (and finding it "adequate" actually
- > moves the project one step closer to denial, not approval).
- >
- > >>> Marilyn Bardet <mjbardet@sbcglobal.net> 8/3/2007 3:16 PM >>>
- > Dear Mayor Messina and Councilmembers Hughs, Whitney, Schwartzman and
- > Patterson,
- >
- >
- > In anticipation of Tuesday's Council continued hearing on the
- > Seeno DEIR, could you please clarify what the parameters of discussion
- > will be? The review process at this juncture is confusing. I'm
- > assuming-please correct me if I'm wrong-that approval of the DEIR for
- > "sufficiency" should precede discussion of the DEIR's followup
- > document, the "Response to Comments" , which coupled to an approved
- > DEIR, would constitute the Final EIR (FEIR) according to LSA. If this
- > is so, why was the Response To Comments circulated before a second
- > hearing on the sufficiency of the DEIR? Will councilmembers have read
- > the "Response to Comments" before the Tuesday hearing? If so, how can

> Councilmembers determine the sufficiency of the DEIR, which should be
> evaluated as a "stand alone" document? It would appear that a vote now
> to approve the DEIR would be colored, one way or the other, by
> knowledge of LSA's Response to Comments, which has been in circulation
> for two weeks. I'm assuming here that a vote on the FEIR would occur at
> yet another hearing. But am I wrong about this?

>
> On Tuesday, could Council approve the DEIR, then discuss the
> Response to Comments, and decide immediately thereafter to approve the
> FEIR? In other words, could Council "wrap it up" Tuesday night with a
> vote to approve the FEIR? If this "fast track" scenario is legally
> possible, I would certainly advise that this path not be taken,
> considering the high level of public concern, and because so many
> people are out of town on vacation and will not have had a chance to
> comment before Council's discussion.

>
> I understand that LSA is seeking to give another presentation at
> Tuesday's hearing, presumably to convince Council to approve the DEIR,
> with the idea of negotiating other details later. If at Tuesday's
> hearing they add any additional material, substantive information,
> including graphics, illustrations, etc-in Powerpoint or in any other
> forms such as photo displays-how will the public get a chance to
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> this point into discussion of a final EIR, (the DEIR + Response to
> Comments), since the Response to Comments has already been published
> and circulated? Please consider the public's right to consider ALL
> information fully before decisions are made by Council.

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> The public, in spoken and written comments, certainly expressed
> serious concern to have more graphic representations of the project and
> project alternatives (cut-aways, simulations, 3-d models, clearer plan
> view maps) to better understand the ultimate appearance of the proposed
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> as we all concurred at the May 1st hearing, was patently "insufficient"
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> impacts of the proposed project, nor how the recommended alternative in
> would be the "better choice".

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> Regarding LSA's Response to Comments: I'm distressed reading the
> responses, in light of the public's testimony to Council at the May 1st
> hearing and through all submitted comments. An enormous discrepancy
> remains between the proposed project and the intent of our General Plan

> goals and policies, which must guide project design and development in
> all phases, to AVOID significant and irreversible impacts and to
> ENHANCE Benicia's quality of life. I'm sure you'll find, as I have,
> that the RTC does very little to revise the DEIR in light of Council's
> and the public's key concerns. In fact, many of the public's comments
> are virtually blown off, without sound basis in fact, by LSA's
> assertions that their expert judgments and interpretations are correct.
> Analyses of "growth-inducing" impacts, traffic and noise analyses,
> cumulative local air quality impacts, hydrology and "urban decay"
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> extent of grading, even in the recommended alternative, is still a
> major impact, owing to the basic design of the project. Recommended
> mitigations in some cases (for instance, for 8 foot "sound wall" along
> East Second for reducing noise owing to significantly increased daily
> traffic on East Second from I-780) are not in accordance with General
> Plan policies. LSA argues that their summary descriptions of the
> "alternative projects" are sufficiently spelled out in accordance with
> CEQA's (minimum?) requirements. In my view, Council should question
> LSA's interpretation of CEQA standards of "sufficiency".
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> What's at stake? The long-range 25 year development of the Seeno
> business park will alter the physical topography, environmental
> qualities and aesthetic character of Benicia forever.
>
> If Council votes to approve the FEIR (the DEIR + Response to
> Comments), the City will be faced with a harrowing uphill course to
> "get a better project", which is what the public insists upon. We
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> "mall" that we see in Vallejo.
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> project alternative" that will answer myriad concerns through BETTER
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> Thank you for your time and consideration here, and for answers to
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> Council expect to discuss the Response to Comments on Tuesday as part
> of the hearing on the DEIR? Will discussion of approval of the Final
> EIR be entertained? I suggest that whatever else is on the agenda, that
> the Seeno hearing be held first for benefit of the public.
>
> Most sincerely,
>
> Marilyn Bardet
> 745-9094

> 333 East K Street

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CC: "Alan Schwartzman" <ams@advancedmtg.com>, "Jim Erickson" <Jim.Erickson@ci.benicia.ca.us>, "Steve Messina" <Steve.Messina@ci.benicia.ca.us>, "Bill Whitney" <wwhitney@adventmortgage.com>, "Mark Hughes" <MxH3@pge.com>, "Elizabeth Patterson" <elopato@comcast.net>, "Heather McLaughlin" <Heather.McLaughlin@ci.benicia.ca.us>, "Dana Dean" <danamail@pacbell.net>

Steve Messina - To Certify Or Not To Certify

From: <Kittysmail@aol.com>
To: <mjbardet@sbcglobal.net>
Date: 8/3/2007 9:14 PM
Subject: To Certify Or Not To Certify
CC: <cknox@ci.benicia.ca.us>, <elopato@comcast.net>, <wwhitney@adventmortgage.com>, <smessina@ci.benicia.ca.us>, <ams@advancedmtg.com>, <MxH3@pge.com>

In a message dated 8/3/2007 5:56:03 PM Pacific Daylight Time, mjbardet@sbcglobal.net quotes staff as saying:

| (and finding it "adequate" actually moves the project one step closer to denial, not approval).

Well, this sounds nice.

But an EIR involves two analyses, don't they? They have to analyze the original impact, and then they have to analyze the same impact after they've explained it said how they'd fix it. If either the original impact description is slid over, or the fixed and explained part is over-optimistic and slid over, I don't see how the EIR can be accepted as "adequate under CEQA" which, after all, is a document that DESCRIBES and informs. If it doesn't describe correctly, how can it be certified?

It seems that the council does not like the project Seeno is describing, but they don't really care whether the description of that unpopular project is correct or not. I think they should care.

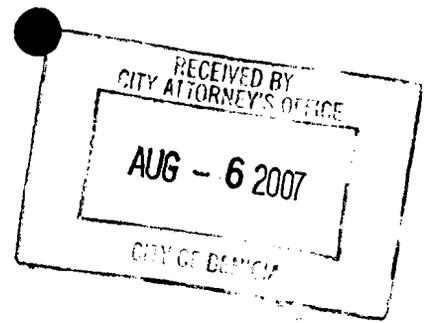
I should think it would be the council's proper job to reject the description of the environmental impacts (the EIR) of the unpopular project if it's indeed inaccurate, AND (1) ask them to not fix up the original one but ditch it as a failed EIR and (2) encourage them to submit an alternative plan and try doing a more accurate EIR for THAT plan. Presumably, if the alternate plan doesn't HAVE as many environmental impacts, Seeno (or its EIR-writer firm) won't be motivated to submit a superficial and inaccurate EIR.

If they don't want to submit a new alternative with its own EIR, and choose to make the EIR for the unpopular plan more honest, that would be their choice, and if and when they submit an honest and accurate description of the impacts of the unpopular plan, the council could still reject that plan.

Anyway, that's what makes sense to this layperson.

Get a sneak peek of the all-new AOL at <http://discover.aol.com/memed/aolcom30tour>

From: Bob Berman <bob@nicholsberman.com>
To: Jim Erickson <jim.erickson@ci.benicia.ca.us>
Date: 8/3/2007 11:33:21 AM
Subject: Agenda Item VIII.B. August 7, 2007



Hi Jim:

I am on vacation and unable to attend the August 7th City Council meeting. Please forward this email to the Mayor and City Council. Thanks

Dear Mayor Messina and City Council:

I am on vacation and unable to attend the August 7th City Council meeting. I would, however, like to comment on item VIII.B. regarding the Review of Benicia Business Park DEIR. Previously I sent a memo with a number of comments regarding proceeding ahead with a review of the Draft EIR and Response to Comments in light of the City Council's last action on this matter at your meeting in May 2007 (I believe that was the date of your most recent action). Please make that memo and this email a part of the official record.

As I stated in my previous memo I again state that I believe that the hearing on August 7th and the City staff recommendation is inconsistent with your previous action. You asked for additional information and a new alternative -- you did not ask for the preparation of the Response to Comments. I am aware of no new information or new alternative from the project applicant. I understand that the applicant has stated that additional information will be presented to the City Council at the meeting. Clearly such information is not available for public review, nor staff review. This is unacceptable.

According to the agenda the applicant disputes the DEIR findings and has indicated a willingness to discuss these issues with the City once the DEIR adequacy has been determined. To put it simply this is not how the CEQA process works. I find this suggestion by the applicant outrageous.

I must confess that I find the City's CEQA process somewhat confusing -- as I understand it you are only being asked to find the DEIR "adequate" and at some future date you will be presented with a Final EIR and be asked to "certify" the Final EIR. It is not clear to me how the Final EIR will differ from what is being presented to you at this meeting.

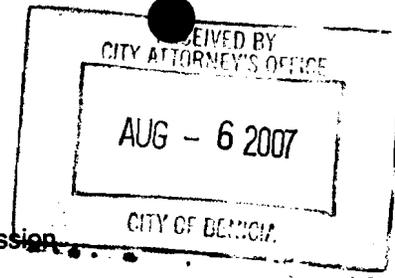
I do believe that the public has had inadequate time to review the document that you are being asked to say is adequate. I also believe that due to vacation schedules August is not the best time to schedule such a hearing. The public deserves more time to review the document and a more convenient time for the hearing to be scheduled. I also believe that consistent with your previous action new information and a new alternative must be submitted by the applicant and be made available to the public for a sufficient period of time for review.

Based on my previous memo and the above I suggest that you continue this item until the requested information is available and the public has had an adequate time to review all of the documents.

Thank you.

Bob Berman

From: <redfoxred@earthlink.net>
To: <info@ci.benicia.ca.us>
Date: 8/3/2007 11:50:45 AM
Subject: City of Benicia Website Contact Form Submission



UserName : Sabina Yates
Regarding : City Council
Comments : August 3, 2007

Dear Members of the Benicia City Council;

I understand that Charlie Knox, Planning Director, is expecting Seeno to produce more information at the August 7, 2007 City Council meeting.

Seeno is expected to produce complete Response to Comments "a" a list of commenters, comments, and responses.
To produce a project alternative that involves less grading and is consistent with the City's General Plan.

Many people were angry and outraged when Seeno offered very generalized responses to specific public comments prior to the May 1, 2007 City Council meeting. Many had submitted cogent and challenging questions concerning the Seeno DEIR which deserved more than a generalized, summarized response.

How can there be a finding of conformance of the Draft DEIR if the Seeno "Summarized Approach" to formal Responses to Comment does not satisfactorily answer many of the legitimate questions and the introduction of new information produced by public comment to the Draft DEIR?

My concerns are:

The burden of providing police and fire protection to Benicia Taxpayers when the Benicia General Plan specifically states "ensure that development pays its own way".
In the Draft EIR (p.321) it states that:
Fire Protection and emergency medical

services would be provided to the project site by the City of Benicia Fire Department
(b) The City of Benicia Police Department would provide law enforcement and emergency related services to the project site.

Has the City of Benicia budgeted for the construction and staffing of fire and police substations before the build-out of the industrial park?

No soil maps were included in the Draft DEIR.

This information is necessary for the Council and Planning Department to access the merits of a project that grades 9M cubic yards from hills and valleys to plateaus.

No drainage plan was included.

No grading plan was submitted.

Traffic mitigation measures suggested to reduce significant impacts include massive road widening, major intersection improvements with two or three left turn lanes. These roadway improvements have not been approved or fully funded. (i.e.

American Canyon WalMart)

The proposed project would adversely affect scenic vistas from 2nd Street East by creating an embankment with a slope of approx. 30% and ranging from 16 to 40 feet in height from Industrial Way to Lake Herman Road "The Gateway to Benicia.

These questions and questions of many other Benicians should be answered by Seeno and by the City Council. What is the rush to review the Draft DEIR without a Formal Response to Comments document from LSA?

Sincerely,

Sabina Yates

302 Bridgeview Ct.

Benicia CA 94510 (707) 746-6428
redfoxred@earthlink.net



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Kristina D. Lawson
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925 941 3283

August 1, 2007

VIA FACSIMILE (707) 747-8120

Jim Erickson
City Manager
City of Benicia
250 East L Street
Benicia, CA 94510

Re: Benicia Business Park; Conformance Hearing Pursuant to City of Benicia
CEQA Environmental Review Guidelines Section III.D.9.d

Dear Mr. Erickson:

As you know, this office represents West Coast Home Builders in connection with its proposed Benicia Business Park project. Yesterday we received a copy of the notice of the upcoming City Council hearing to consider the conformance of the Benicia Business Park Draft Environmental Impact Report (DEIR) with the City of Benicia's CEQA Environmental Review Guidelines. We very much appreciate that after a three month continuance, both you and Mayor Messina have agreed to calendar this continued matter for consideration at next week's City Council meeting.

Pursuant to section III.D.9.d of the City's CEQA Environmental Review Guidelines, as the public hearing on this matter was closed on May 1, 2007, the City Council must determine on August 7, 2007 "[w]hether to accept the Draft EIR after determining it is in conformance with the CEQA Guidelines and that there has been an adequate response to potential environmental impacts." Consistent with our May 1, 2007 correspondence to the City Council and staff's previous recommendation to the City Council, it is our position that the DEIR fully conforms to the City's CEQA Guidelines. With the unconventional addition of the nearly 600-page Response to Comments document to the administrative record prior to preparation of a Final EIR, the City's environmental review of the Benicia Business Park project has now exceeded the City's requirements, and has gone above-and-beyond the environmental review required by CEQA. Accordingly, we would appreciate confirmation that, as stated in the staff report dated April 10, 2007, staff will again inform the City Council that "the DEIR is adequate in conformance with the applicable sections of the City CEQA Environmental Review Guidelines."

Jim Erickson
August 1, 2007
Page 2

We understand that over the past week you have discussed the scheduling of this continued matter on at least three occasions with Sal Evola, and that you have expressed concerns that our client has not provided staff with written material to review in advance of the City Council meeting. Please be assured that our client intends to make a full presentation of its vision for the Benicia Business Park to the City Council and the public next Tuesday, and will distribute written materials to the members of the City Council, City staff, and the public at the scheduled meeting. These materials (which we understand you were able to review, in part) and the formal presentation are currently in the process of being finalized by Loving & Campos Architects, Inc. Additionally, a model of the project site will be available for review prior to any hearing on the Final EIR. While our client plans to present additional information about its proposed project to the City Council and the public next Tuesday, the City's CEQA Environmental Review Guidelines (and the circulated notice of public hearing) make clear that the purpose of the hearing is to determine whether the City's consultants have conducted the environmental review of the proposed project in conformance with the City's requirements. We acknowledge that varying concerns about the project have been raised by staff and members of the public. While a discussion of the merits of the project, including the project's consistency with the City's General Plan is unwarranted and inappropriate at this time, our client is fully prepared to discuss such matters when those matters are properly before the City Council.

We remain concerned that the City's CEQA Guidelines essentially permit a neverending infinite loop of environmental review. Such a process burdens the City's resources, and our client's resources, and is in direct conflict with numerous provisions of CEQA, including CEQA's finite and mandatory processing time limit.¹ To date, our client has spent well over \$300,000 on more than two full years of environmental review conducted by LSA. At this time, we respectfully request the City to fully comply with its CEQA Environmental Review Guidelines, the state CEQA Guidelines (14 Cal. Code Regs., §§ 15000 et seq.), and CEQA (Pub. Resources Code, §§ 21000 et seq.), so that the merits of the project may finally be considered by the City.

¹ 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 a final EIR within one year from the date the project application is deemed complete. (14 Cal. Code Regs., § 15108.)

Jim Erickson
August 1, 2007
Page 3

We look forward to receiving a copy of the Final EIR in the very near future, and to continuing our positive dialogue with the City and the public about the merits of the project at the appropriate time.

Very truly yours,

MILLER STARR REGALIA



Kristina D. Lawson

KDL:kdI

cc: Heather McLaughlin, City Attorney
Charlie Knox, Community Development Director
Jeanne Pavao
Sal Evola

From: Charlie Knox
To: bob@nicholsberman.com, Heather.McLaughlin@ci.benicia.ca.us
Date: Mon, Jul 23, 2007 5:10 PM
Subject: Re: Senno EIR

Council asked for "more info" in 2 pieces:
-complete RTC
-project alternative from applicant

We're scheduled to go back to CC 8-7, depending on what applicant may provide in advance.
Stay tuned...

>>> Bob Berman <bob@nicholsberman.com> 07/23/07 4:21 PM >>>
Hi Charlie and Heather:

I would appreciate some clarification regarding the status of the Benicia Business Park EIR.

I received a copy of the Benicia Business Park Response to Comments, July 2007.

I also reviewed the minutes of the Benicia City Council May 1, 2007 meeting.

The July 2007 Response to Comments documents appears to be a typical responses to comments -- list of commenters, comments, and responses.

However, reviewing the May 1, 2007 Benicia City Council meeting it appears that the City Council was looking for something different. As you will recall, the purpose of the May 1st hearing was to complete an adequacy review of the Draft EIR as per the City's environmental guidelines.

There was a lot of discussion by council members regarding the need for more information. The City Council did not determine that the Draft EIR was adequate to proceed. The motion was to continue this item until more information is received from Seeno (approved 5 - 0).

Since the City Council did not determine the Draft EIR to be "adequate" and there appears to be no new information from Seeno what happens now? The July 2007 Response to Comments does not seem consistent with the City Council May 1 action. What was the purpose of the May 1st hearing?

I would appreciate an update as to what happens next.

Thanks

Bob Berman

CC: nslund@earthlink.net, redfoxred@earthlink.net, sustreet@pacbell.net, jan@cafevoltairebenicia.com, mattfisher1989@yahoo.com, janlcg@gmail.com

From: Bob Berman <bob@nicholsberman.com>
To: Charlie Knox <Charlie.Knox@ci.benicia.ca.us>, Heather McLaughlin <Heather.McLaughlin@ci.benicia.ca.us>
Date: Mon, Jul 23, 2007 4:21 PM
Subject: Senno EIR

Hi Charlie and Heather:

I would appreciate some clarification regarding the status of the Benicia Business Park EIR.

I received a copy of the Benicia Business Park Response to Comments, July 2007.

I also reviewed the minutes of the Benicia City Council May 1, 2007 meeting.

The July 2007 Response to Comments documents appears to be a typical responses to comments -- list of commenters, comments, and responses.

However, reviewing the May 1, 2007 Benicia City Council meeting it appears that the City Council was looking for something different. As you will recall, the purpose of the May 1st hearing was to complete an adequacy review of the Draft EIR as per the City's environmental guidelines.

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I would appreciate an update as to what happens next.

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Bob Berman

CC: <janlcg@gmail.com>, Matt Fisher <mattfisher1989@yahoo.com>, Sabina Yates <redfoxred@earthlink.net>, Jan Cox Golovich <jan@cafevoltairebenicia.com>, Susan Street <sustreet@pacbell.net>, Nancy Lund <nslund@earthlink.net>

MEMORANDUM

DATE: July 24, 2007

TO: Mayor Steve Messina and Benicia City Council Members

REGARDING: Benicia Business Park EIR

FROM: Bob Berman

MESSAGE:

I recently received the *Benicia Business Park Environmental Impact Report Response to Comments Document*. In a discussion with Charlie Knox, the City's Community Development Director, he indicated that the *Response to Comments* may be presented to the City Council at your August 7, 2007 meeting.

In light of the City Council's action on May 1, 2007 regarding this project I do not understand why the *Response to Comments* was prepared at this time and why it would be presented to the City Council at this time.

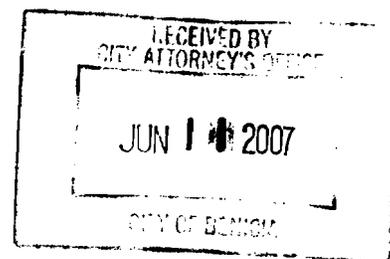
The *Response to Comment* document appears to be a typical responses to comments -- list of commenters, comments, and responses. However, reviewing the May 1, 2007 Benicia City Council meeting minutes it appears that the City Council was looking for something different. As you will recall, the purpose of the May 1st hearing was to complete an adequacy review of the Draft EIR as per the City's environmental guidelines. There was a lot of discussion by council members regarding the need for more information. The City Council did not determine that the Draft EIR was adequate to proceed. The motion was "to continue this item until more information is received from Seeno" (approved 5 - 0).

Although not clearly stated at the City Council meeting it appears that one piece of new information was a request for a revised proposed project that involves less grading and is consistent with the City's General Plan. There was no City Council direction to begin the preparation of the *Response to Comments*.

So, I urge you not to begin review or consideration of the *Response to Comments*. I urge you to direct City staff to communicate with the project applicant to submit the requested new information. Once the new information is received the May 1, 2007 hearing can be reopened for further consideration of this information and the adequacy of the Draft EIR. It is likely that based on this new information that additional analyses will be necessary and it may be necessary to recirculate the Draft EIR.

Preparation of the *Response to Comments* prior to your review of the new information is inconsistent with your May 1, 2007 action and I urge you to reject any consideration of that document at this time.

BENICIA FIRST
P.O. Box 119 • Benicia, CA 94510



June 8th, 2007

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

Dear Ms. McLaughlin,

A number of Benicia residents have joined together in recent months to form Benicia First, a community group made up of Benicia residents concerned about the impacts of large-scale development in our city. As such, we have recently paid great attention to the status and progress of the Benicia Business Park Draft Environmental Impact Report and project application.

At the May City Council hearing regarding the Benicia Business Park Draft EIR, an important issue was broached by Councilmember Elizabeth Patterson that we feel needs to be addressed by the City, more specifically by you as our City Attorney.

The question at stake is whether or not the BBP (aka "Seeno") application is legally "vested". Have "vested tentative maps" been approved by the City, and if not what is the public process that the applicant will have to go through to "vest" such a map?

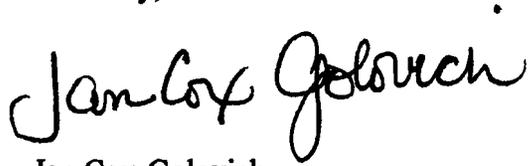
Since they have already submitted a project application, Seeno representatives have, at different times, declared that they are legally "vested" and therefore any new city ordinances, design & review guidelines, or other fresh planning procedures would not apply to this application. Does your office concur with this interpretation?

The City Council recently voted to require that any applicants looking to build a "Big Box" store would be required to obtain a special use permit in order to move forward. However, if one applies Seeno's interpretation of vesting, their project would not be subject to such a requirement. In your legal opinion, is that assumption correct or incorrect?

After informally conferring with individuals who have land use and environmental law experience, it seems to us that Seeno's interpretations are murky at best. During the May Council meeting when the DEIR was reviewed, it was unclear as to whether the City has an official position on this matter – critical information for Benicia residents who have a deep-rooted interest in responsible public planning.

The questions we pose are questions many Benicia residents are asking. This is a vital issue in our community that requires a formal legal opinion from your office, and we greatly appreciate your timely written response.

Sincerely,



Jan Cox-Golovich
Chair



Nancy Lund
Co-Chair



Susan Street
Co-Chair



Sabina Yates
Co-Chair



**MILLER STARR
REGALIA**

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925 941 3283

May 1, 2007

VIA FACSIMILE (707) 747-8121 AND EMAIL

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

Re: May 1, 2007 City Council Meeting - Agenda Item VIII A; Proposed
Adequacy Review of Benicia Business Park Draft Environmental Impact
Report

Dear Honorable Mayor Messina and Members of the City Council:

This office represents West Coast Home Builders, the owner of the property on which the Benicia Business Park project is proposed. We understand that the City Council intends to hold a second public hearing regarding the adequacy of the Draft Environmental Impact Report ("DEIR") at this evening's City Council meeting. A previous hearing to receive comments on the adequacy of the DEIR was held by the City's Planning Commission on February 8, 2007. Specifically, the City Council apparently intends to conduct an additional hearing, pursuant to Section III.D.9 of the City of Benicia Environmental Review Guidelines ("City's CEQA Guidelines"), to review the DEIR and an initial summarized set of responses to the comments received on the DEIR.

It is our position that the DEIR conforms to the City's CEQA Guidelines, and that no new significant information was presented in the comments submitted to the City regarding the DEIR that would necessitate either recirculation of the DEIR or a delay in processing "to gather additional information needed to reach conformance." City's CEQA Guidelines, § III.D.9.d.2.) Accordingly, pursuant to Section III.D.9.d of the City's CEQA Guidelines, we believe the City Council should determine that the DEIR is in conformance with the City's CEQA Guidelines, accept the DEIR, and direct staff to complete a Final EIR within an established time period. (See City's CEQA Guidelines, § III.D.11.)

While we believe the DEIR is adequate and that the environmental review of this project must continue, we are concerned with the sufficiency of the matrix of "summarized comments and responses," which was included with your staff report for tonight's hearing. As you are aware, the City received numerous verbal and

Honorable Mayor Steve Messina and Members of the City Council
May 1, 2007
Page 2

written comments on the DEIR during the statutory comment period, as extended by the City Council. Our client's extensive comments on the DEIR were submitted to the City in two separate letters dated March 12, 2007 (which we incorporate herein by this reference).

The matrix provided to you clearly consists of only a summarized approach to certain, selected comments, and does not address many of the numerous comments received. For example, the matrix includes no proposed approach or response to any of the eight utilities and infrastructure related comments we submitted on the DEIR on our client's behalf. It further fails to respond to four comments we made regarding the DEIR's Project Description, three comments regarding Geology, Soils and Seismicity, three comments regarding Hydrology and Water Quality, five comments regarding Biological Resources, and additional comments regarding Visual Resources, Cultural and Paleontological Resources, Public Services, and Urban Decay. Consistent with the CEQA Guidelines (14 Cal. Code Regs., §§ 15088, 15132), we therefore respectfully request the City provide, as part of the Final EIR, a formal response to all comments submitted during the CEQA process.

We look forward to receiving and reviewing a copy of the Final EIR and Response to Comments in the near future. Please do not hesitate to contact me directly at (925) 941-3283 should you have any questions or require further information before this evening's hearing.

Very truly yours,

MILLER STARR REGALIA



Kristina D. Lawson

KDL:kdI

cc: Charlie Knox, Community Development Director
Cindy Gnos, Raney Planning & Management
Heather McLaughlin, City Attorney
Jeanne Pavao, Esq.
Wilson F. Wendt, Esq.

Anne Cardwell - Benicia Business Park in the City of Benicia in Solano County, California

From: <Chris_Nagano@fws.gov>
To: <cknox@ci.benicia.ca.us>, <comdev@ci.benicia.ca.us>
Date: 5/1/2007 12:09:44 PM
Subject: Benicia Business Park in the City of Benicia in Solano County, California
CC: <Jonathan.Ambrose@noaa.gov>, <swilson@dfg.ca.gov>, <Eric_Tattersall@fws.gov>, <Ryan_Olah@fws.gov>, <Cay_Goude@fws.gov>

Dear Mr. Knox:

This electronic mail message concerns the proposed Benicia Business Park in the City of Benicia in Solano County, California. Our comments are based on the *Public Review Draft Benicia Business Park Environmental Impact Report* dated January 2007 (DEIR). It is our understanding that tonight, the City Council of Benicia will discuss the project at their meeting. It also is our understanding that this project is located on 527.8 acres of undeveloped lands; it consists of the subdivision of the site into 80 lots, development of approximately 280 acres of limited industrial use, 180 acres of open space, 10 acres of roadways and infrastructure, two 1,000,000 gallon water tanks, and rezoning of the site to apply a Master Plan overlay and to adjust commercial and industrial design designation boundaries to conform to the Master Plan. At issue are the potential adverse effects of the proposed project on the threatened California red-legged frog (*Rana aurora draytonii*), endangered callippe silverspot butterfly (*Speyeria callippe callippe*), and other listed species under the authority of the U.S. Fish and Wildlife Service (Service). Based on the information provided in the DEIR and otherwise available to us, the Service does not concur with the conclusions in the DEIR that the California red-legged frog and the callippe silverspot butterfly are "not likely to occur onsite." The proposed Benicia Business Park is located in an area of Solano County that provides suitable habitat for these two listed species or is otherwise naturally accessible to them. Our comments and recommendations are made under the authority of the Endangered Species Act of 1973, as amended (16 USC Â§ 1531 *et seq.*) and our Mitigation Policy of 1956.

Section 9 of the Act prohibits the take of any federally listed animal species by any person subject to the jurisdiction of the United States. As defined in the Act, take is defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." Harm has been further defined to include habitat destruction when it injures or kills a listed species by interfering with essential behavioral patterns, such as breeding, foraging, or resting. Thus, not only are the California red-legged frog and the callippe silverspot butterfly protected from such activities as collecting and hunting, but also from actions that result in their death or injury due to the damage or destruction of their habitat. The term "person" is defined as "an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal government, of any State, municipality, or political subdivision of a State, or any other entity subject to the jurisdiction of the United States."

Take incidental to an otherwise lawful activity may be authorized by one of two procedures. If a Federal agency is involved with the permitting, funding, or carrying out of the project and a listed species is going to be adversely affected, then initiation of formal consultation between that agency and the Service pursuant to section 7 of the Act is required. Such consultation would result in a biological opinion addressing the anticipated effects of the project to the listed species and may authorize a limited level of incidental take. If a Federal agency is not involved in the project, and federally listed species

may be taken as part of the project, then an incidental take permit pursuant to section 10(a)(1)(B) of the Act should be obtained. The Service may issue such a permit upon completion of a satisfactory conservation plan for the listed species that would be taken by the project.

As part of the environmental review for this proposed project, the Service recommends that habitat evaluations and/or surveys, as appropriate, by qualified biologists following Service and California Department of Fish and Game protocols be completed for the California red-legged frog and the callippe silverspot butterfly in the action area. We recommend the City of Benicia provide us and the California Department of Fish and Game with the results of these assessments and/or surveys. If it is determined that the proposed project may result in take or adverse effects to any of these two listed species, and/or other federally listed species under the authority of the Service, we recommend that the City of Benicia require the applicant to obtain authorization for incidental take for the appropriate listed species pursuant to sections 7 or 10(a)(1)(B) of the Act prior to certification of the final environmental documents.

We recommend adequate habitat assessments/surveys, as appropriate, for the burrowing owl (*Spetylo canicularia*), loggerhead shrike (*Lanius ludovicianus*), horned lark (*Eremophila alpestris*), western pond turtle (*Clemmys marmorata*), foothill yellow legged frog (*Rana boyleii*), and nesting raptors be completed by a qualified biologist in the action area. Photocopies of the data and findings from the habitat assessments/surveys should be provided to the Service and the California Department of Fish and Game. The Service recommends that adequate avoidance or conservation measures be implemented if it is determined that any of these species will be adversely affected by the proposed project.

The on-going loss and reduction in terrestrial movement corridors in this portion of Solano County also is of concern to the Service. The proposed project may adversely impact movement of animals such as the California red-legged frog, black-tailed deer (*Odocoileus hemionus*), bobcat (*Lynx rufus*), gray fox (*Urocyon cinereoargenteus*), and possibly American badger (*Taxidea taxus*). Inadequate wildlife corridors are problematic because they may lead to differential use of the corridors, leading to changes to natural community composition over time and may allow non-native species a competitive advantage over native species. However, the width and necessary characteristics of a useable wildlife corridor have not been fully documented. One study in southern California found that mountain lion (*Felis concolor*) corridors needed to be located along natural travel routes, contain ample woody cover, lack artificial outdoor lighting, and have less than one human dwelling unit per 40 acres (Beir 1995). The width of wildlife corridors in several studies have varied from 300 feet to more than 3 miles, depending upon the species, type of habitat, and other factors, and there is general agreement that the longer the corridor, the wider it needs to be for animals to effectively move through it (Andreassen *et al.* 1996; Beier and Noss 1998; Beier and Loe 1991; Danielson and Hubbard 2000; Rosenburg *et al.* 1997).

For the issue of habitat connectivity and wildlife migration, impacts are extremely difficult to adequately evaluate on a case-by-case basis. This is because these issues occur at the landscape level and any meaningful analysis and mitigation must occur at that level as well. There are a number of proposed projects in this area of Solano County. Wildlife migration and habitat connectivity are landscape level issues, are rooted in regional context, should be evaluated at the highest level (biologically and geographically) and are most effectively mitigated at the landscape level. We recommend that the City of Benicia and/or the applicant coordinate closely with the habitat conservation plan participants for the Solano County habitat conservation plan currently in development to ensure that the proposed project does not preclude any conservation strategies (i.e. movement corridors) currently being developed for the regional plan.

The City of Benicia should contact NOAA - Fisheries regarding the potential effects of this project on the threatened Central California steelhead (*Oncorhynchus mykiss*), threatened California coast coho salmon (*Oncorhynchus kisutch*), and other listed species, and animals and plants under their authority.

The NOAA - Fisheries contact may be reached at: Jonathan.Ambrose@noaa.gov.

We are interested in working with the City of Benicia and/or the applicant in the development of a project that avoids adverse effects/take of listed species or the development of a conservation plan that will allow authorization of incidental take under either sections 7 or 10(a)(1)(B), as appropriate.

If you have any questions, please contact me via electronic mail or at telephone 916/414-6600.

s/Christopher D. Nagano

Deputy Assistant Field Supervisor
Endangered Species Program
Sacramento Fish and Wildlife Office
U.S. Fish and Wildlife Service
2800 Cottage Way Room W-2605
Sacramento, California 95825

Literature Cited

Andreassen, H.P., S. Halle, and R.A. Ims. 1996. Optimal width of movement corridors for root voles: not too narrow and not wide. *Journal of Applied Ecology* 3:63-70.

Beier, P. and S. Loe. 1991. Checklist for evaluating impacts to wildlife corridors. *Wildlife Society Bulletin* 20:434-440.

Beier, S. and R.F. Noss. 1998. Do habitat corridors really provide connectivity? *Conservation Biology* 12:1241-1252.

Danielson, B.J. and M.W. Hubbard. 2000. The influence of corridors on the movement behavior of individual *Peromyscus polionotus* in environmental landscapes. *Landscape ecology* 15:323-331.

Rosenburg, D.K., B.R. Noon, and E.C. Meslow. 1997. Biological corridors: form, function, and efficacy. *BioScience* 47:677-687.

From: Marilyn Bardet <mjbardet@sbcglobal.net>
To: Alan Schwartzman <ams@advancedmtg.com>, Steve Messina <Steve.Messina@ci.benicia.ca.us>, Mark Hughes <MxH3@pge.com>, Charlie Knox <Charlie.Knox@ci.benicia.ca.us>, Elizabeth Patterson <elopato@comcast.net>, Jim Erickson <Jim.Erickson@ci.benicia.ca.us>
Date: 5/1/2007 4:00:22 PM
Subject: tonite on Seeno DEIR: summary of my comments

Dear Mayor Messina and Councilmembers, Charlie Knox and Jim Erickson,

I'm sending you this at the last minute, as a review of my comments for tonight, hoping to be able to deliver their gist in 3 minutes. I hope you will have a chance to read this. Sorry, but the demand to produce comments on the Matrix and address the adequacy of the DEIR at this point call for an inordinate "last minute" response by the public. Here are my thoughts about DEIR "adequacy" and the Matrix in shorter form. I'm submitting this in pdf and will also copy contents below.

Thank you again,
Marilyn B.

CC: Jerry Page <Jkjerome@aol.com>, Bob Berman <bob@nicholsberman.com>, Kathy Kerridge <kkerridge@sbcglobal.net>, Steve Goetz <sgoet@sbcglobal.net>, Susan Street <sustreet@pacbell.net>, Robert Craft <bob.craft@comcast.net>, Norma Fox <normafox@hotmail.com>, Joe O'Reilly <joeo1212@yahoo.com>, Dana Dean <danamail@pacbell.net>, Jan Cox-Golovich <janlcg@gmail.com>, Kitty Griffin <Kittysmail@aol.com>, Jon Van Landschoot <jonv@fsusd.k12.ca.us>

MARILYN BARDET
333 East K St. Benicia, CA 94510
(707) 745-9094 mjbardet@sbcglobal.net

May 1st, 2007

Mayor Steve Messina, and Councilmembers Hughs, Patterson, Schwartzman and Whitney;
Charlie Knox, Director, Economic Development and Planning Dept.
Cindy Gnos, Contract Planner
Benicia City Hall
250 East L St.
Benicia, CA 94510

Subject: EXECUTIVE SUMMARY of my letter on the use of the Matrix; and also, summary of my complete set of comments on the Seeno DEIR relevant to judgment of DEIR as insufficient, incomplete and fatally flawed under CEQA.

Dear Mayor Messina, Councilmembers, Mr. Knox and Ms. Gnos,

As you are aware, I have turned in two sets of extensive comments, the second of which were meant to amplify and justify statements made in the original submittal, March 12. The additional comments were based on notes taken page by page, while reading the entire DEIR.

I've also recently submitted a letter by email regarding the extra judicial review step Council is poised to take tonight apparently in accordance with a city revised CEQA procedure, adopted November 7, 2006. **Whatever the ordinance revision intended, it has created unintended consequences: it gives great advantage to the DEIR preparers' arguments and those promulgated by staff, in the form of the 56 page "Matrix" created apparently to "summarize the [staff/LSA] approach to formal responses".**

The key points of my letter:

1. The 56 page Matrix, was solely distributed to Council without possibility of review by the public for its accuracy. The Matrix is an unacceptable document being used in an unacceptable "extra step" offering no informational advantage to the public. The Matrix does NOT give any advantage to the community in presenting its caseload of concerns about the adequacy of the DEIR: the public's comments are neither quoted directly nor referenced in any way knowable or useful at this point in the CEQA review process under state guidelines.
2. There was no opportunity given for the members of the public to review the Matrix for its accuracy; the Matrix was not distributed to the public via email or other means; it was not put up on the City's website under "What's New/Benicia Business Park review"; the people whose comments are referenced were not sent a copy of the Matrix, even as a courtesy.
3. It cannot be used to judge the "adequacy" of the DEIR nor even whether the DEIR

is "going in the right direction". Any word or phrase used as synonym or substitute for the word "adequacy" will likely be seen as equivalent of "adequacy" under legal review.

4. The staff has effectively created a NEW document under CEQA for public review for adequacy. The DEIR's Summary Table of Impacts and Mitigations is the comparable model, but it is part of the DEIR under CEQA review. The Matrix is not a "stand alone" document meaningful or helpful to the public's understanding of the DEIR, and it is not useful to decision-makers, since it is inaccurate and incomplete. **The Matrix cannot be used to support a vote on the merits of the current DEIR. No vote should be taken at this time**, and the Matrix should be rejected or at least put aside. The only way for decisionmakers to properly review the DEIR is in its final form, with all public comments published, with LSA comments organized to address not only the "gist" of comments as bundled together, but specific points made by individual comments.

5. The public and council still await receiving a complete set of the public's comments and also staff/LSA response as required under CEQA guidelines for determining a draft EIR "adequate" ("sufficient", "complete", "accurate")

6. At 56 pages, the Matrix seems to be modeled after the DEIR's Table, "Summary of Impacts and Mitigation Measures", whose length is 51 pages (Chapter II. Summary, pages 8 - 59). The Matrix's length makes it seem *more* than a summary of an *approach* to comments, but an ACTUAL summary of response to comments--especially since individual public comments have been assigned reference letters and numbers as they will presumably appear in the final "Response To Comments" format. But to date: neither the council nor the public has had access to a complete set of public's comments, with LSA's reference numbers assigned to each particular comment.

7. Staff and LSA's judgement of the DEIR's alleged "completeness" is meant to be convincing; but the Matrix is inaccurate and incomplete in itself, even at 56 pages. The total number of public comments submitted were not represented; many are missing. (See my original email letter of April 25th, 2007). For example: my comments (March 12 and March 26) are not all accounted for by name under column #2; also, there is also no way for a commentor to know which of her comments is being referred to, and the identifying letters and numbers can mean nothing to any reader of the Matrix UNLESS he or she has a complete set of comments already assigned a name, number and letter for easy reference. The public's concerns are inadequately summarized as characterized in the first column: the descriptions are so limited, they cannot be used to accurately reflect neither the scope or the specifics of a particular concern or the general depth of concern for, say, cumulative and irreversible impacts.

8. The Matrix is designed to convince decision-makers of a final judgment on the adequacy of the DEIR: the last column serves the staff and LSA conclusion prior to final review; it forms a column that purports, in sum, to show and determine like a finding that the DEIR can "proceed" to further review, and MORE: that the DEIR does NOT need to be recirculated. This summary judgment column presumes that there is no other reason to recirculate the DEIR unless in the case that "new information has been brought to light" by public comment. It presumes that all other significant impacts can be addressed by the mitigations recommended, and/or that the DEIR's project

alternatives adequately address irreversible or cumulative impacts. The Matrix, therefore, becomes a shorthand "scorecard" for decisionmakers, implying the staff's approach must not only be trusted, weighed against public comment, but that a "yes vote" would signify agreement with the Matrix's conclusion and the staff/LSA approach to arriving at it, (e.g., via the Matrix and its last column as a significant "finding of adequacy").

9. The use of the Matrix points up an unexplored fallacy in the creation of an "extra judicial step" for the City's CEQA review process. The step should be eliminated since it disadvantages the public, especially if anything like the Matrix is used to assert staff/LSA opinion to the Council PRIOR to the final "Response To Comments" when complete public comments are published and referenced.

I considered submitting a full SUMMARY of my judgments on the DEIR's INADEQUACY, in the context of accounting for all my comments thus far submitted. However, this project requires more time and preparation than last week allowed before tonight's Council meeting. I will prepare such a summary for your convenience, before the final review hearing.

The DEIR must fundamentally address impacts with regard to sustainability, in accordance with our General Plan, and in consideration of the formidable challenges to the environment posed by global warming and its causes, as well as the energy crunch and economic, social and obviously environmental impacts spread over time of a resource-depleted world, which is now largely the result of "human activity" such as the proposed Seeno development represents. Therefore, it is imperative to get a DEIR that best allows a BETTER alternative project to be devised. This DEIR does not investigate a truly superior alternative; it simply does not suggest a master plan for the 21st century, speaking to 21st century requirements and new information, new legislation that can be anticipated, etc.

There are ample reasons for rejection of this DEIR and need for recirculation, owing to its insufficiency, inaccuracies, incompleteness and fatal flaws. (For example: incomplete analysis of significant cumulative Air Quality impacts, and, lack of choices of "project alternatives" that truly show greater distinction from the proposed project and thus show greater deference to the public's major concerns for benefit to the community and environment as a whole.

My comments submitted on the DEIR directly and indirectly point to the inadequacy of the DEIR:

1. at fundamental level of the development of the so-called master plan, the design, apportionment and configuration of "lot layout" for commercial and light industrial areas; road plans, circulation and public access, allocation of land area for development, grading plan with respect to goal of maintaining local natural topography and assumptions of the types of "uses" the layout and massive grading will invite; consideration of the environmental and economic impacts and the adequacy of the mitigations presented; insufficient number of "project alternatives" presented, and those presented are insufficiently characterized for understanding of their qualities and

significant impacts;

2. the lack of complete or sufficient or accurate account of the project's cumulative and irreversible impacts over time with regard to local economic impacts and public health; (Urban Decay, Traffic, Air Quality)

3. lack of discussion of sustainability: at the very least, an EIR can suggest, as a mitigation measure, development of "standards" and defining criteria for measuring performance on meeting sustainability goals WITHIN the scope of the 25 year build-out); conservation of biological resources, energy and water demands and with concern for contributions of the project to global warming and with regard to growth-inducing factors.

It's my fervent hope that this Council will take responsibility for reading all public comments in full and to know the will of the public on this very controversial project as it is described in the DEIR.

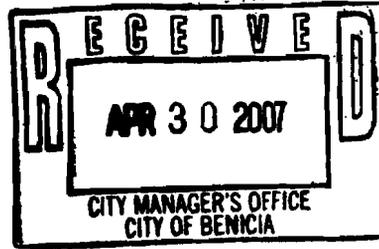
I look forward to a final review hearing, when the entire set of public comments is published and referenced completely, in a final "Response to Comments".

Thank you again for consideration of my observations. My standing in the community with regard to my familiarity with CEQA derives from nongovernmental organization review and comment on: air impacts associated to environmental review of refinery project; several local hazardous waste cleanups for existing and proposed residential development, and involving military site with unexploded ordinance; urban design, aesthetics, including viewsheds, cultural resources; and also, mitigation measures pursuant to CEQA. I have served on various city committees, including the General Plan Oversight Committee, qualifying me as an expert witness in these areas.

Sincerely,

Marilyn Bardet

Lisa Burton
1140 W L St.
Benicia



April 19, 2007

Dear City Council,

As a long time resident of Benicia, (since 1983) I have seen a lot of growth both population and housing in our town. The planning of this town has been pretty good over the years because what makes Benicia special is its unique smaller businesses, artist community, First St's procsimity to the water, lack of mega malls, and not having all the fast food chains. Concerned residents for no growth past our city's building foot print, have made the logic clear that our roads and infrastructure can not handle masses of traffic and people. We need to stay that course.

The mailer from the "Benicians for Growth" committee is a move to take advantage of the traffic from the new bridge construction on 680 freeway to the commuters going from Fairfield and beyond to Concord and beyond. "Benicians for Growth" is actually large developers to afraid to put an address on the mailer for fear of being found out. These are not local citizens as it leads you to believe. A WALMART SUPER STORE, COSTCO, and MEGA MALL would financially hurt our First St. businesses and even our grocery stores.

My family urges you to vote yes on the formula-based business ban and keep Benicia unique.

A concerned citizen,

Lisa Burton
Lisa Burton

P.S. Once the Rose Dr. strip mall is done we will have 5 Starbucks. Is this necessary?

Steve Messina - Development in Benicia

From: <Logan5003@cs.com>
To: <smessina@ci.benicia.ca.us>
Date: 4/29/2007 9:56 AM
Subject: Development in Benicia

Steve,
We cannot attend meeting. No more development.
The logans

Steve Messina - May 1 meeting comment

From: "Sue Wickham" <swgeo@sbcglobal.net>
To: <aschwartzman@ci.benicia.ca.us>, <smessina@ci.benicia.ca.us>, <epatterson@ci.benicia.ca.us>, <wwhitney@adventmortgage.com>, <mhughes@ci.benicia.ca.us>
Date: 4/29/2007 9:08 PM
Subject: May 1 meeting comment

April 29, 2007

Dear Mr. Mayor and City Council Persons:

I am unable to come to the council meeting on May 1 and am sending comments via email instead. I wanted to let you know I am dismayed at the Seeno/LSA "matrix" that has come to light recently. After having spent several days reading the lengthy draft EIR and composing comments on that draft I find out that my comments are dismissed on the matrix table. By viewing this table, you, staff and the public have no idea what my original comments are, but are subjected to LSA/Seeno's dismissal of these comments. I also have no way of understanding which of my comments they are responding to. The whole matrix procedure is extremely frustrating and seriously in question.

I urge you to read the original comments, all 115 of them, and see for yourself if the comments made by the public, city staff and agencies merit some discussion. The public knows this is a poorly designed project that the developer is trying to force us to accept. The EIR has significant flaws of adequacy in the areas of energy conservation, traffic-especially along E. Second and Lake Herman beyond the immediate project area and my largest concern, impact to Sulphur Springs Creek in the immediate area of the project for flooding, increased erosion, and impacts to potential red-legged frog habitat. No discussion in the EIR was provided for having a development within the floodplain of the creek and to potential impacts to future recreation opportunities along this creek. Storm water regulations that the city is responsible for are not part of the design. Several studies for biologic resources as well as hydrology are not adequate for a DEIR and are pushed to later "potential" studies. We should not approve any document without the facts first. My prior lengthy letter has many other comments about the adequacy of this EIR that I believe warrant consideration. Many of the other public comments also warrant serious consideration of this DEIR inadequacy.

Please do not let outside developers unduly influence you to vote for this inadequate DEIR.

Sincerely,

Susan Wickham
411 Duvall Court
Benicia, CA 94510

Steve Messina - May 1 meeting comment

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To: <aschwartzman@ci.benicia.ca.us>, <smessina@ci.benicia.ca.us>, <epatterson@ci.benicia.ca.us>, <wwhitney@adventmortgage.com>, <mhughes@ci.benicia.ca.us>
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Sincerely,

Susan Wickham
411 Duvall Court
Benicia, CA 94510

Steve Messina - Seeno Business Park DEIR

From: "George Delacruz" <georgedelacruz@sbcglobal.net>
To: "Elizabeth Patterson" <epatterson@ci.benicia.ca.us>, "Mark Hughes" <mhughes@ci.benicia.ca.us>, "Steve Messina" <smessina@ci.benicia.ca.us>, "Alan Schwartzman" <AlanSchwartzman@ci.benicia.ca.us>, "Bill Whitney" <wwhitney@adventmortgage.com>
Date: 4/27/2007 2:08 PM
Subject: Seeno Business Park DEIR

To: Benicia City Council

Date: April 25, 2007

From: George Delacruz
735 Buchanan Street #101
Benicia California 94510
746-6989

Subject: Comments on the inadequacy of the Draft Environmental Impact Report on the Seeno Business Park Project (deir)

"I find that the deir is inadequate in it's totality in that there is insufficient mitigation of traffic, lighting, landscaping, the environment, and the projects effects on the downtown area."

The failure of the city to have in place a Master Plan at the time of this application allows the developer to shift and subjectively change his development plan to match items that are not yet approved by the city.

There are substantial legal question regarding the "vesting" subdivision map approval.

Additionally, the city of Benicia's failure to use mandated "Conditions of Approval" seriously reduce the ability of the city to seek developer paid for infrastructure improvements. These infrastructure improvements, if not made by the developer of projects within the city limits, eventually put the cost onto the residents of Benicia.

I urge you to vote against this deir and to seek a better solution to the necessary mitigation factors involved.

Steve Messina - Re: Seeno DEIR's "adequacy"?: use of LSA's matrix to evaluate

From: Bob Berman <bob@nicholsberman.com>
To: Charlie Knox <Charlie.Knox@ci.benicia.ca.us>
Date: 4/25/2007 1:55 PM
Subject: Re: Seeno DEIR's "adequacy"?: use of LSA's matrix to evaluate
CC: Alan Schwartzman <ams@advancedmtg.com>, Bill Whitney <wwhitney@adventmortgage.com>, Elizabeth Patterson <Elizabeth.Patterson@ci.benicia.ca.us>, Steve Messina <Steve.Messina@ci.benicia.ca.us>, Mark Hughes <MxH3@pge.com>, Marilyn Bardet <mjbardet@sbcglobal.net>, Robert Craft <bob.craft@comcast.net>, Jan Cox-Golovich <janlcg@gmail.com>, Belinda Smith <bsmitgo@hotmail.com>, Norma Fox <normafox@hotmail.com>, Dana Dean <danamail@pacbell.net>, Steve Goetz <sgoet@sbcglobal.net>

Hi:

I agree with Charlie Knox -- the city's procedure is unusual. The City's CEQA Guidelines are somewhat confusing (at least to me) in regards to this hearing process. I would support Charlie's suggestion that the City's guidelines be amended to remove this step. I do not see much public benefit to this hearing.

Bob

Charlie Knox wrote:

This is not a special case.

The adequacy hearing for the decision-making body is established for ALL Draft EIRs by the City's newly adopted City CEQA guidelines (11-7-06).

My limited understanding of why the step was added (it *is* unusual) is to give citizens one more opportunity to comment.

City staff would have no objection to amending the City guidelines to remove the adequacy hearing and go straight to the Final EIR certification hearing that follows.

>>> Marilyn Bardet <mjbardet@sbcglobal.net> 4/25/2007 8:50 AM >>>
 Good morning, Mayor Messina, and Councilmembers Hughs, Patterson, Schwartzman and Whitney,

The preliminary "summary judgment step" you are about to take next week, May 1st, for evaluating the adequacy of the Seeno DEIR for further review may set a regrettable precedent as a highly questionable departure from the city's customary CEQA review process that aligns with state guidelines. This "extra Council review step" is disturbing for a number of reasons, the most basic I list below, and with examples of my own continuing concerns. There are many questions that need to be answered. How was the decision made to have Council take a preliminary vote on the DEIR's adequacy to proceed with further CEQA review? Why is a "special case" being made of this particular CEQA review? Why is the Seeno Business Park Project's environmental review being distinguished in procedure from the CEQA review of Valero's VIP DEIR in 2003, an EIR review that was of equal concern to the public, (such that

community members and groups made a legal challenge with regard to the VIP DEIR's failure of analysis of cumulative Air Quality impacts-a challenge which ended with a settlement agreement with Valero.)

For my own part, I did not learn of any preliminary Council vote on DEIR adequacy or any "matrix" being drawn up when I turned in my initial 7 pages of comments on March 12th (the official deadline for comments) nor when I turned in additional pages of comments which Charlie Knox advised me to submit by March 26th, in time to be reviewed by LSA in preparation for Council hearing.

Your special determination of "adequacy" at this preliminary juncture apparently will necessarily revolve around a 56 page "matrix" developed by LSA and city staff as a summation of their "approach" to full "response to public comments". What is meant by "approach"? Are the responses presented actual summaries of comments already written? Was the matrix developed for the express purpose to persuade Council of the DEIR's worthiness to stand further CEQA review?

For the Council to vote to accept the DEIR on the basis of the matrix's "Summarized Approach to Formal Response", Council has to assume that the matrix is accurate. If Council votes to accept the DEIR as "adequate" now, it would surely signal a tentative FINAL approval, since the matrix itself is presented as a "summary" of what will be final responses to comments. Why would decision-makers need to read the full measure of public comments when they can cut to the chase-via the matrix cribsheets-to LSA /staff's arguments in support of the DEIR? Seen in this light, the matrix presents a kind of "assurance" for Council that it can move toward final acceptance of the DEIR. Would a councilmember who votes "yes" now-to accept the DEIR's adequacy based on a reading of the matrix-be likely to reverse his or her decision at the public hearing when the "final" EIR is reviewed? Would he or she expect to find any significant difference, except in length of response, between the "Summarized Approach to Formal Responses" of the matrix, and the final full, complete "Response to Comments" required under CEQA with regard to a determination of the DEIR's "adequacy" and "completeness"? What weight will be given to actual public comments as submitted in writing and in oral presentation at the final Council hearing?

Because of the "special case" of this preliminary vote you are about to make, the public must be able to assume that staff and LSA intended to represent an accurate accounting of all public comments submitted. How will Council determine the accuracy of the matrix as a representation of the public's comments and the depth of concern they express? How will the concerned public at large benefit from Council's use of this "summary" matrix? The use of this "extra decision step" puts incredible, unanticipated, added burden on the public now, in a matter of a few days, to comment on the matrix itself for adequacy and accuracy, as a matter of principled oversight under CEQA. Yet, is any governance provided to assure the public of the matrix's "accuracy in

reporting"? Is there an official review period for this new document circulated by LSA and staff?

So, here we are, members of the public, having to comment on the matrix's adequacy, knowing that Council is charged with making a preliminary assessment of the DEIR-a decision that will have to be based on the assumed accuracy of the "Summarized Approach to Formal Responses" and the accounting of all public comments by the matrix. Is the City aware of how this "extra step" involving a vote on "adequacy" using the matrix favors LSA's assessments over any comments members of the public would make in their own comment's defense at this time? What kind of legal issue is involved here, when the community is effectively deprived of seeing all public comments published with adequate full response before any determination of "adequacy" of the DEIR is made? Why is the public being put in the position now of addressing this new document, and on what basis are we to assume that it's accurate? On what grounds is the matrix a document that is legally defensible? Is there a review period for the matrix that allows the public to contest its summations? On what basis can the matrix be judged by Council to be accurate? Is there any independent review by other agencies that is included in the matrix? I did not find any.

We know how burdensome it may be to councilmembers to pour over public comments and give them a fair reading. Yet, the public was invited, and many took up the responsibility, reading 377 pages of text of the DEIR plus appendices. LSA states in the matrix, page 7, "The environmental analysis in the Draft EIR, including the identification of impacts and mitigation measures, was conducted in accordance with the level of detail available on the proposed project. Although the EIR preparers did not have access to certain information about the project (including detailed diagrams of cut and fill, site cross sections, and architectural design for individual buildings) the project information that was available was adequate to identify the project's anticipated environmental impacts..." In effect, this statement provides the caveat with which the DEIR must be understood and evaluated. LSA feels it did the best job it could, based on the information provided to them by Discovery Builders (Seeno).

I've read the entire DEIR, submitted over 35 pages of comments in two submittals, have read various, but not all, letters by other community members, and also have read the 3 page LSA/staff letter and 56 page matrix.

(1) The matrix does not reference ALL public comments submitted by the official deadline (March 12) nor those ADDENDUM comments submitted by the second deadline (March 26th) set by Charlie Knox, (who promised that additional comments would be responded to by LSA for final "response to comments" and Council's hearing. In several conversations and email exchanges, I did not learn of any "matrix" being developed at that time that would preclude inclusion of my additional comments.) I know that many of my comments have not been

included in the matrix's summary.

(2) Regarding the content of the matrix and its form: the matrix summarily characterizes subject areas covered by the DEIR in the 1st column, references and bundles public comments by name of the commentator and by letter and number in the 2nd column, and gives LSA's "Summarized Approach to Formal Response", in the 3rd column, followed by judgments in the 4th column, pertaining to the column's header "Does this Response Introduce Significant New Information to the Draft EIR?" Thus, the matrix does not quote actual comments made by the public. It's therefore impossible for a member of the public to understand which of his or her comments are being cited in the matrix when there is no immediate access to the entire set of comment letters submitted and no explanation of the system of identifying, referencing and bundling specific comments. [For example, without access to LSA's full "response to comments", I have no idea which of my comments on page 6 are being referenced as "C6-2, C6-4, C6-12 (Bardet)", concerning The Project Description.

(3) The matrix does not fully or accurately characterize the content of public comments that are being addressed by LSA's/staff's summary remarks. I am concerned that I did not find reference in the matrix to many of my comments pertinent to cumulative impacts to biological resources, visual impacts of the project as they relate to grading and landscaping, and especially, the inadequacy of the DEIR's analysis of air quality impacts, including CO2 emissions as related to state legislation AB32, and the failure to identify significant cumulative LOCAL impacts to community health owing to increases of air pollution. My comments on air quality monitoring stations and use of the BAAQMD Tuolumne monitoring station data is not cited on page 33 of the matrix, along with Bob Craft's comments. (See my written comments submitted March 26, pertinent to Air Quality. For instance, there is no citation for any comment that addresses the evaluation of air impacts, regarding the traffic study that focused only on CO as the emission of concern at intersections. Also there was no mention of my many comments regarding the wholly inadequate characterization and analysis of cumulative air quality impacts and the use of BAAQMD air basin statistics, which do not and CANNOT address local concerns for local air quality in our neighborhoods from pollution sources. I also am disturbed by the seeming dismissal of BUSD's concern, which I share, about the air quality impacts to Semple School owing to I-780 road widening and excessive extra traffic on East Second, cumulatively added to existing pollution from nearby refinery, gas station, city corporation yard, etc.)

Thus, the concerned public might legitimately fear that Council will rely on the matrix's summations and vote to accept the adequacy of the DEIR, offering the public a "preview" of a final approval of the DEIR. What's tricky in this? The Council would presumably be least likely to reverse such a decision, if members have presumptively voted "yes" now, on the basis of a matrix's "Summary Approach to Formal

Response". A preliminary judgment would appear to subvert the CEQA process, since a vote now to accept the DEIR as adequate relies on a matrix that does not make immediately available to the public or to council the actual texts of all public comments, nor those required from outside independent agencies. Staff and LSA conclude peremptorily, in the letter that confirms the matrix's findings, that there is no significant reason to recirculate the DEIR. Obviously, as devised, the matrix makes a special case for Council to give a "green light" to the DEIR's further review. What's dangerous? The matrix offers a "short cut" to understanding LSA's and staff responses and privileges them at the expense of the public's concerns, since the public's actual comments are not actually quoted or given in full in the matrix. Does the Council right now have a full set of public comments with which to compare its own assessments and those of staff and LSA stated in the matrix? Certainly, the public has no easy access to a full set of public comments at this time.

The matrix "reads" like a defense of the DEIR: Council "acceptance" of the DEIR at this preliminary decision step would mean that Council accepts the presentation of public comments "as cited" and the "Summarized Approach to Responses" as "generally accurate and going in a reasonable direction". In the event that Council votes to give the DEIR a "green-light" as recommended by the staff/LSA letter, would Council be likely to vote to reverse its own preliminary decision to "accept" the DEIR as "adequate", considering that, in the final review, to reverse a preliminary decision to accept the DEIR would appear to negate the validity of the matrix's "summarized approach" upon which the May 1st vote would presumably depend upon?

The DEIR must characterize the full scope of the proposed project and its impacts and provide project alternatives that demonstrate significant and various improvements to the project that mitigate significant environmental impacts; the "environmentally superior alternative" which is identified should better represent respect for the public's expressed concerns fundamental to "master planning" and concept of "sustainability". I do not believe the DEIR meets the standard of acceptance which the community believes necessary for judging a project of this magnitude. I also believe that staff and LSA have interpreted CEQA guidelines in the narrowest possible terms suitable to an acceptance by decisionmakers of the proposed project's review.

The DEIR represents a minimalist interpretation of what CEQA's "limits" are and the "scope" of CEQA discussion. In the matrix, staff/LSA lay out CEQA terms and guidelines that would seem to make moot many of the public's comments: but the public is concerned to understand a project and its considerable impacts that will be felt for generations. For example, LSA claims that the "new findings" public comments allude to with respect to the project's potential contributions to greenhouse gas emissions are "evolving" and that, with

reference to sustainability, that the current DEIR adequately meets the standard for adequacy in its limited discussions. References to pages 374 and 375, on energy and resource impacts, is considered by LSA to be adequate discussion and response. I do not believe, under the current circumstances, that the public should have to wait until the last text pages of the draft EIR for such a BRIEF discussion of energy requirements of the project within CEQA law and considering "evolving" national and state legislation which may govern for the life of the project and beyond. At the very least, current "evolving" understanding of the meaning of sustainability should be addressed with sufficient references and citations to assure the public that, in fact, LSA has done its own homework to elucidate the problems of evaluation.

Further, the matrix essentially blows off public concern to evaluate a 25 year project's impacts in relation to new scientific findings on CUMULATIVE effects of our "carbon footprint". As LSA suggests, these are "evolving" concerns; but that does not mean that we should not attempt to evaluate a project with regard to avoiding "adverse impacts" pertinent to future accumulation of greenhouse gases. Since scientists are saying now that we have about 20 years in which to try to curtail CO2 and other greenhouse gas emissions, it is not right that LSA narrowly interprets the role of CEQA to "avoidance of adverse impacts" as opposed to "improving a project" to meet the needs of future generations (sustainability). The DEIR does not clearly demonstrate how the "project alternatives" suggested would address concerns of AB32 or protect natural habitat in the context of a development plan that would best reflect new and anticipated conditions whether owing to changes in climate or availability of energy, water, etc. We should be given the opportunity under CEQA to call for an ecological master plan consistent not only with Benicia's General Plan but with new state legislation. If the Seeno project is considered a "minor" contributor to global warming, each of our lives are also minor contributors. Cumulative impacts must be considered, weighing impacts which might be described as "minor" when isolated and compartmentalized, but which DO have long-term impacts in the aggregate, when a whole city's production of emissions is accounted for. This is one of the most important aspects pertinent to assessing a city's "sustainability". Carbon "trading" for industry is based on the understanding that different sources of greenhouse gases will produce different amounts of emissions; industries will have to account for these differences, through carbon credit trading programs at local, regional, national and international levels.

The Master Plan, such as it was presented in only a few nearly inscrutable maps, suggests a layout of a project that is NOT ecologically devised to MINIMIZE harm to the environment. We should be given the opportunity to choose a project alternative that represents a truly ecological master plan. The DEIR does not provide such an "environmentally superior" project that addresses the concerns of the 21st century we are facing right now that morally REQUIRE all of us, as environmental stewards, to fully utilize CEQA to UNDERSTAND ALL OF A

PROJECT'S POTENTIAL AND CUMULATIVE IMPACTS. CEQA can be a resourceful tool for researching, gathering information for evaluation, and finding best "land use" planning practices for sustainability, to address "hidden costs" of impacts-without minimizing them-with respect to energy crisis and global warming. I cannot accept the review and rationale presented as a discussion of "sustainability" in the matrix, nor the "Summarized Approach" that virtually dismisses any opportunity under CEQA to develop pertinent criteria for evaluating sustainability of the project via the DEIR. I cannot accept the DEIR's analysis of the project's "insignificant" contribution to global warming, or its judgment that the project is "not growth-inducing." Given 21st century conditions that are being widely discussed by both scientists and policymakers at every level- I cannot accept the DEIR because it does not adequately reflect the evaluative responsibility and possibility CEQA offers, to help identify opportunities and alternatives to enhance and IMPROVE the project with respect to consequences of energy consumption, greenhouse gas emissions and global warming impacts. That there is no separate discussion of these impacts and variables is not acceptable, given the amount of information now available, both from science and policy research communities. The matrix states that some scientists claim that global warming will cause California to be warmer, while others say "cooler with more rain". Please! Where are the references? Why, in a 377 page document is there no legitimate discussion? The pathetic nod given to such topics in the matrix defends the adequacy of the DEIR's discussion of "sustainability" and impacts to "non-renewable resources" by citing pages 373 - 375 of the DEIR-in the DEIR's last few pages. The word "sustainable" does indeed show up throughout discussions in the DEIR, but to what end? Sustainability is not fully discussed in light of new scientific information, and new strategies in both land use policy, design, energy conservation, transportation and economic localization-all of which address local prospect of Urban Decay and environmental demise under the conditions we will likely face if we continue to do "business as usual", permitting new developments that represent 20th century assumptions. The project's contribution to global warming should not be minimized or compartmentalized as "insignificant". What motive does any human have for reducing his or her own "environmental impacts" related to a personal carbon footprint, if the carbon footprint of a major corporation's plan to excavate 9 million cubic yards of soil and build on 500+ acres is considered "insignificant" with respect to cumulative global warming impacts?

The evolving requirements foreseeable to reduce carbon emissions and carbon footprints of individual lives, businesses, whole communities and regions should be discussed in the DEIR. For new development projects, it can be demonstrated now that reducing the carbon footprint of a project is cost effective in the long term and can best be addressed at the fundamental level of project layout, "master plan" and overall design guidelines for sustainability. The DEIR should not be allowed to escape such analysis. There is plenty of new information readily available that is sufficient to address the

Seeno project, considering its 25 year construction life and that the project is meant "to serve the community" well into the 21st century WITHIN time-frames now used to describe global warming impacts and energy needs. The project at buildout will 'last' well beyond mid-century: We should be proud to use CEQA as a virtual planning tool now, as we assess ways to best address "adverse" environmental impacts that can be fairly anticipated to be consequent of the proposed project. In the near term, construction costs are said to be increasing each year, making all servicing costs of the project much greater. The obvious new levels of uncertainty which rising costs for all aspects of construction point to suggest that to allow this DEIR to go forward in its present state would be to throw up our hands and allow "business as usual" to proceed, as if we have "no choice" and as if CEQA would not allow a more comprehensive analysis with new information having come to light in the last two years. The DEIR before you represents a 20th century analysis of a 20th century project, totally unsuitable AS DESCRIBED in the DEIR, for Benicia as a community in the 21st century. Project Alternatives should draw on new concepts of land use planning that are much more innovative and ecological; at the very least, the DEIR should consider and reference what is meant by "ecological design concepts" that seek to not only avoid adverse impacts but ENHANCE environmental and economic sustainability.

I believe that members of the public who earnestly reviewed the DEIR should not be short-changed by Council in its CEQA review: Council must fully reckon the depth of concern the public has demonstrated with regard to the DEIR's adequacy, for what purports to be "sufficient" and "adequate" discussion of such things as significant and irreversible impacts to biological resources, natural topography, visual character of the project, hydrology, and air quality.

Yes, Council should consider its very fundamental responsibility to identify what's missing in LSA's discussion of sustainability and immediately require a strategy to devise standards and criteria for judging such projects impacts and the costs to taxpayers of doing "business as usual" in Benicia, accounting for the rising costs of construction, transportation, infrastructure, energy, over the 25 year construction phases of the Seeno project and beyond.

Detailed example of lack of sufficient and accurate discussion in DEIR, and also the matrix, pertinent to cumulative air quality impacts:

Pertaining to my own comments, submitted March 12 and with numerous pages in addendum, Cumulative LOCAL air pollution impacts and consequent public health impacts were not adequately addressed either in the DEIR, nor were public comments (my own) identified in the matrix summary. My own comments were not mentioned with others (Steve Goetz) on increased daily traffic throughout the community contributed to by Seeno project as well as by Water's End development, prospective impacts from Bordoni Ranch development of another 400 homes on Benicia's western boundary AND expansion of production at the Valero refinery (which involves increased truck traffic on East Second,

increased coke production and increased port pollution from increased weekly shipping; also and especially, with regard cumulative traffic impacts from increased daily peak hour traffic on East Second, as well as from widening of I-780 (which is assumed by the DEIR).

The matrix does not identify my concerns, which were shared by school board president Dirk Fulton, whose comments were also not mentioned, with specific reference to findings from well documented children's health studies ("The East Bay Children's Respiratory Health Study" whose findings are promulgated by CalEPA's Office of Environmental Health Hazard Assessment, and which pertain to chronic exposure to air pollution and the effects on lung development and respiratory function in children who attend schools located within 500 feet of "busy roadways". Standards promulgated for siting new schools, as a result of the health studies findings, must now be challenged, with reference to new information on the dangers of tiniest particulate matter, PM2.5, which actually penetrates lung tissue. Summarizing their conclusions on this subject in the matrix, LSA argues that projected vehicle traffic on East Second would be 37,000 daily vehicle trips and that current (or future??) traffic on I-780 is documented to be 55,000 vehicle trips per day, so that when added together, the total number of vehicle trips would be "within the recommended threshold of 100,000 vehicle trips per day, (the threshold of significance when considering citing a new school near a major roadway.) However, considering that when added together, figures for projected increases in local traffic on East Second and future I-780 traffic would add up to 92,900 vehicle trips per day, LSA is suggesting that barely making it under the threshold is "good enough" for protection of Semple students and surrounding neighborhoods. My concern especially addressed the case of Semple School in relation NOT ONLY to the potentially significant traffic impacts cited in the DEIR, but also; in consideration of cumulative health impacts owing to air pollution from all immediate, constant nearby sources, namely the refinery ADDED to the traffic impacts.

Further, with regard to AIR QUALITY: the DEIR's analysis fails to fully characterize cumulative health impacts to the community from daily, therefore, chronic exposures to LOCAL pollution sources, which the Air District's statistics from its regional air monitors cannot and do not accurately describe. In fact, the AIR District's mandate is to be primarily and singularly concerned with conditions of the regional air basin, not local impacts to surrounding community neighborhoods stemming from nearby local pollution sources. The BAAQMD monitor near the Valero southern fenceline ONLY monitors for hydrogen sulfide and sulfur dioxide, in accordance with BAAQMD requirements. This does NOT mean that there are not numerous other chemicals the public is exposed to on a daily basis, for example, volatile organic compounds that attach to PM 10 and especially PM 2.5 that penetrates lung tissue; this means that increases in air emissions from all sources can have even greater health impacts, since soot and other fine particulate matter (like petroleum coke dust and diesel exhaust) act as "carriers" into

the lungs of other highly toxic contaminants coming from the refinery, other industries, traffic sources and the port. Also, as I explained in my official comments, ammonia is now being cited as a culprit emission that is a residue attributable from use of catalytic converters: ammonia is ubiquitous in urban environments; ammonia molecules attach to nitrogen oxides (NO) to form a tiny, solid particulate at the size of 2.5 microns-the size that penetrates lung tissue and cannot be expelled from the body. This means that tailpipe emissions have an additional, heretofore uncharacterized impact upon respiratory function. Sonoma Technologies has researched these effects and the impacts of "quick spikes" as vehicles pass by. These impacts cause and aggravate asthma.

The problem of analysis of cumulative air quality impacts was made clear in the community's 2003 evaluation of the DEIR for the Valero refinery VIP project. At that time, a letter sent to the Planning Commission on behalf of the Good Neighbor Steering Committee, Sierra Club and others, (from Mike Remy's Sacramento law firm which specializes in CEQA) addressed the inadequacy and failure of the Valero DEIR's analysis of cumulative air impacts from a community, e.g. LOCAL, health perspective. LSA contends that the general conditions of the Bay Area air basin represent the local conditions in Benicia. This is a generalization that cannot fairly be made since there is no adequate modeling and no actual monitoring research locally that could characterize local conditions given the multiple local sources of pollution and the numbers of chemicals involved in air emissions from local refinery, including the asphalt plant and port. The matrix does not discuss any of these problems and therefore dismisses my official comments pertinent to determining whether the DEIR is an adequate document sufficient to describe the significant cumulative impacts attributable to the proposed project. The case of the cumulative impacts to young children at Semple School is not "closed" by LSA's assessment of the sufficiency of their own analysis.

It is a serious flaw that the current Seeno DEIR sweeps away the General Plan's guidance to protect community health with regard cumulative air quality impacts from ALL current and anticipated local AND regional sources.

I hope you will take my comments and those of all others who have participated seriously, and trust the spirit in which they are raised, realizing the exceptional tool CEQA can be to help better define a project and its significant and cumulative impacts as well as IMPROVE prospects of getting a BETTER PROJECT.

Thank you for your time in reviewing these comments before May 1st.

Most sincerely and respectfully,

Marilyn Bardet

333 East K Street
745-9094

Anne Cardwell - Please add to written comments, 5/1 Council mtg, include in Agenda packet please

From: Norma Fox <normafox@hotmail.com>
To: <acardwell@ci.benicia.ca.us>
Date: 4/25/2007 2:17 PM
Subject: Please add to written comments, 5/1 Council mtg, include in Agenda packet please

Dear Elizabeth,

In the last City Council meeting discussion on the proposed Formula Business Ordinance -- in response to concerns that stiff restrictions on chain stores might hurt our local business economy -- you mentioned that there are other nearby communities, such as Calistoga, which have actually experienced a beneficial economic impact after implementing stiff formula business restrictions which have encouraged the expansion and vitality of local independent businesses (with a side benefit of increased tourism).

I have not contacted Calistoga to see if they have conducted an economic impact study, but I found the following the following economic impact studies from other cities (full of charts, tables, statistics and hard data) which do repeatedly support the finding that local independent businesses, as compared to national chains, do indeed have significantly better impact on the local economy. When compared on a dollar for dollar or square footage basis, they circulate more money back into the local economy because of the 'local multiplier effect'.

Please click on the links provided and review these studies, and share them with your colleagues.

I believe the Formula Business Ordinance as currently written is far too weak. It will allow a flood of uniform chain stores of different varieties on First Street, and will allow unlimited growth of national chain stores in other existing commercial zones in town, as well as in the proposed Seeno Project on the edge of town, thus severely weakening and undermining the economic viability of our Downtown as our central commercial zone and community focus.

It is my hope that in the upcoming discussion and vote on the Formula Business Ordinance, decisions will be made on the basis of the General Plan goals of retaining our unique small town character and preserving Downtown as our central commercial zone, and on the basis of this factual hard economic data, and not merely on the basis of conventional economic wisdom and assumptions.

—Norma Fox

Economic Impact Studies

“Local First” – An Economic Strategy for Sustainability

Santa Fe, New Mexico

Santa Fe Independent Business Report - November 2003

<http://www.santafealliance.com/education/index.php>

By Angelou Economics

Key findings:

- Small businesses account for 90% of all businesses in Santa Fe and employ 30% of all private sector workers.
- Dollars spent at independent businesses deliver twice the economic impact of those spent at national chains.
- However, national chains in Santa Fe are growing faster than independents - 2.5 times faster - and bring new competition and pressure to the small business community.

Chicago, Illinois

Andersonville Study of Retail Economics - October 2004

<http://www.civiceconomics.com/Andersonville/html/reports.html>

By Civic Economics

Civic Economics, the Andersonville Development Corporation, and the Andersonville Chamber of Commerce collaborated on this study, designed to evaluate the economic role played by the independent businesses of this dynamic district on Chicago's North Side.

Key findings:

- Every \$100 spent with a local firm leaves \$68 in the Chicago economy; \$100 spent at a chain store leaves \$43 in Chicago.
- For every square foot occupied by a local firm, the local economic impact is \$179 vs. \$105 for a chain store.

Midcoast Maine

The Economic Impact of Locally Owned Businesses vs. Chains: A Case Study in Midcoast Maine - September 2003

<http://www.newrules.org/retail/midcoaststudy.pdf>

By Institute for Local Self-Reliance

This study tracked the revenue and expenditures of eight locally owned businesses in Midcoast Maine, as compared to big box stores.

Key findings:

- Locally owned businesses spent 44.6 percent of their revenue within the surrounding two counties, and another 8.7 percent elsewhere in Maine, largely on wages and benefits paid to local employees, goods and services purchased from other local businesses, profits that accrued to local owners, and taxes paid to local and state government.
- Big box retailers return an estimated 14.1 percent of their revenue to the local economy, mostly as payroll. The rest leaves the state, flowing to out-of-state suppliers and back to corporate headquarters.

Austin, Texas

Economic Impact Analysis: Local Merchants vs. Chain Retailers - December 2002

<http://www.liveablecity.org/lcfullreport.pdf>

By Civic Economics, Austin IBA

Key finding:

- For every \$100 in consumer spending at a national chain bookstore in Austin, Texas, the local economic impact was \$13. The same amount spent at locally based bookstores yielded \$45, or more than three times the local economic impact.

NEF Community Tools for Measuring the Local Multiplier

By the New Economics Foundation (NEF). [http://www.neweconomics.org/gen/Plugging the Leaks](http://www.neweconomics.org/gen/Plugging%20the%20Leaks) is a community-led economic development strategy tool that enables a community to identify the economic resources in their local economy and determine ways to use them more effectively. <http://www.pluggingtheleaks.org/>

Local Multiplier 3 is an impact measurement tool that measures how income is spent and re-spent in the local economy. The purpose of tracking and measuring this spending is to identify opportunities to strengthen linkages in the local economy so that efforts can be made to keep money circulating locally.

#####

For more Economic Impact Studies, see
<http://www.livingeconomies.org/localfirst/studies/>
<http://www.newrules.org/retail/econimpact.html>

For supplemental information and reports, see
<http://www.livingeconomies.org/localfirst/faq> -- Local First FAQ
<http://www.livingeconomies.org/localfirst/whylocalfirst> -- Why Local First
<http://www.livingeconomies.org/localfirst/whobenefits> -- Who Benefits
<http://www.newrules.org/retail/0204msn.pdf> -- Report: Protecting Locally Owned Retail
<http://www.regionalprogress.org/Building%20a%20Resilient%20and%20Equitable%20Bay%20Area.pdf> -- full report: Localization Strategy for the Bay Area
<http://www.regionalprogress.org/Executive%20Summary%20BBA.pdf> -- Exec. Summary

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Bob Berman
250 West K Street
Benicia, CA 94510

MEMORANDUM

DATE: April 22, 2007
TO: Benicia City Council
REGARDING: Benicia Business Park Draft EIR
FROM: Bob Berman

MESSAGE:

It is my understanding that at the May 1, 2007 meeting the Benicia City Council will be asked to make one of two decisions regarding the Benicia Business Park Draft EIR. The decision will be to either:

Accept the Draft EIR and direct that the formal Response to Comments document be prepared, or:

Move for a continuance of the hearing to gather additional information needed to ensure that the Draft EIR is adequate.

The City's procedure regarding the adequacy of the Draft EIR is unusual and the May 1, 2007 hearing to review the initial evaluation and response to comments differs from most CEQA procedures that I am familiar with. Nevertheless, based on the City's CEQA Guidelines, my review of the January 2007 Benicia Business Park Draft EIR, and the April 10, 2007 memo prepared by the Community Development Department and LSA Associates, Inc. I conclude that the Draft EIR is inadequate. I request that the City Council continue the hearing in order to revise and improve the Draft EIR before the formal Responses to Comments is prepared.

I base my findings on a review of my comment letter (dated February 23, 2007) and the proposed responses to my comments contained in the attachment to the April 10, 2007 memo.

- One of my DEIR comments was that in the transportation analysis only roadway improvements that are approved, fully funded, and assured of full implementation should be included in the analysis of traffic impacts. The initial response is that the traffic analysis assumed only reasonably foreseeable projects. One of these assumed projects is the I-80/I-680/SR 12 improvements. Although it is not fully described in the DEIR, it is my understanding that the full improvements recommended by the STA to the I-80/I-680/SR 12 improvements are not fully funded and therefore are not reasonably foreseeable projects. The DEIR needs to be revised to ensure that only fully funded planned roadway improvements are included in the impact analysis.
- Another of my DEIR comments deals with the visual analysis contained in the DEIR. First, the discussion of visual resource impacts inadequately discusses and illustrates the impacts of the proposed grading. Second, the visual simulations are simply inadequate. The response is basically "we did the best we could with the information regarding the proposed project that we have". I simply disagree. The visual simulations (A through H) are inadequate to understand and analyze the visual impacts of the proposed project. Let's remember the project proposes that nine million cubic yards of soils be excavated. Cuts would be up to 100 feet deep and fills would be

30 to 50 feet deep. The visual simulations do not adequately illustrate the impacts of the proposed massive grading.

- My February 23, 2007 comment letter included several comments regarding the inadequacy of Chapter N – Urban Decay. The initial responses do not seem to include responses to all of my comments. In short, for the reasons stated in my February 23, 2007 letter the analysis of urban decay impacts in the DEIR is inadequate.

The above discussion is only a few examples of where I believe that the Draft EIR is inadequate and should be revised prior to the preparation of the Response to Comments.

From: <rebseth@comcast.net>
To: <info@ci.benicia.ca.us>
Date: 4/23/2007 8:45:39 PM
Subject: City of Benicia Website Contact Form Submission

UserName : Seth and Rebekah Burnham
Regarding : City Council
Comments : Dear Benicia City Council,

As relatively new residents of this community, we were appalled to discover that developments such as the Benicia Business Park (Seeno Development) are even being considered. We chose to live here specifically for it's appeal in the areas of Historic Preservation, Low-crime, small-business populated main thoroughfare (First St.), and appearance of community pride. This pride is reflected in the buildings (downtown area anyhow), the support of the arts (Arsenal area), Environment (progressive-minded business owners, clean streets, green spaces) This proposed development is fiscally, environmentally, and politically irresponsible. It has absolutely no correlation to a sustainable future in any of those categories.

Recently, a flyer was distributed via mail that essentially lauded the qualities of mall and business park littered landscapes such as Fairfield and Concord. Our (and Iâ€™m certain many other residents) question is what qualities of those homogenized landscapes are there to aspire to?? Monotonous, uninspired, same-ness are not goals to strive for!! There are simply no arguable long or even short-term benefits, but clear detriment to health and worthy progress when such projects are allowed to move forward. As proven time and time again in communities all across this country (multiple controversies ensue concerning a certain "Big Box" business that has fallen completely out of public favor and will continue to do so), it is time to embrace smaller local business, clean up the environment, increase education, or quite simply face the very real possibility of becoming completely irrelevant. Strip Malls, Business Parks, Big-Box, Polluters, Non-Green Construction, Lack of monies focused on public transport or education, will quite simply not be tolerated and not be part of the worldâ€™s current and future communities. Virtually any cover of any current magazine on any newsstand (Time, Vanity Fair, Outside, and many more), or any television network,

film, internet, in fact most media today, emphatically states pretty much the same message: People are fed up with the callous aspects of corporate culture, and are trying to rectify the world's environmental crisis with renewed vigor. This project is not a viable way to contribute to the future of this or any community and is severely lacking in redeeming qualities. These views are clearly supported and illustrated throughout the Bay area, throughout California, and throughout the world. We certainly think Benicia is special and full of enormous potential. Please make the appropriate choice for a successful Benician future and realize, that in it's current form, this (Seeno) proposal is an abomination of an idea.

Sincerely,

Seth and Rebekah Burnham

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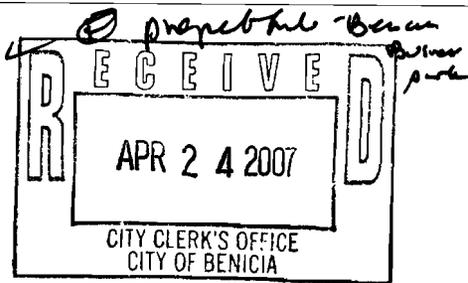
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Sincerely,

Seth and Rebekah Burnham

April 24, 2007

Benicia City Council
Benicia City Hall
Benicia CA 94510



Members of the Benicia City Council,

Will there be any tax benefit to the City of Benicia?

In the Community Development and Sustainability – Growth Management Section 2 – Goal 2.4 of the Benicia General Plan, adopted in 1999, it states: **Ensure that development pays its own way.**

In the Draft EIR of the Benicia Business Park (p.321) it states that: **(a) Fire Protection and emergency medical services would be provided to the project site by the City of Benicia Fire Department (Fire Department) (b) The City of Benicia Police Department (Police Department) would provide law enforcement and emergency related services to the project site.**

The cost of local policing increases when Wal-Mart comes to town because of increased shoplifting crime in their stores. Wal-Mart insists on prosecuting every shoplifting perpetrator. In Vista, California, arrests at Wal-Mart contributed to a 24 percent rise in the crime rate.

Big box retail shopping centers, and fast-food restaurants cost taxpayers more than they produce in revenue when compared to specialty retail shops because of the cost of higher road maintenance and a greater demand for public safety services. Barnstable Massachusetts fiscal impact report.

There may be an incremental increase in the total number of taxable items that are purchased, but as the selling prices at Wal-Mart are lower than those at the locally-owned businesses, the resulting tax revenue may well fail to match the increase in consumption.

Over the last 12 years, the city of Concord New Hampshire, added 2.8 million square feet of new commercial and industrial development. Tax Revenue has actually declined by 19 percent. New retail development, primarily big box stores, had harmed local businesses. Property values, and subsequently tax revenue, in the older shopping areas had declined sharply. New development had eroded the value of residential property due in part because of increased traffic and noise.

Please consider the hidden costs of the Benicia Business Park to the taxpayers of the citizens of Benicia.

Sincerely,

A handwritten signature in cursive script that reads "Sabina Yates".

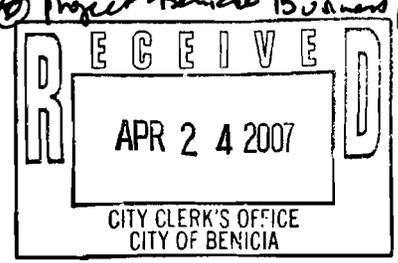
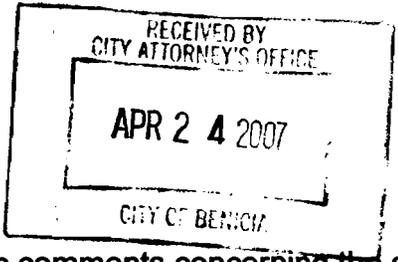
Sabina Yates
302 Bridgeview Ct.
Benicia CA 94510
(707) 7746-6428 redfoxred@earthlink.net

Heather ✓

Project Benicia Business Park

April 23, 2007

Benicia City Council
Benicia City Hall
Benicia CA 94510



The LSA responses to public comments concerning the sufficiency of the Benicia Business Park Draft EIR prepared by the Community Development Department and LSA are inadequate and should be revised.

One of my DEIR comments was that the proposed project is totally incompatible with the Benicia General Plan.

The **significant and unavoidable (SU)** impact of this project would conflict with General Plan policies because the excavation of 9M cubic yards would require a substantial reconfiguration of almost the complete total of the 527.8 acres site. (Goal 3.16)

This project would require development that degrades existing lakes and streams and relies on underground pipelines and culverting for storm water management. (Policy 3.22.1)

This project DEIR is inadequate and should be revised because its significant adverse effects would not protect hillsides, watersheds and riparian corridors. It would not preserve public views of open space and would not maintain existing vistas of the hillsides that surround Benicia. This project would place two 1M gallon water tanks near the tops of the only two hills left within the 527.8 acres of the project.

The DEIR is inadequate and should be revised because it does not address the adverse effects the project will have on scenic vistas from 2nd Street East by creating an embankment with a slope of approximately 30 percent and ranging from 16 to 40 feet in height. This embankment would have a significant impact the whole length of 2nd Street East – from Industrial Way to Lake Herman Road. (Benicia General Plan Goal 2.26)

I strongly urge the Benicia City Council to move for a continuance of the hearing to gather additional information needed to reach conformance because the LSA Draft EIR does not adequately describe the significant environmental and visual issues and should be revised prior to the preparation of the Response to Comments.

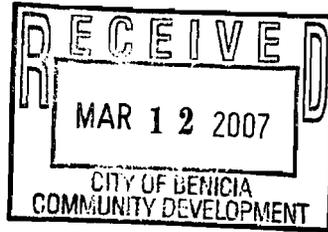
Sincerely,

Sabina Yates

Sabina Yates
302 Bridgeview Ct.
Benicia CA 94510
(707) 746-6428 redfoxred@earthlink.net



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KDL@msrlgal.com
925 941 3283

March 12, 2007

Cindy Gnos
Contract Planner
City of Benicia
250 East "L" Street
Benicia, CA 94510

Re: Benicia Business Park Draft Environmental Impact Report

Dear Ms. Gnos:

This firm represents West Coast Home Builders, Inc., the owner of the Benicia Business Park property. We have received and reviewed the January 2007 Benicia Business Park Environmental Impact Report Public Review Draft prepared by LSA Associates, Inc. (the "DEIR"). The DEIR contains a comprehensive, detailed, and adequate analysis of the potentially significant environmental impacts that may result from the proposed Benicia Business Park. Unfortunately, the DEIR goes above-and-beyond what is required and allowed by the California Environmental Quality Act ("CEQA"; Pub. Resources Code, §§ 21000 et seq.), and, among other things, attempts to impose mitigation that is not reasonably related to the identified impacts. On behalf of our client, we appreciate the opportunity to provide the following comments on the DEIR.¹

GENERAL COMMENTS

1. The DEIR Improperly Proposes Specific Mitigation Measures In Areas Subject To Regulation By State And Federal Permitting Agencies.

As a first matter, there are numerous mitigation measures proposed in the DEIR that purport to unlawfully extend the jurisdiction of the City into areas subject to the responsibility and jurisdiction of other public agencies, including, but not limited to, the United States Army Corps of Engineers ("Corps"), United States Fish and Wildlife Service ("USFWS"), California Department of Fish and Game ("CDFG"), and San Francisco Bay Regional Water Quality Control Board ("RWQCB"). The DEIR

¹ By separate letter of the same date (which we incorporate herein by this reference), we have also provided comments on the Transportation and Circulation section of the DEIR.

proposes to unlawfully extend the City's jurisdiction in various ways, including by granting the City the right to reject provisions in federally-mandated plans.

Public Resources Code section 21004 provides that: "In mitigating or avoiding a significant effect of a project on the environment, a public agency may exercise only those express or implied powers provided by law other than this division..." CEQA does not permit the City to require mitigation measures that go beyond the powers conferred by law on the City. **CEQA does not expand the jurisdiction of the City.** (Pub. Resources Code, § 21004; 1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 1st ed, 2005) § 14.17, p. 714.)

In imposing mitigation requirements, the City must defer to the appropriate state and federal permitting agencies. While it is proper for the DEIR to include a summary description of the types of requirements likely to be imposed by the state and federal permitting agencies, it is improper for the DEIR to impose specific and detailed requirements in areas outside of the City's jurisdiction.

2. The DEIR Improperly Proposes Mitigation Measures Where No Reasonable Relationship or Nexus Exists Between the Project's Impacts And The Mitigation Proposed

Mitigation measures may not violate state or federal constitutional standards. This requirement is expressly set forth in section 15041 of the CEQA Guidelines, which allows a City to impose only those mitigation measures "...**consistent with applicable constitutional requirements such as the 'nexus' and 'rough proportionality' standards established by case law.**" (14 Cal. Code Regs., § 15041, *emph. added*; see also 14 Cal. Code Regs., § 15126.4(4) ["Mitigation measures must be consistent with all applicable constitutional requirements, including the following: (A) There must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); and (B) The mitigation measure must be 'roughly proportional' to the impacts of the project. *Dolan v. City of Tigard* 512 U.S. 374 (1994). Where the mitigation measure is an *ad hoc* exaction, it must be 'roughly proportional' to the impacts of the project. *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854."].) The fact that a mitigation measure is proposed by an EIR does not serve to validate an otherwise unlawful exaction. (See *e.g.*, *Pinewood Investors v. City of Oxnard* (1982) 133 Cal.App.3d 1030, 1040.) The City cannot use CEQA to take property without the payment of just compensation.

Various mitigation measures set forth in the DEIR, and specifically identified below, violate state and federal constitutional standards by proposing conditions above and beyond that required to mitigate the particular impact at issue. Such measures violate the applicable constitutional standards and must be revised or deleted from the DEIR.

SPECIFIC COMMENTS

Chapter III. Project Description.

1. DEIR, p. 69. Table III-1 on page 69 of the DEIR sets forth proposed phases of development. While this phasing was proposed by the sponsor, we respectfully request that footnote a on Table III-1 be revised to indicate that the phasing is conceptual only. Specifically, the following revisions to the DEIR are necessary:

- Table III-1, footnote a: "Conceptual pPhasing as proposed by the sponsor."
- Figure III-10, Title: "Conceptual Phasing"
- Page 80, sixth paragraph, first sentence: "Site preparation and development ~~would occur in~~ is conceptually proposed to occur five phases, beginning in the southeastern portion of the site (Figure III-10)."
- Page 87, first paragraph: "Conceptual project phasing has been provided by the project sponsor. The first phase of the project would consist of development of the proposed commercial area. The next four phases would involve the construction of industrial areas. Main streets would not be connected as through streets until the final phase of development adjacent to the road. Periodic traffic surveys would need to be conducted (minimum every two years) to verify the need for and recommend necessary street improvements ahead of the proposed phasing plan."

2. DEIR, p. 70. In the second paragraph on page 70 (lines 10-11), the DEIR states that "East 2nd Street would be reconstructed from Industrial Way to Lake Herman Road..." As accurately set forth on page 220 of the DEIR, the project sponsor has proposed to *widen* East 2nd Street. We respectfully request that on page 70 the word "reconstructed" be replaced with "widened."

3. DEIR, p. 80. As set forth above, the proposed phasing of the project is conceptual only. Accordingly, we respectfully request that the first line of the last paragraph on page 80 be revised to reflect that, "Site preparation and development would occur in five conceptual phases..."

Additionally, for the reasons set forth below in our comments regarding Chapter IV.M. (Utilities and Infrastructure), we respectfully request that the Development Phasing and Infrastructure Improvements discussion be revised to reflect that water and wastewater improvements will be installed *as directed by the City Engineer*. Prior to the initial development of the site, it may not be appropriate or feasible to

fully install the infrastructure improvements necessary for complete build-out of the project. (Please also see General Comment 2 above.)

4. DEIR, p. 87. As set forth above, the proposed phasing of the project is conceptual only. Accordingly, we respectfully request that ~~the~~ first sentence of the first paragraph on page 87 be revised as follows: "As conceptually proposed, the first phase of the project would consist of development of the proposed commercial area."

Additionally, we respectfully request that the second paragraph on page 87 of the DEIR be revised to reflect that water and wastewater improvements will be installed *as directed by the City Engineer*. Prior to the initial development of the site, it may not be appropriate or feasible to fully install the infrastructure improvements necessary for complete build-out of the project. (Please also see General Comment 2 above.)

Chapter IV.A. Land Use and Planning Policy.

5. DEIR, p. 9, 104-105 (Impact LU-1). By reading numerous provisions of the City of Benicia's General Plan out of context, the DEIR mischaracterizes Impact LU-1 ("The proposed project would substantially conflict with policies in the General Plan adopted for the purposes of environmental protection") as a potentially significant and unavoidable environmental impact. For the reasons set forth in detail below, it is clear that Impact LU-1 should not be classified as potentially significant, and should instead be classified as less-than-significant, with no mitigation required.

a. The Project Is Consistent With The Property's General Plan Designations. The proposed project is consistent with the provisions of the City's adopted 1999 General Plan, and does not "[c]onflict with an applicable land use plan, policy, or regulation of an agency with jurisdiction over the project...adopted for the purpose of avoiding or mitigating and environmental effect." (DEIR, p. 103.) **First, the proposed commercial and industrial development is fully consistent with the two adopted general plan land use designations for the property – General Commercial² and Limited Industrial.³** (See also, General Plan, Figure 2-

² The General Commercial "category is intended to provide shopping and services for the community as a whole and for visitors coming from the freeways...General Commercial is intended to allow a wide range of commercial development, with the intensity of development limited by a maximum FAR of 1.2." (City of Benicia General Plan (hereinafter "General Plan") p. 27.)

³ The Limited Industrial "category includes manufacturing, assembly, and packaging of goods primarily from previously prepared (not raw) materials; wholesale, distribution, and storage facilities (including auto import, export, and storage); research and development facilities; and related industrial and commercial services. As it pertains to refining-related activities, this category also includes such uses as: fabrication areas, packaging facilities (dry and liquid), quality control laboratories, and refining accessory uses such as

2, p. 36 [identifying project site as "industrial land"].) Second, the project has complied with the General Plan's master plan requirement for new industrial and business park developments on properties under common or single ownership which aggregate to more than 40 acres. (See General Plan, Policy 2.3.1, p. 34.)

b. The General Plan Encourages Development Of The Property. Interestingly, the DEIR fails to even mention General Plan Goal 2.6 or any of its underlying programs and policies, which directly relate to and encourage the development of industrial lands in the City, such as the Benicia Business Park property. **As set forth in the General Plan, it is the express goal of the City of Benicia to "attract and retain a balance of different kinds of industrial uses to Benicia," (General Plan, Goal 2.6, p. 43) by "preserv[ing] industrial land for industrial purposes..." (General Plan, Policy 2.6.1, p. 43), and "for lands designated limited industrial" (such as the project site), by reducing the "length of time and number of steps required for development proposals to proceed, consistent with CEQA, community development policies and ordinances, and the design review process for general industrial lands."** (General Plan, Program 2.6.C, p. 44.) There is no doubt that the City, through its General Plan, planned for and envisioned the development of the property in the manner proposed.

c. The Project Is In Agreement With The Provisions Of The General Plan. Furthermore, the proposed project is not inconsistent with the policies identified in the text following Impact LU-1. A finding of consistency requires that a project be "in agreement or harmony with' the terms of the applicable plan, not in rigid conformity with every detail thereof." (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 678, quoting *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 718 and *Greenbaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 406.) The General Plan itself defines consistency as the following:

Consistency, Consistent With

Free from significant variation or contradiction. The various diagrams, text, goals, policies, and programs in the general plan must be consistent with each other, not contradictory or preferential. The term 'consistent with' is used interchangeably with 'conformity with.' The courts have held that the phrase 'consistent with' means 'agreement with; harmonious with.' Webster defines 'conformity with' as meaning harmony, agreement when used with 'with.' The term 'conformity' means in harmony therewith or agreeable

maintenance shops, storage areas, shipping/distribution facilities and offices..." (General Plan, pp. 28-29.)

to (§ 58 Ops.Cal.Atty Gen. 21, 25 [1975].) California State law also requires that a general plan be internally consistent and also requires consistency between a general plan and implementation measures such as the zoning ordinance.

Accordingly, perfect conformity with each and every General Plan policy is not required – particularly in circumstances such as this, where the project site is very clearly designated for the uses that are proposed.

The DEIR purports to identify “key policy conflicts of note.” (DEIR, p. 104-105.) However, upon review of the General Plan, it is clear that the proposed project does not conflict with the noted policies. The DEIR identifies a purported conflict between the project and Policy 2.2.1. However, Policy 2.2.1 is not applicable to the project – its purpose is to implement Goal 2.2 to “maintain lands near Lake Herman and north of Lake Herman Road in permanent agriculture/open space use.”⁴ (General Plan, Goal 2.2, p. 34.) While the project is technically near Lake Herman, it is certainly not north of Lake Herman Road. Moreover, a review of the General Plan land use designations for the property near Lake Herman and north of Lake Herman Road clearly evidences that Goal 2.2, and all of its underlying policies, were intended to preserve the lands that are already designated General Open Space in the General Plan. (See DEIR, Figure IV.A-2; see also City of Benicia Land Use Diagram.) The purpose of this Goal is not to redesignate the project site – which is clearly designated General Commercial and Limited Industrial in the General Plan – as agricultural land or open space.

⁴ The General Plan explains that “Goals’ are ‘end-state’; they are the long-range answers to what the City wants to accomplish to resolve a particular issue. Policies are medium- or short-range statements that guide day-to-day decision-making so there is continuing progress toward the attainment of goals. Programs are the actions taken to implement a specific policy or group of policies..” (General Plan, p. 6.) Further, the General Plan identifies the hierarchy of goal, policy, and program as follows:

- | | |
|----------|--|
| Goal: | A general, overall, and ultimate purpose, aim, or end toward which the City will direct effort. |
| Policy: | A specific statement of principle which implies clear commitment <u>but is not mandatory</u> . A general direction that the City elects to follow, in order to meet its goals. |
| Program: | An action, activity, or strategy carried out in response to adopted policy or group of policies. |

(General Plan, p. 6, internal formatting omitted.)

The next alleged conflict is with Policy 2.21.1, which is a Circulation Policy of the General Plan. Policy 2.21.1 is included in the General Plan to implement the Goal 2.21 to "encourage Benicia residents and employees to use alternatives to the single-occupant automobile." The proposed development of a long-planned for commercial and industrial project does not in any way conflict with this goal. To the extent it does conflict with the goal, the impact can be easily and feasibly mitigated through measures encouraging employees of the Benicia Business Park to use alternatives to the single-occupant automobile.

The DEIR also erroneously identifies a third conflict between the project and Policy 3.21.E of the General Plan. Again, reference to the relevant General Plan Goal is necessary to determine whether or not a conflict between the policy and the project exists – the General Plan policies cannot be read out of context. Specifically, a General Plan Policy must be considered in the context of the corresponding General Plan Goal. (See General Plan, p. 6.) General Plan Goal 3.21 provides that it is the goal of the City to "permanently protect and enhance wetlands so that there is no net loss of wetlands within the Benicia Planning Area." (General Plan, p. 134.) Policy 3.21.1 ("Encourage avoidance and enhancement of sensitive wetlands as part of future development") implements Goal 3.21.

The overview of the project set forth on page 65 of the DEIR makes clear that the project, as proposed, is clearly consistent with both Goal 3.21 and Policy 3.21.1. The DEIR explains that the project sponsor has proposed "an approximately 54-acre open space 'reach' for the purpose of "preserv[ing] a key drainage and associated wetlands at the project site." (DEIR, p. 65.) Additionally, "180 acres of open space proposed in the site would also be used to enhance existing wetlands and riparian zones, and build new wetlands to mitigate adverse effects to and removal of existing wetlands." (DEIR, p. 79.) The project does not propose a net loss of wetlands within the Benicia Planning Area, and therefore cannot be inconsistent with General Plan Goal 3.21. (See also DEIR, p. 80.)

The fourth alleged conflict between the project and Policy 3.22.1 is also nonexistent. General Plan Goal 3.22 is to "preserve water bodies." (General Plan, p. 136.) Policy 3.22.1 proposes to implement this goal through avoidance of "development that will degrade existing lakes and streams." (General Plan, p. 136.) While there are no lakes present on the property, the project does propose to fill and/or underground portions of three existing intermittent streams. As explained on page 80 of the DEIR, the project sponsor will be required to fully mitigate for these effects. Accordingly, insofar as a conflict exists (which we do not believe to be the case), the impact is reduced to a less-than-significant impact through appropriate mitigation.

Lastly, without explanation the DEIR also purports to conclude that the project conflicts with "the majority of applicable policies in the Open Space and Conservation of Resources section...namely Policies 3.15.2, 3.15.D, 3.15.3, 3.15.4, 3.15.5, 3.15.6, 3.17.1, 3.19.1, 3.20.1, 3.21.1, and 3.22.1." (DEIR, p. 105.)

General Plan Goal 3.15 is to "provide buffers throughout the community." (General Plan, p. 126.) The purpose of this Goal is not to preclude development of lands clearly planned for industrial and commercial development, but is to ensure that buffers between urban communities and the proposed industrial and commercial uses are provided. (See General Plan, p. 125.) As indicated in Figure IV.A-2 of the DEIR, the City has already provided these buffers through the designation of land between the existing industrial park and the residential development as General Open Space. It is a clear misstatement that the project conflicts with the policies underlying Goal 3.15.

The project also does not conflict with policy 3.17.1 which implements the City's goal of "link[ing] regional and local open spaces." (General Plan, p. 127.) Reference to Figure IV.A-2 makes clear that the project site is not located between regional and/or local open spaces, and that the project site could not be used to link regional and/or local open spaces. North of Lake Herman Road, the project is bordered by open space. The project's southern, eastern, and western borders are surrounded by General and Limited Industrial lands. By its own terms, Goal 3.17 (including its underlying policies) does not apply to the project.

The project is also fully consistent with the General Plan's goal of "preserv[ing] and enhanc[ing] habitat for special-status plants and animals." (General Plan, Goal 3.19, p. 133.) The project includes approximately 180 acres of open space, including a 54-acre 'reach' that was recommended to be preserved by State of California natural resource agencies. (DEIR, p. 70.) Even if the project conflicts, in part, with Goal 3.19 and its underlying policies (which is not the case), the conflict is not properly characterized as a significant impact, particularly in light of the project's proposed 180 acres of open space. This comment is equally applicable to the purported conflict between the project and policy 3.20.1.

d. The DEIR's Land Use Impact Determination Must Be Revised.

Based on the analysis set forth in sections 4a, 4b, and 4c above, it is clear that the DEIR's conclusion that purported policy inconsistencies represent a significant and unavoidable environmental impact is not supported by substantial evidence. To the contrary, substantial evidence (identified above) exists that the project is fully consistent with all applicable provisions of the General Plan. Impact LU-1 should not be classified as potentially significant, and should instead be classified as less-than-significant, with no mitigation required. We therefore respectfully request that the DEIR be modified accordingly.

Chapter IV.C. Geology, Soils and Seismicity.

6. DEIR, pp. 10, 124-125 (Mitigation Measure GEO-2b). The DEIR identifies potential damage to structures or property related to the shrink-swell potential of project soils as a potentially significant impact (Impact GEO-2). As set forth on page 124 of the DEIR, the preliminary geotechnical report included several

recommendations for mitigating the potential problems associated with expansive soils. These recommended mitigation measures are included in Mitigation Measure GEO-2a, and will fully mitigate the identified impact.

For unknown reasons, the DEIR proposes review and approval for designs of all common landscaped areas prior to issuance of site-specific grading or building permits as further mitigation for Impact GEO-2. Not only would it be premature to prepare such a plan prior to issuance of a grading permit for the site, but Mitigation Measure GEO-2b, even if required to be implemented (which it is not), is not related to the identified impact. Accordingly, we respectfully request that Mitigation Measure GEO-2b be deleted from the DEIR. (See also General Comment 2 above.)

7. DEIR, pp. 11, 126 (Mitigation Measure GEO-3b). Mitigation Measure GEO-3b should be revised to clarify that it applies only to disturbed portions of the site. Further, the reference to "cut slopes along the northern portion of the project site" should be deleted. The project does not propose "cut slopes along the northern portion of the project site."

Additionally, we respectfully request that the requirement that a "slope maintenance program" be established be deleted from the DEIR. Such a program does not serve to mitigate the identified impact – *potential long-term deformation related to construction of deep fills and cut slopes* – and is therefore superfluous. In any event, the owner of the Benicia Business Park will be required to repair any slope failures that do occur, and creation of a separate entity for the same purposes is unnecessary.

Lastly, we respectfully request that requirement that the annual report be "approved" by the City of Benicia be deleted. The report is not one for which approval should be required. Further, the DEIR sets forth no standards for such approval, and does not address what might happen (including any potentially significant impacts associated therewith) if the City does not approve the report.

8. DEIR, pp. 12, 127-128 (Impact GEO-5, Mitigation Measure GEO-5). Impact GEO-5 and Mitigation Measure GEO-5 are not properly included in the DEIR because the identified impact is not within the scope of analysis required by CEQA. The identified impact ("accidental or earthquake induced overflows from the Water Treatment Plant and proposed water tank reservoirs could result in flooding hazards on the project site") is not an impact that the project will have on the environment, but is an impact that the pre-existing physical environment, which includes the City's Water Treatment Plant, may potentially have on the project. "The purpose of CEQA is to protect the environment from proposed projects, not to protect proposed projects from the existing environment." (*Baird v. County of Contra Costa* (1995) 31 Cal.App.4th 1265.) To require mitigation of a pre-existing condition by this project "would impose a requirement beyond those stated in CEQA or its guidelines, and is

thus prohibited." (*Id.*) We therefore respectfully request that both Impact GEO-5 and Mitigation Measure GEO-5 be deleted from the DEIR.

Chapter IV.D. Hydrology and Water Quality.

9. DEIR, pp. 13, 139 (Mitigation Measure HYDRO-1). With respect to Mitigation Measure HYDRO-1, please be advised that the Final Report Economic Impact Analysis of the Proposed Benicia Business Park prepared by Applied Development Economics in connection with the project assumed the City would continue to maintain its own drainage systems, and concluded that after all City services are fully funded, the project would produce a positive net surplus revenue gain for City government that would reach \$1 million per year by 2017, and \$6.3 million per year at full buildout. As also set forth above in General Comment 2, there must be an essential nexus between the impact identified, and the mitigation proposed to avoid or reduce that impact. We believe Mitigation Measure HYDRO-1's requirement to establish a self-perpetuating drainage system maintenance program goes beyond that which is legally permissible. Accordingly, we request that subsection (4) of Mitigation Measure HYDRO-1 be deleted.

10. DEIR, pp. 15, 140-141 (Mitigation Measure HYDRO-2). Subsection (2) of Mitigation Measure HYDRO-2 requires that "funding for long-term maintenance needs" be provided by the project sponsor. Notwithstanding that the Final Report Economic Impact Analysis of the Proposed Benicia Business Park prepared by Applied Development Economics in connection with the project concluded that after all City services are fully funded, the project would produce a positive net surplus revenue gain for City government that would reach \$1 million per year by 2017, and \$6.3 million per year at full buildout, this mitigation measure expressly states that "the City will not assume maintenance responsibility" for BMPs required to be implemented to control the quality of storm water runoff. Ongoing maintenance of these improvements should be the responsibility of the City; the funding requirement may not lawfully be shifted to the project sponsor. (See also General Comment 2 above.) We therefore request that the long-term funding requirement be deleted from the DEIR.

11. DEIR, pp. 15, 142 (Mitigation Measure HYDRO-3). As Mitigation Measure HYDRO-3 simply requires implementation of Mitigation Measures HYDRO-1 and HYDRO-2, please see our comments and requested revisions regarding Mitigation Measures HYDRO-1 and HYDRO-2 above.

Chapter IV.F. Biological Resources.

12. DEIR, pp. 21, 195-196 (Mitigation Measure BIO-2b). As currently drafted, Mitigation Measure BIO-2b requires the project sponsor to implement a mitigation and monitoring plan developed by Sycamore Associates in 2000 as mitigation for potential impacts to wetlands and waters of the United States. As Sycamore

Associates' report was prepared almost seven years ago, and was never approved by the U.S. Army Corps of Engineers, the Department of Fish and Game, or San Francisco Bay Regional Water Quality Control Board, it is inappropriate for the DEIR to require implementation of the plan proposed therein. A new report will be prepared in connection with the project sponsor's request for necessary state and federal permits, and it is appropriate that the plan developed in the more recent report be the plan that is actually implemented.

As set forth in more detail in General Comment 1, in imposing mitigation requirements, the City must defer to the appropriate state and federal permitting agencies. While it is proper for the DEIR to include a summary description of the types of requirements likely to be imposed by the state and federal permitting agencies, it is improper for the DEIR to impose specific and detailed requirements in areas outside of the City's jurisdiction.

Accordingly, we respectfully request Mitigation Measure BIO-2b to be revised as follows:

~~The project sponsor shall implement the a wetland mitigation and monitoring plan prepared by Sycamore Associates as mitigation for impacts to jurisdictional wetlands and waters of the United States, and implement the recommendations and revisions to the original mitigation plan in the subsequent mitigation feasibility report prepared by WRA. a qualified wetlands consultant. The mitigation plan and recommendations of the feasibility report are incorporated into this mitigation measure by reference and together are referred to as the mitigation plans. The plan shall details the mitigation design, wetland planting design, maintenance and monitoring requirements, reporting requirements and success criteria. This plan shall be approved by the Corps and City prior to implementation.~~

~~As detailed in the mitigation plans, The plan shall include provisions requiring that created wetlands shall be monitored for a minimum of 5 years. Subject to the approval of state and federal regulatory agencies with jurisdiction over wetlands on the project site, Annual monitoring of each site shall include: 1) observation of existing and developing problems and recommendations for remedial actions; 2) an assessment of creation of wetland habitats; 3) a formal wetland delineation in year 5; 4) notation of~~

invasive exotic species; 5) measurement of willow survival; and 6) photo-documentation. Monitoring visits shall be required to be made in the winter and spring of each year and quantitative data shall be collected in the spring. Annual reports shall be submitted to the Corps ~~and the City~~ for review, with a copy to the City. At the end of the 5-year monitoring period, the Corps ~~and City~~ shall review the reports and determine if the success criteria have been met. If the success criteria have not been achieved at the end of the 5-year monitoring period, remedial measures shall be identified in consultation with the ~~City and~~ USACE. Remedial measures could include grading, planting, seeding, exotic/invasive vegetation control, and/or an extension of the maintenance or monitoring period. Remedial measures shall be implemented by the project sponsor.

13. DEIR, pp. 23, 196 (Mitigation Measure BIO-2c). As the project site is a large site totaling approximately 530 total acres, and each individual construction phase may not impact wetlands, we respectfully request the last sentence of Mitigation Measure BIO-2c be revised as follows: "During construction in the vicinity of or near wetlands, t~~The~~ project restoration specialist shall conduct periodic site visits (once every week or once every two weeks, depending on the level of activity) ~~during the construction period~~ to provide direction and ensure protection of sensitive resources and permit compliance."

14. DEIR, pp. 23, 197 (Mitigation Measure BIO-2e). As establishment of a conservation easement may not be the only mechanism for preserving created wetlands in perpetuity, we respectfully request that Mitigation Measure BIO-2e be revised as follows: "As required by applicable state or federal permits, a conservation easement (or similar restriction) may ~~shall~~ be established over the preserved and created wetlands to preserve these wetlands in perpetuity. ~~The City of Benicia or other public resource agency~~ A designated agency or group shall hold ~~the any~~ the easement to ensure retention of ~~this land~~ the wetlands in perpetuity."

As set forth in more detail in General Comment 1 above, in imposing mitigation requirements, the City must defer to the appropriate state and federal permitting agencies. While it is proper for the DEIR to include a requirement that wetlands be preserved in perpetuity, it is improper for the DEIR to impose specific and detailed requirements in areas outside of the City's jurisdiction.

15. DEIR, pp. 24, 197 (Mitigation Measure BIO-2f). Mitigation Measure BIO-2f should be revised as follows: "If required by the Corps, t~~The~~ project sponsor shall provide financial assurances of a type (i.e., bond, letter of credit) and amount to be

determined by the Corps ~~and the City~~ to ensure successful implementation of the mitigation and monitoring plan. As required by applicable state or federal permits, ~~the project sponsor shall also~~ will provide a long term funding mechanism for the maintenance of the created wetlands in ~~the conservation easements in perpetuity.~~ Again, as set forth in detail in General Comment 1 above, in imposing mitigation requirements, the City must defer to the appropriate state and federal permitting agencies. While it is proper for the DEIR to include a summary description of the types of requirements likely to be imposed by the state and federal permitting agencies, it is improper for the DEIR to impose specific and detailed requirements in areas outside of the City's jurisdiction.

16. DEIR, pp. 24-25, 197-198 (Mitigation Measure BIO-3). Mitigation Measure BIO-3 should be revised to reflect that it is only required to be implemented if the pre-construction survey identifies pappose tarplant on the project site.

Moreover, as matters related to the pappose tarplant are within the subject matter expertise of a qualified botanist, we respectfully request that line 6 of Mitigation Measure BIO-3 be revised as set forth below to require that the project sponsor consult directly with the qualified botanist to determine the appropriate avoidance measures for the pappose tarplant: "...project. The project sponsor ~~and City~~, in consultation with a..." Additionally, the requirement in bullet point 6 of Mitigation Measure BIO-3 that the City approve the project sponsor's potential purchase of off-site mitigation land for the pappose tarplant is not appropriate. Bullet point 6 should therefore be revised to indicate that the appropriate state or federal agency, with jurisdiction over the pappose tarplant, will review the terms of the purchase for compliance with any applicable permits. As explained in General Comment 1 above, while it is proper for the DEIR to include a summary description of the types of requirements likely to be imposed by the state and federal permitting agencies, it is improper for the DEIR to impose specific and detailed requirements in areas outside of the City's jurisdiction. Lastly, bullet point 6 should be revised to make clear what standards apply to a determination of whether further monitoring is "warranted."

17. DEIR, pp. 26, 198-199 (Mitigation Measure BIO-4a). The second paragraph of Mitigation Measure BIO-4a proposes very specific mitigation requirements for potential impacts to the California red-legged frog, which measures are properly within the jurisdiction of the California Department of Fish and Game and U.S. Fish and Wildlife service.⁵ The specific measures, such as the proposed mitigation ratio and financing requirements, should not be fixed in the DEIR, but should be left up to the appropriate permitting agencies to impose in their discretion. Accordingly, we

⁵ We believe that the reference to the California red-legged frog in Mitigation Measure BIO-4a on page 26 is a typographical error, and that, if the language is a part of the mitigation measure, the appropriate reference is to the Pacific pond turtle. The second paragraph of Mitigation Measure BIO-4a does not appear on page 199. Please be advised that our comment is a general comment, and is not specific to the frog.

respectfully request that the second paragraph of Mitigation Measure BIO-4 be revised to indicate that mitigation will be required at a ratio "to be determined by the appropriate permitting agencies." The same comment applies with respect to the other specific mitigations proposed. As set forth in more detail in General Comment 1 above, in imposing mitigation requirements, the City must defer to the appropriate state and federal permitting agencies. While it is proper for the DEIR to include a summary description of the types of requirements likely to be imposed by the state and federal permitting agencies, it is improper for the DEIR to impose specific and detailed requirements in areas outside of the City's jurisdiction.

Additionally, to allow for sufficient flexibility to comply with the terms of state and federal permits, we respectfully request that the last seven lines of Mitigation Measure BIO-4 be revised as follows:

...All mitigation sites shall be placed in a conservation easement (or shall be subject to a similar restriction) to preserve the sites as wildlife and plant habitat in perpetuity. ~~The Any easements shall be held by CDFG or the City of Benicia~~ an appropriate agency or group, as identified in applicable permits. The sponsor shall provide evidence of compliance with the mitigation requirements of the USACE, USFWS, and CDFG prior to issuance of a grading permit.

18. DEIR, pp. 27, 199 (Mitigation Measure BIO-4b). The second paragraph of Mitigation Measure BIO-4b proposes very specific mitigation requirements for potential impacts to the California red-legged frog, which measures are properly within the jurisdiction of the California Department of Fish and Game and U.S. Fish and Wildlife service. The specific measures, such as the proposed mitigation ratio and financing requirements, should not be fixed in the DEIR, but should be left up to the appropriate permitting agencies to impose in their discretion. As set forth in more detail in General Comment 1 above, in imposing mitigation requirements, the City must defer to the appropriate state and federal permitting agencies. While it is proper for the DEIR to include a summary description of the types of requirements likely to be imposed by the state and federal permitting agencies, it is improper for the DEIR to impose specific and detailed requirements (such as mitigation ratios) in areas clearly outside of the City's jurisdiction. Accordingly, we respectfully request that the second paragraph of Mitigation Measure BIO-4b be revised to indicate that mitigation will be required at a ratio "to be determined by the appropriate permitting agencies." The same comment applies with respect to the other specific mitigations proposed.

Additionally, to allow for sufficient flexibility to comply with the terms of state and federal permits, we respectfully request that the last seven lines of Mitigation Measure BIO-4b be revised as follows:

...All mitigation sites shall be placed in a conservation easement (or shall be subject to a similar restriction) to preserve the sites as wildlife and plant habitat in perpetuity. ~~The~~ Any easements shall be held by ~~CDFG or the City of Benicia~~ an appropriate agency or group, as identified in applicable permits. The sponsor shall provide evidence of compliance with the mitigation requirements of the USACE, USFWS, and CDFG prior to issuance of a grading permit.

19. DEIR, pp. 28, 199 (Mitigation Measure BIO-4c). The third bullet point of Mitigation Measure BIO-4c requires that certain reports be submitted to the City by November 30 of each year. Read in context and consistent with the usual practice of the state and federal agencies, it appears that this reporting requirement is only applicable if a California red-legged frog is found within the work area. Further, we understand that this reporting requirement is only applicable to the initial grading of the site, and that once the initial grading is complete no further reporting is required. We respectfully request that Mitigation Measure BIO-4c be revised to make clear that a report need only be prepared if a frog is found within the work area during the initial grading of the site.

20. DEIR, pp. 28-29, 200 (Mitigation Measure BIO-5a). This mitigation measure must be revised to reflect that the report required to be submitted to the City is a copy of the report required to be prepared under the provisions of applicable state and federal permits.

21. DEIR, pp. 30-31, 201 (Mitigation Measure BIO-6a). Subsection (a) of Mitigation Measure BIO-6a must be revised to reflect that the California Department of Fish and Game (CDFG) is the appropriate agency to determine the appropriate measures for avoidance of burrowing owls. CDFG should be tasked with making determinations on this issue, not the City. As set forth in more detail in General Comment 1 above, in imposing mitigation requirements, the City must defer to the appropriate state and federal permitting agencies. While it is proper for the DEIR to include a summary description of the types of requirements likely to be imposed by the state and federal permitting agencies, it is improper for the DEIR to impose specific and detailed requirements in areas outside of the City's jurisdiction.

22. DEIR, pp. 32, 203 (Mitigation Measure BIO-8b). Mitigation Measure BIO-8b must be revised to reflect that the California Department of Fish and Game (CDFG) is the appropriate agency to determine whether a mitigation plan for the various bat species is adequate. Accordingly, the requirement that the City review and approve the plan should be deleted. While it is proper for the DEIR to include a summary description of the types of requirements likely to be imposed by the state and federal permitting agencies, it is improper for the DEIR to impose specific and detailed requirements in areas outside of the City's jurisdiction.

23. DEIR, pp. 32, 203 (Mitigation Measure BIO-8d). Mitigation Measure BIO-8d must be revised to reflect that CDFG is the appropriate agency to approve any required plan. Accordingly, the requirement that the City prepare and approve the plan should be deleted.

Additionally, it is inappropriate for the DEIR to fix a requirement that a secure source of funding be provided for the mitigation plan before CDFG has developed that plan. Any funding requirement must, at a minimum, be contingent upon (1) a survey that determines bats are present on site, and (2) a requirement by CDFG that a mitigation plan be prepared and implemented. For example, it is possible that no bats will be located on site, in which case, funding for a bat mitigation plan would be unnecessary.

Chapter IV.H. Air Quality.

24. DEIR, pp. 45, 265-266 (Mitigation Measure AIR-1). We respectfully request that Mitigation Measure AIR-1 be revised to be consistent with the Bay Area Air Quality Management District's (BAAQMD) CEQA Guidelines. (See BAAQMD CEQA Guidelines, December 1999, p. 15, Table 2.) As the site is greater than four acres in size, the appropriate control measures are the Basic and Enhanced Control Measures set forth in Table 2 of the BAAQMD's CEQA Guidelines. The Optional Measures are not necessary because the site is not located near sensitive receptors and does not warrant additional controls. Specifically, we request that the list of controls required to be implemented at all construction sites be revised as follows:

- Water all active construction sites at least twice daily ~~and more often during windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers to control dust;~~
- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard;
- Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites;
- Sweep daily (with water sweepers) all paved access roads, parking areas, and staging

areas at construction sites; ~~water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality;~~

- Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets;
- Hydroseed or aApply non-toxic soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more);
- Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.);
- Limit traffic speeds on unpaved roads to 15 mph;
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways;
- Replant vegetation in disturbed areas as quickly as possible;
- Install baserock at entryways for all exiting trucks and wash off the tires or tracks of all trucks and equipment in designated areas before leaving the site; and
- ~~Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph.~~

Chapter IV.I. Noise.

25. DEIR, pp. 48, 283 (Mitigation Measure NOI-2b). Depending upon the option selected in Mitigation Measure NOI-2a, the mitigation set forth in Mitigation Measure NOI-2b may not be necessary. The requirement to install sound-attenuated ventilation systems should be mandatory only upon confirmation by a sound study that the interior noise level, without sound-attenuated ventilation systems, would exceed the City standard (45 dBA CNEL). We therefore respectfully request that Mitigation Measure NOI-2b revised as follows:

If a sound study confirms that the interior noise level, without sound-attenuated ventilation systems, would exceed the City standard, sSound-attenuated ventilation systems, such as air conditioning, shall be installed in all buildings that require good speech intelligibility (as outlined in sub-note 5 of Table IV.I-4) for buildings located as follows:

- Within 199 feet from the centerline of the outermost travel lane of Lake Herman Road;
- Within 263 feet from the centerline of the outermost travel land or East 2nd Street.

Chapter IV.J. Visual Resources.

26. DEIR, pp. 49, 300 (Mitigation Measure VIS-3c). Upon completion, the parcel on which the water storage tanks will be located will be dedicated to the City. Accordingly, the project sponsor (and/or the project sponsor's successor-in-interest) will have no right to access the tanks or the trees planted to screen the tanks. We therefore respectfully request that Mitigation Measure VIS-3c be revised as follows:

The water storage tanks shall be screened by vegetation. Trees shall be planted to obscure at least 50 percent of the water tanks within 10 years of final project build out. A 20-foot buffer between the vegetation and the tanks would be required to maintain access to the tanks. The trees shall be properly planted by the project sponsor or its successor-in-interest, and maintained by the project sponsor.

Chapter IV.K. Cultural and Paleontological Resources.

27. DEIR, pp. 50-51, 319-319 (Mitigation Measures CULT-1a and CULT-1b). The description of Mitigation Measures CULT-1a and CULT-1b in the summary does not clearly indicate (as the DEIR text does) that *either* Mitigation Measure CULT-1a *or* Mitigation Measure CULT-1b shall be required. We respectfully request that the summary be revised accordingly.

Chapter IV.L. Public Services.

28. DEIR, p. 326 (Impact PUB-1). We believe that Impact PUB-1 contains a typographical error in that it concludes the project will result in a potentially significant impact on the parks department. On the previous page of the DEIR

(DEIR, p. 325), impacts on the parks department are identified as less-than-significant. We therefore request Impact PUB-1 be revised accordingly.

29. DEIR, pp. 53, 327-328 (Mitigation Measure PUB-1a). As explained above in General Comment 2, a City is authorized to impose only those mitigation measures "...consistent with applicable constitutional requirements such as the 'nexus' and 'rough proportionality' standards established by case law." (14 Cal. Code Regs., § 15041, *emph. added*; see also 14 Cal. Code Regs., § 15126.4(4) ["Mitigation measures must be consistent with all applicable constitutional requirements, including the following: (A) There must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); and (B) The mitigation measure must be 'roughly proportional' to the impacts of the project. *Dolan v. City of Tigard* 512 U.S. 374 (1994). Where the mitigation measure is an *ad hoc* exaction, it must be 'roughly proportional' to the impacts of the project. *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854."].) While the project would increase the demand for fire protection services, police services, and public works maintenance and operation services, it is not the project's responsibility to fully fund capital improvements or operational costs for these services. Through Mitigation Measure PUB-1a, the Benicia Business Park is unlawfully being asked to pay for things that should be – or perhaps should have been – paid for by the municipality. The project may only be required to pay its fair share, and Mitigation Measure PUB-1a must be revised accordingly.

One of the most egregious examples of an overreaching mitigation measure for which there is no essential nexus or rough proportionality is the requirement in Mitigation Measure PUB-1a that the project shall set aside 7 to 15 acres of land for development of an auxiliary corporation yard. As indicated on the attached Exhibit A, the City's existing corporation yard, located at 2400 East 2nd Street is 7.26 acres. Without any individualized evaluation or quantification of the relationship between the project and the impact (see *Dolan v. City of Tigard, supra*, 512 U.S. at 395-396), Mitigation Measure PUB-1a requests the project dedicate a facility between one to two times the size of the City's existing facility to mitigate the project's minimal demand for additional maintenance and operations services. (See *Ehrlich v. Culver City, supra*, 12 Cal.4th at 884 [exaction must be tied to the actual impact of the land use change].) As set forth on page 327 of the DEIR, "if infrastructure on the project site is not maintained by a private maintenance district or similar entity, the City would need to hire approximately five to eight employees, and associated equipment, to meet this increased demand. Space in the City's existing corporation yard would not be adequate to accommodate new employees and equipment required by the project." Pursuant to the DEIR, it is possible that the project will have no impacts on maintenance and operations services. Accordingly, Mitigation Measure PUB-1a cannot, by definition, be roughly proportional to the impacts of the project. Mitigation Measure PUB-1a must be deleted or the City must be prepared to compensate our client for the value of the property in excess of that required to

mitigate the impact. "If the applicant must donate property for a public use that bears no relationship to the benefit conferred on the applicant or the burden imposed on the public, there is a taking of property." (*Rohn v. City of Visalia* (1989) 214 Cal.App.3d 1463, 1470.)

With respect to the "fees imposed on the proposed project" that will provide funding for fire department and other facilities, any such fees must be adopted in accordance with the procedures set forth in the Mitigation Fee Act (Gov. Code, §§ 66000 et seq.) or other applicable law. The DEIR does not provide separate authority for establishment of such fees. (See, e.g., *Pinewood Investors, Inc. v. City of Oxnard* (1982) 133 Cal.App.3d 1030, 1040.)

Additionally, please be advised that the phasing set forth in the Project Description is conceptual only. Accordingly, we respectfully request that no arbitrary phasing requirement be imposed by this mitigation measure, and that any required facilities be built at the time the need for those facilities exists (i.e., at the time the first hotel is under construction).

Chapter IV.M. Utilities and Infrastructure.

30. DEIR, p. 331. In the last paragraph of page 331 of the DEIR, the current peak hourly wet weather flow (PHWWF) is omitted. We respectfully request the DEIR be revised to include this figure, which we understand is approximately 30.8 mgd.

31. DEIR, p. 332. The last sentence of the first paragraph on page 332 of the DEIR should be revised to reflect that the Conceptual Pipeline Alignments and Cost Study for Conveyance of Wastewater From Benicia Business Park to City of Benicia's Wastewater Treatment Plan, dated September 27, 2006, and prepared by Stetson Engineers, Inc., was utilized in the DEIR's analysis. This study is Appendix O to the Benicia Business Park Sewer Collection System Analysis, dated October 16, 2006, by Brown and Caldwell, which is referenced on page 332 of the DEIR. For ease of reference, the report is also attached hereto as Exhibit B.

With respect to line 9 of the second paragraph on page 332, we are unclear as to the basis for the DEIR's statement that the pump stations contribute only negligible flows to the force main system. Accordingly, we respectfully request the FEIR to include relevant data (for both present and future conditions) substantiating the statement.

Lastly, we respectfully request the last line of paragraph 2 on page 332 be revised to accurately indicate that the existing sewer system functions adequately and is serviceable "only under normal dry weather conditions." As indicated elsewhere in the DEIR, the existing sewer system only functions adequately in dry weather conditions, and is not adequate at other times.

32. DEIR, p. 336. We respectfully request that the last line of the third paragraph on page 336 be revised to indicate that the demand would not result in "dry or peak hour wet weather wastewater flows that exceed existing or planned capacity of the WWTP."

Additionally, we respectfully request that the last sentence on page 336 of the DEIR be revised to indicate that there should be "limited" inflow/infiltration due to wet weather rather than "no" inflow/infiltration. Accordingly, the last sentence on page 336 should be modified to read as follows: "There should be limited ~~no~~ inflow/infiltration due to wet weather, ~~and wet weather flows should not increase beyond what the development would contribute in dry weather.~~"

33. DEIR, p. 337. The first paragraph on page 337 of the DEIR appears to suggest that a precise pipeline alignment for the future infrastructure improvements has been selected. As set forth in the Benicia Business Park Sewer Collection Analysis prepared by Brown and Caldwell and dated October 2006 (including all appendices), several alternative sewer alignments have been proposed and no specific alignment has yet been selected. These alternative alignments are more fully set forth in the Benicia Business Park Sewer Collection System Analysis, dated October 16, 2006, and prepared by Brown and Caldwell, including Appendix N (Stetson Engineers Infrastructure Conveyance Evaluation, June 26, 2006) and Appendix O (Conceptual Pipeline Alignments and Cost Study for Conveyance of Wastewater from Benicia Business Park to City of Benicia's Wastewater Treatment Plant, Stetson Engineers, Inc., September 27, 2006) thereto. (The September 27, 2006 Report is attached hereto as Exhibit B.) As the DEIR evaluates these several alternatives, and no precise alignment has been selected, we respectfully request that the first paragraph be revised accordingly. Specifically, a sentence should be added to the end of the first paragraph on page 337 that indicates that an alignment has not yet been selected, and that an alignment will be selected by the project sponsor, in consultation with the City, and subject to all applicable constitutional standards as more fully detailed in General Comment 2 above.

34. DEIR, pp. 55, 337 (Mitigation Measure UTIL-1). We respectfully request that the first sentence of the first bullet point of Mitigation Measure UTIL-1 be revised to read: "All water storage and pumping facilities required to serve the proposed project shall be constructed and operational as directed by the City Engineer." As currently drafted the mitigation measure is not practical; it is possible that the initial development of the site will not require the water storage and pumping facilities to be fully constructed and/or operational. Accordingly, while our client intends to fully fund and install its fair share of the infrastructure improvements for which the required nexus exists (please also see General Comment 2 above), it is appropriate that the City Engineer direct when the improvements are installed, not the DEIR.

With respect to the third bullet point, we respectfully request that the requirement to have each phase of development "approved" by the City be deleted. As the Benicia

Business Park will be developed utilizing the highest standards for commercial and industrial development, and requires a substantial investment in infrastructure, the appropriate time for evaluation and determination of an adequate and dependable water supply is in connection with approval of the final map.

With respect to the fourth bullet point of Mitigation Measure UTIL-1, please be advised that due to physical constraints and City siting requirements, the mitigation measure proposed is infeasible. Due to visual and topographical constraints, neither tank can be sited lower on the site, and City requirements prevent the storage tanks from being located at higher elevations. Accordingly, we respectfully request this mitigation measure be deleted.

35. DEIR, pp. 56, 339 (Impact UTIL-3). As explained on pages 56 and 339 of the DEIR, implementation of the project would require extension of wastewater collection lines to serve the project. At the present time, the precise pipeline alignments for the future infrastructure improvements have not been determined, and several alternative alignments have been evaluated and analyzed within the DEIR. These alternative alignments are more fully set forth in the Benicia Business Park Sewer Collection System Analysis, dated October 16, 2006, and prepared by Brown and Caldwell, including Appendices N (Stetson Engineers Infrastructure Conveyance Evaluation, June 26, 2006) and O (Conceptual Pipeline Alignments and Cost Study for Conveyance of Wastewater from Benicia Business Park to City of Benicia's Wastewater Treatment Plant, Stetson Engineers, Inc., September 27, 2006) thereto. (The September 27, 2006 Report is attached hereto as Exhibit B.) We respectfully request that pages 56 and 339 be revised to indicate that an alignment has not yet been selected, and that an alignment will be selected by the project sponsor, in consultation with the City, and subject to all applicable constitutional standards as more fully detailed in General Comment 2 above.

36. DEIR, pp. 56, 339 (Mitigation Measure UTIL-3). Mitigation Measure UTIL-3 provides that "...the City shall review each building permit application for information regarding flows and loads to ensure that wastewater flows do not exceed capacity..." As the Benicia Business Park will be developed utilizing the highest standards for commercial and industrial development, and requires a substantial investment in infrastructure, the appropriate time for evaluation and determination of wastewater capacity is in connection with approval of the final map. Accordingly, we respectfully request that the second bullet point of Mitigation Measure UTIL-3 be deleted. The immediately preceding requirement (first bullet point, Mitigation Measure UTIL-3) fully mitigates the identified potentially significant impact.

37. DEIR, pp. 57, 340 (Mitigation Measure UTIL-4). We respectfully request that the first sentence of Mitigation Measure UTIL-4 be revised to read: "When directed by the City Engineer, the project sponsor shall fully fund and install all the required on-site and off-site wastewater collection improvements to serve the project." As currently drafted the mitigation measure is impracticable; it is possible that only a

small wastewater user (such as a gas station) will pull the first building permit for the project. Not only would this type of user not warrant the development of a complete system, but it is unlikely that a fully developed system would be able to handle the minimal flows and loads generated by such a user. Accordingly, while our client intends to fully fund and install all required infrastructure improvements for which the appropriate nexus has been established (see General Comment 2 above), it is appropriate that the City Engineer direct when the improvements are installed.

Additionally, because the precise pipeline alignments for the future infrastructure improvements have not been determined, and several alternative alignments have been evaluated and analyzed within the DEIR, it is not proper for the DEIR to direct which improvements will be required. The alternative alignments are more fully set forth in the Benicia Business Park Sewer Collection System Analysis, dated October 16, 2006, and prepared by Brown and Caldwell, including Appendices N (Stetson Engineers Infrastructure Conveyance Evaluation, June 26, 2006) and O (Conceptual Pipeline Alignments and Cost Study for Conveyance of Wastewater from Benicia Business Park to City of Benicia's Wastewater Treatment Plant, Stetson Engineers, Inc., September 27, 2006) thereto. (The September 27, 2006 Report is attached hereto as Exhibit B.)

The DEIR should be revised to indicate that implementation of one of the alternatives set forth in the above-referenced reports will be required (subject to the required constitutional nexus standard more fully discussed in General Comment 2 above). Specifically, we respectfully request Mitigation Measure UTIL-4 to be revised as follows:

Prior to the issuance of building permits for Phase 1 of the proposed project or at such other time as directed by the City Engineer, the project sponsor shall fully fund and install its fair share of all the required on-site and off-site wastewater collection improvements to serve the project. Required improvements shall consist of one of the stand-alone alternatives listed in the Benicia Business Park Sewer System Collection Analysis (October 16, 2006) prepared by Brown and Caldwell (including all appendices) that solely serves the proposed project. ~~Required improvements include the following:~~

- ~~• Replace the existing 8-inch west fork of the Industrial Park gravity sewer system with a new 18-inch sewer line.~~

- ~~Replace the existing 8-inch force main with a new 16-inch force main that is cross-connected to the existing force main.~~
- ~~Replace the existing PLS to operate at a new higher pressure to maximize capacity in both pipelines. Upgrade the PLS to meet the design criteria of the two pipelines.~~
- ~~Increase maintenance of eastern fork of gravity sewer to reduce root intrusion and the long-term settlement of debris.~~
- ~~A force main surge analysis shall be performed prior to approval of final project design. Proposed improvements to the force main shall be reviewed and approved by the City prior to installation.~~

Chapter VI.N. Urban Decay.

38. DEIR, pp. 58, 349 (Mitigation Measure DECAY-1). Mitigation Measure DECAY-1 states that EIR analyzed the proposed "tenant mix" of the project. The DEIR does not analyze the tenant mix of the project; rather, the DEIR analyzes a proposed combination of anticipated uses for the Benicia Business Park. No specific tenants were identified. We respectfully request that Mitigation Measure DECAY-1 be revised accordingly.

Additionally, Mitigation Measure DECAY-1 requires that the City review the tenant mix at the time of issuance of an occupancy permit to determine whether the tenant mix has substantially changed from the tenant mix analyzed in the EIR. At the time an occupancy permit is issued, buildings may have been built for specific tenants, and those tenants may not be able to move into already constructed buildings if the City determines that further environmental review is required. Accordingly, we respectfully request that the tenant mix review take place at a prior stage in the planning process, such as at the time of issuance of a use permit.

Chapter V. Alternatives.

39. DEIR, p. 354. In paragraph "m" on page 354 of the DEIR, it is incorrectly implied that existing water and sewer infrastructure in the vicinity of the site would not need to be upgraded in the absence of the project. In fact, there is already some over-burdening in the system, and the existing water and wastewater infrastructure may be required to be upgraded regardless of whether the project is

Cindy Gnos
March 12, 2007
Page 25

developed. We therefore respectfully request that this paragraph be revised accordingly.

Chapter VI.C. Cumulative Impacts.

40. DEIR, p. 374. The last paragraph on page 374 (lines 7-8) of the DEIR incorrectly states that "the proposed project would result in a substantial conflict with numerous General Plan policies..." For the reasons set forth above in Comment 5, substantial evidence (identified above) exists that the project is fully consistent with all applicable provisions of the General Plan. We therefore respectfully request that page 374 of the DEIR be modified accordingly.

* * *

We very much appreciate the opportunity to comment on the DEIR, and look forward to reviewing the Final Environmental Impact Report and Response to Comments in the near future. If you have any questions regarding these comments, or if we can be of any assistance, please do not hesitate to contact me directly at (925) 941-3283.

Very truly yours,



Kristina D. Lawson

KDL:kdI

Attachments

cc: Charlie Knox, Community Development Director
Jeanne Pavao, Esq.
Wilson F. Wendt

EXHIBIT "B"

APPENDIX O

**CONCEPTUAL PIPELINE ALIGNMENTS AND COST STUDY FOR CONVEYANCE
OF WASTEWATER FROM BENICIA BUSINESS PARK TO CITY OF BENICIA'S
WASTEWATER TREATMENT PLANT**

CONCEPTUAL PIPELINE ALIGNMENTS AND
COST STUDY FOR CONVEYANCE OF WASTEWATER FROM
BENICIA BUSINESS PARK TO CITY OF BENICIA'S
WASTEWATER TREATMENT PLANT

SEPTEMBER 27, 2006



STETSON ENGINEERS INC.
San Rafael and West Covina, California
Mesa, Arizona

W A T E R R E S O U R C E E N G I N E E R S

INTRODUCTION

The purpose of this conceptual report is to document pipeline alignments and costs for the conveyance of wastewater exclusively from the Benicia Business Park (BBP) to the City of Benicia (City) Wastewater Treatment Plant. Brown and Caldwell has prepared the BBP Sewer Collection System Analysis (October 2006) that characterizes the total existing and future capacity requirement from the City's sewer Sub-basin #1 (B&C Report). The BBP will contribute approximately 22% to the total flow from Sub-basin #1 when all deficiencies from existing development are corrected and flows from vacant lands are realized. Planning estimates used to determine peak wet weather flow from existing development are greater than the capacity of the existing sewer conveyance system, resulting in "deficiencies" in system capacity. This report does not consider a remedy for existing system deficiencies or future flows from vacant lands. Because the B&C Report describes the facilities required to convey 100% of the wastewater from Sub-basin #1, Discovery Builders Inc. requested that Stetson Engineers review conceptual alignments and costs for conveyance of wastewater flows from BBP only.

This report relies on land use and flow calculations that are currently being presented in the B&C Report. Additionally, Stetson Engineers has relied on the numerical and analytical models developed by B&C to describe the physical parameters that control wastewater flow through pipelines and pumping facilities. A summary of the models and assumptions adopted for designing the facilities presented in this report may be found in the B&C Report. Actual hydraulic model results describing the gravity and force main pipeline requirements for this study are included as attachments.

Two pipeline alignments and associated costs are addressed in this report. The two alignments presented below are referred to as the Park Road (Alternative A) and Bayshore Road (Alternative B) alignments (Attached Map). While the latter alignment has already been studied for total flows from Sub-basin #1, the Park Road alignment represents a new alignment not previously considered. The Park Road alignment is a shorter pipeline alignment through a relatively unpopulated and undeveloped area.

This report presents a conceptual-level design of two alternatives for conveying sewer flows from BBP to the City's wastewater treatment plant. Mr. Stephen Reich and Ms. Molly Palmer visually inspected the alignments during a field trip. Costs associated with land acquisition, geotechnical hazards, rights-of-way, and other physical constraints have been roughly estimated for each of the two alignments. For example, conflicts with underground

pipelines owned and operated by Valero could present unforeseen additional costs not accounted for in this conceptual design study.

PARK ROAD ALIGNMENT (ALTERNATIVE A)

The Park Road alignment consists of a new 14-inch gravity main along Industrial Way, a 12-inch force main over Park Road, and a new 14-inch gravity main through the western portion of the Armory. The last gravity section connects to the 24-inch gravity main which currently conveys the existing wastewater flows from Sub-basin #1. The total dynamic head (TDH) required to lift the wastewater from an area near the Park Industrial Lift Station (PILS) to the top of Park Road is 195 feet. The total new pipeline requirement is approximately 19,400 feet. The pipeline sizes and costs are presented in the following table.

PARK ROAD ALIGNMENT CAPACITY AND COSTS

Item	Unit	Quantity	Unit Cost	Cost
14" HDPE Gravity (Industrial Way)	LF	5,900	\$156	\$920,000
12" PVC Force (Park Road)	LF	6,450	\$140	\$903,000
14" HDPE Gravity (Park Road)	LF	7,060	\$195	\$1,376,000
New Pump Station (TDH = 194 feet)	Each	1	\$154,000	\$154,000
Back-up Generator	Each	1	\$50,000	\$50,000
Pump House Enclosure	Each	1	\$50,000	\$50,000
Sub-Total				\$3,453,000
Contingencies, Engineering, ROW				\$1,899,000
Total				\$5,352,000

Note: Unit costs for the 14" HDPE Gravity main along Park Road are greater due to increased excavation and easement costs.

The Park Road alignment provides for a project that avoids the congestion of utilities found along the Bayshore Road. The unit costs for the force and gravity pipeline segments along Park Road have been reduced 20%, as compared to the cost for installation in the Bayshore Road alternative, to account for the relatively undeveloped nature of Park Road. Final design of pumping facilities may reduce the operating TDH based on the location of the pump station and the terminus of the gravity main along Industrial Way. The alignment through the Armory was planned based on avoiding known utilities.

BAYSHORE ROAD ALIGNMENT (ALTERNATIVE B)

The Bayshore Road alignment consists of a new 14-inch gravity main along Industrial Way and a 10-inch force main along Bayshore Road that connects to the 24-inch gravity main which currently conveys the existing wastewater flows from Sub-basin #1. The total dynamic head (TDH) required to lift the wastewater from an area near PILS to the 24-inch gravity main is 105 feet. The total new pipeline requirement is approximately 20,000 feet. The pipeline sizes and costs are presented in the following table.

BAYSHORE ROAD ALIGNMENT CAPACITY AND COSTS

Item	Unit	Quantity	Unit Cost	Cost
14" HDPE Gravity (Industrial Way)	LF	5,900	\$156	\$920,000
10" PVC Force (Bayshore Road)	LF	14,100	\$165	\$2,325,000
New Pump Station (TDH = 104 feet)	Each	1	\$83,000	\$83,000
Back-up Generator	Each	1	\$50,000	\$50,000
Pump House Enclosure	Each	1	\$50,000	\$50,000
Sub-Total				\$3,428,000
Contingencies, Engineering, ROW				\$1,886,000
Total				\$5,314,000

The cost of the Bayshore Road alignment is approximately the same as the Park Road alignment. Although longer in reach, the parity in cost is the result of constructing a smaller diameter force main with a higher TDH at the pump station. If the pipeline was sized to meet the TDH of the existing pump station and pipelines along Bayshore Road, costs for the required new pipeline would increase due to a larger diameter pipeline designed for a smaller TDH.

SUMMARY

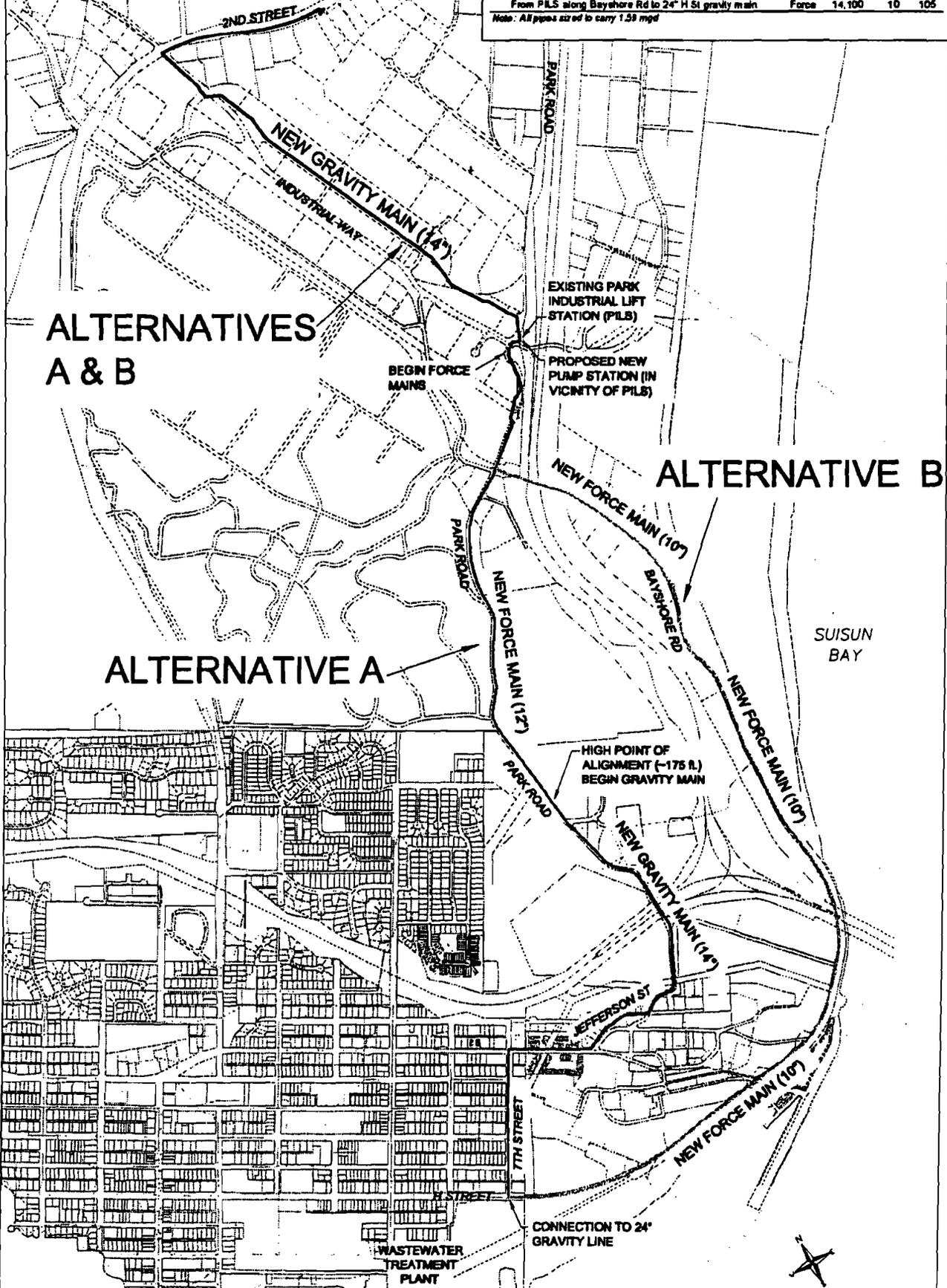
The two alignments presented in this conceptual report provide alternatives that would allow the BBP to design, construct, and use facilities to exclusively convey wastewater flows from their project site to the City wastewater treatment plant. The alignment and footprint of each alternative were based on information received from the City regarding existing facilities. All pipeline design and capacity estimates presented in this memorandum are based on the B&C Report that developed hydraulic model criteria for sizing appropriate facilities. Land ownership, rights-of-way, and geotechnical information should be gathered to further refine the costs of each alignment.

**BENICIA
BUSINESS
PARK**

Summary of Alignment Alternatives

Segment Description	Type of Main	Length (LF)	Diem. (in)	TDH (ft)
Alternative A - Park Rd/7th St				
From Benicia Business Park to PLS along Industrial Way	Gravity	5,900	14	n/a
From PLS along Park Road to High point	Force	6,450	12	195
From high point of Park Road to 24" H Street gravity main	Gravity	7,080	14	n/a
Alternative B - Bayshore Rd				
From Benicia Business Park to PLS along Industrial Way	Gravity	5,900	14	n/a
From PLS along Bayshore Rd to 24" H St gravity main	Force	14,100	10	105

Note: All pipes sized to carry 1.58 mgd



**ALTERNATIVES
A & B**

ALTERNATIVE A

ALTERNATIVE B

SUISUN BAY

HIGH POINT OF ALIGNMENT (~175 ft.)
BEGIN GRAVITY MAIN

WASTEWATER TREATMENT PLANT

CONNECTION TO 24" GRAVITY LINE



**Alternative Alignments for Benicia Business
Park Sewer Mains**
September 23, 2006
DRAFT

- PROPOSED ALIGNMENT ALONG INDUSTRIAL WAY (ALTS A & B)
- PROPOSED ALIGNMENT ALONG PARK RD/7TH ST (ALT A)
- PROPOSED ALIGNMENT ALONG BAYSHORE RD. (ALT B)
- EXISTING SEWER PIPELINE

SCALE (FEET)
1" = 250'

ATTACHMENTS

Gravity and Force Main Model Results

Contents

Gravity Main Results: Industrial Way (Alternatives A&B) and Park Road (Alternative A)

Force Main Results: Park Road (Alternative A)

Force Main Results: Bayshore Road (Alternative B)

Gravity Main Results: Industrial Way (Alternatives A & B)
 Park Rd (Alternative A)

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*****
*   Computer Modeling for Design and Planning   *
*   of Sanitary Sewer Systems                 *
*   H2OMAP Sewer, Version 5.5                 *
*   MWH Soft, Inc.                            *
*****
    
```

{Title}

{Summary}

```

Number of loading manholes : 48
Number of outlets          : 2
Number of junction chambers : 0
Number of wet wells        : 0
Number of pipes            : 48
Number of force-mains      : 0
Number of pumps            : 0
    
```

{Loading Manholes}

Manhole ID	Base Flow	Storm Load	Total Flow
10	0.0000	0.0000	0.0000
42	0.0000	0.0000	0.0000
48	0.0000	0.0000	0.0000
50	0.0000	0.0000	0.0000
501	0.0000	0.0000	0.0000
502	0.0000	0.0000	0.0000
503	0.0000	0.0000	0.0000
504	0.0000	0.0000	0.0000
505	0.0000	0.0000	0.0000
506	0.0000	0.0000	0.0000
507	0.0000	0.0000	0.0000
508	0.0000	0.0000	0.0000
509	0.0000	0.0000	0.0000
510	0.0000	0.0000	0.0000
511	0.0000	0.0000	0.0000
512	0.0000	0.0000	0.0000
52	0.0000	0.0000	0.0000
54	0.0000	0.0000	0.0000
56	0.0000	0.0000	0.0000
58	0.0000	0.0000	0.0000
604	0.0000	0.0000	0.0000
731	0.0000	0.0000	0.0000
732	0.0000	0.0000	0.0000
733	0.0000	0.0000	0.0000
734	0.0000	0.0000	0.0000
735	1.5900	0.0000	1.5900
739	0.0000	0.0000	0.0000
740	0.0000	0.0000	0.0000
747	1.5900	0.0000	1.5900

Gravity Main Results: Industrial Way (Alternatives A & B)
Park Rd (Alternative A)

749	0.0000	0.0000	0.0000
751	0.0000	0.0000	0.0000
753	0.0000	0.0000	0.0000
755	0.0000	0.0000	0.0000
757	0.0000	0.0000	0.0000
759	0.0000	0.0000	0.0000
761	0.0000	0.0000	0.0000
763	0.0000	0.0000	0.0000
765	0.0000	0.0000	0.0000
767	0.0000	0.0000	0.0000
769	0.0000	0.0000	0.0000
771	0.0000	0.0000	0.0000
773	0.0000	0.0000	0.0000
775	0.0000	0.0000	0.0000
777	0.0000	0.0000	0.0000
779	0.0000	0.0000	0.0000
781	0.0000	0.0000	0.0000
783	0.0000	0.0000	0.0000
785	0.0000	0.0000	0.0000

Gravity Main Results: Industrial Way (Alternatives A & B)
Park Rd (Alternative A)

[Pipes] Pipe ID	From ID	To ID	Pipe Count	Pipe slope	Pipe Diam	Total Flow	Storm Load	UnPeak Flow	Peak Flow	Cover Flow	I/I Flow	Flow Veloc	Actual d/D	Flow Depth	Froude Number	Crit Depth	Full Flow	Cover Count
100	512	511	1	0.001	14.00	1.59	0.00	1.59	0.00	0.00	0.00	2.30	1.00	1.17	0.38	0.555	1.21	0.00
102	505	604	1	0.002	14.00	1.59	0.00	1.59	0.00	0.00	0.00	2.75	0.78	0.91	0.50	0.641	1.67	0.00
104	604	504	1	0.002	14.00	1.59	0.00	1.59	0.00	0.00	0.00	2.76	0.78	0.91	0.51	0.641	1.67	0.00
106	504	503	1	0.002	14.00	1.59	0.00	1.59	0.00	0.00	0.00	2.77	0.77	0.90	0.51	0.641	1.68	0.00
108	503	502	1	0.002	14.00	1.59	0.00	1.59	0.00	0.00	0.00	2.86	0.75	0.88	0.54	0.641	1.74	0.00
114	501	743	1	0.016	14.00	1.59	0.00	1.59	0.00	0.00	0.00	5.88	0.41	0.48	1.72	0.641	4.43	0.00
118	735	734	1	0.011	14.00	1.59	0.00	1.59	0.00	0.00	0.00	5.15	0.46	0.53	1.42	0.641	3.70	0.00
130	747	749	1	0.023	14.00	1.59	0.00	1.59	0.00	0.00	0.00	6.67	0.38	0.44	2.06	0.641	5.26	0.00
132	749	751	1	0.031	14.00	1.59	0.00	1.59	0.00	0.00	0.00	7.47	0.35	0.40	2.42	0.641	6.15	0.00
134	751	753	1	0.016	14.00	1.59	0.00	1.59	0.00	0.00	0.00	5.89	0.41	0.48	1.72	0.641	4.44	0.00
138	755	757	1	0.031	14.00	1.59	0.00	1.59	0.00	0.00	0.00	7.42	0.35	0.41	2.39	0.641	6.10	0.00
140	757	759	1	0.056	14.00	1.59	0.00	1.59	0.00	0.00	0.00	9.19	0.30	0.35	3.23	0.641	8.21	0.00
142	759	761	1	0.055	14.00	1.59	0.00	1.59	0.00	0.00	0.00	9.16	0.30	0.35	3.22	0.641	8.17	0.00
144	761	763	1	0.057	14.00	1.59	0.00	1.59	0.00	0.00	0.00	9.25	0.30	0.35	3.27	0.641	8.29	0.00
146	763	765	1	0.048	14.00	1.59	0.00	1.59	0.00	0.00	0.00	8.73	0.31	0.36	3.01	0.641	7.64	0.00
148	765	767	1	-0.013	14.00	1.59	0.00	1.59	0.00	0.00	0.00	2.30	1.00	1.17	0.38	0.641	1.59	0.00
150	767	769	1	-0.014	14.00	1.59	0.00	1.59	0.00	0.00	0.00	2.30	1.00	1.17	0.38	0.641	1.59	0.00
152	769	771	1	0.000	14.00	1.59	0.00	1.59	0.00	0.00	0.00	2.30	1.00	1.17	0.38	0.641	1.59	0.00
154	771	773	1	0.029	14.00	1.59	0.00	1.59	0.00	0.00	0.00	7.29	0.35	0.41	2.34	0.641	5.95	0.00
156	773	775	1	0.030	14.00	1.59	0.00	1.59	0.00	0.00	0.00	7.39	0.35	0.41	2.38	0.641	6.06	0.00
158	775	777	1	0.029	14.00	1.59	0.00	1.59	0.00	0.00	0.00	7.28	0.35	0.41	2.33	0.641	5.93	0.00
160	777	779	1	-0.089	14.00	1.59	0.00	1.59	0.00	0.00	0.00	2.30	1.00	1.17	0.38	0.641	1.59	0.00
162	753	781	1	0.068	14.00	1.59	0.00	1.59	0.00	0.00	0.00	9.88	0.28	0.33	3.58	0.641	9.08	0.00
166	781	783	1	-0.059	14.00	1.59	0.00	1.59	0.00	0.00	0.00	2.30	1.00	1.17	0.38	0.641	1.59	0.00
168	783	785	1	0.078	14.00	1.59	0.00	1.59	0.00	0.00	0.00	10.39	0.27	0.32	3.84	0.641	9.74	0.00
170	779	785	1	0.075	14.00	1.59	0.00	1.59	0.00	0.00	0.00	10.22	0.28	0.32	3.75	0.641	9.53	0.00
172	785	52	1	0.091	14.00	1.59	0.00	1.59	0.00	0.00	0.00	10.96	0.26	0.31	4.13	0.641	10.50	0.00
20	10	48	1	0.002	24.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.000	5.68	0.00
22	48	50	1	0.002	24.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.000	5.75	0.00
24	50	52	1	0.001	24.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.000	5.63	0.00
26	52	54	1	0.001	24.00	1.59	0.00	1.59	0.00	0.00	0.00	2.38	0.36	0.73	0.57	0.545	5.61	0.00
28	54	56	1	0.002	24.00	1.59	0.00	1.59	0.00	0.00	0.00	2.46	0.36	0.71	0.60	0.545	5.86	0.00
30	56	58	1	0.002	24.00	1.59	0.00	1.59	0.00	0.00	0.00	2.42	0.36	0.72	0.59	0.545	5.74	0.00
32	58	OUTLET	1	0.011	24.00	1.59	0.00	1.59	0.00	0.00	0.00	4.91	0.22	0.43	1.57	0.545	15.45	0.00
74	734	733	1	0.083	14.00	1.59	0.00	1.59	0.00	0.00	0.00	10.60	0.27	0.31	3.95	0.641	10.03	0.00
76	733	732	1	0.031	14.00	1.59	0.00	1.59	0.00	0.00	0.00	7.45	0.35	0.41	2.41	0.641	6.12	0.00
78	732	731	1	0.031	14.00	1.59	0.00	1.59	0.00	0.00	0.00	7.42	0.35	0.41	2.39	0.641	6.10	0.00
80	731	740	1	-0.001	14.00	1.59	0.00	1.59	0.00	0.00	0.00	2.30	1.00	1.17	0.38	0.641	1.59	0.00
82	740	739	1	0.001	14.00	1.59	0.00	1.59	0.00	0.00	0.00	2.30	1.00	1.17	0.38	0.555	1.21	0.00
84	511	510	1	0.004	14.00	1.59	0.00	1.59	0.00	0.00	0.00	3.42	0.64	0.74	0.75	0.641	2.16	0.00
86	510	509	1	0.004	14.00	1.59	0.00	1.59	0.00	0.00	0.00	3.39	0.64	0.75	0.74	0.641	2.14	0.00
88	509	508	1	0.003	14.00	1.59	0.00	1.59	0.00	0.00	0.00	2.90	0.74	0.86	0.56	0.641	1.77	0.00
9	42	10	1	0.002	24.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.000	5.69	0.00
90	508	907	1	0.002	14.00	1.59	0.00	1.59	0.00	0.00	0.00	2.30	1.00	1.17	0.38	0.628	1.53	0.00
92	507	506	1	0.005	14.00	1.59	0.00	1.59	0.00	0.00	0.00	3.70	0.60	0.70	0.85	0.641	2.39	0.00
94	506	505	1	0.000	14.00	1.59	0.00	1.59	0.00	0.00	0.00	2.30	1.00	1.17	0.38	0.372	0.56	0.00
96	502	501	1	0.006	14.00	1.59	0.00	1.59	0.00	0.00	0.00	3.93	0.57	0.66	0.94	0.641	2.59	0.00
98	739	512	1	0.001	14.00	1.59	0.00	1.59	0.00	0.00	0.00	2.30	1.00	1.17	0.38	0.560	1.23	0.00

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*****
***                H2OMAP Water GIS                ***
***                Comprehensive Analysis of         ***
***                Water Distribution Piping Network ***
*****

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Input Data File ..... C:\2134\Stetson Runs\Stetson 1\Stetson
1.OUT\SCENARIO\STETSON1_12IN\~INP
Number of Junctions..... 12
Number of Reservoirs..... 1
Number of Tanks ..... 0
Number of Pipes ..... 12
Number of Pumps ..... 0
Number of Valves ..... 0
Headloss Formula ..... Hazen-Williams
Hydraulic Timestep ..... 1.00 hrs
Hydraulic Accuracy ..... 0.001000
Maximum Trials ..... 40
Quality Analysis ..... None
Specific Gravity ..... 1.00
Relative Kinematic Viscosity ..... 1.00
Relative Chemical Diffusivity ..... 1.00
Demand Multiplier ..... 1.00
Total Duration ..... 0.00 hrs
Reporting Criteria:
  All Nodes
  All Links

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Analysis began Mon Apr 03 16:46:19 2006

Hydraulic Status:

```

-----
0:00:00: Balanced after 2 trials
      Total Supplied: 1.59 mgd
      Total Demanded: 0.00 mgd
      Total Stored: 1.59 mgd
0:00:00: Reservoir 7008 is filling

```

Force Main Results: Park Rd (Alternative A)

Page 2

Node Results:

Node	Demand mgd	Head ft	Pressure psi	
28	-1.59	194.64	80.00	
47	0.00	192.94	74.94	
49	0.00	191.45	65.62	
51	0.00	190.13	78.05	
53	0.00	187.73	72.68	
55	0.00	185.46	54.36	
57	0.00	184.79	45.41	
59	0.00	183.97	36.38	
61	0.00	182.37	27.02	
63	0.00	180.57	15.41	
65	0.00	178.36	3.62	
67	0.00	175.80	0.35	
7008	1.59	175.00	0.00	Reservoir

Link Results:

Link	Flow mgd	Velocity fps	Headloss ft
67	1.59	3.13	1.70
69	1.59	3.13	1.49
71	1.59	3.13	1.32
73	1.59	3.13	2.41
75	1.59	3.13	2.27
77	1.59	3.13	0.67
79	1.59	3.13	0.82
81	1.59	3.13	1.60
83	1.59	3.13	1.79
85	1.59	3.13	2.21
87	1.59	3.13	2.56
89	1.59	3.13	0.80

Analysis ended Mon Apr 03 16:46:19 2006

```

*****
***                H2OMAP Water GIS                ***
***                Comprehensive Analysis of          ***
***                Water Distribution Piping Network  ***
*****

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Input Data File ..... C:\2134\Stetson Runs\Stetson 2\Stetson
2.OUT\SCENARIO\STETSON2_10IN\~INP
Number of Junctions..... 14
Number of Reservoirs..... 1
Number of Tanks ..... 0
Number of Pipes ..... 14
Number of Pumps ..... 0
Number of Valves ..... 0
Headloss Formula ..... Hazen-Williams
Hydraulic Timestep ..... 1.00 hrs
Hydraulic Accuracy ..... 0.001000
Maximum Trials ..... 40
Quality Analysis ..... None
Specific Gravity ..... 1.00
Relative Kinematic Viscosity ..... 1.00
Relative Chemical Diffusivity ..... 1.00
Demand Multiplier ..... 1.00
Total Duration ..... 0.00 hrs
Reporting Criteria:
  All Nodes
  All Links

```

Analysis began Tue Apr 04 19:18:21 2006

Hydraulic Status:

```

-----
0:00:00: Balanced after 2 trials
          Total Supplied: 1.59 mgd
          Total Demanded: 0.00 mgd
          Total Stored: 1.59 mgd
0:00:00: Reservoir 7002 is filling

```

Page 2

Node Results:

Node	Demand mgd	Head ft	Pressure psi	
16	0.00	45.43	11.02	
20	0.00	86.76	28.93	
22	0.00	91.10	30.81	
23	0.00	31.59	5.02	
24	0.00	100.49	34.87	
28	0.00	113.29	40.42	
29	0.00	58.89	16.85	
33	0.00	69.83	21.59	
34	0.00	64.77	19.40	
35	-1.59	113.30	44.76	
38	0.00	37.84	7.73	
40	0.00	18.39	-0.70	
42	0.00	9.00	-0.30	
46	0.00	37.36	7.52	
7002	1.59	9.00	0.00	Reservoir

Link Results:

Link	Flow mgd	Velocity fps	Headloss ft
1	1.59	4.51	12.80
18	1.59	4.51	5.77
2	1.59	4.51	9.38
23	1.59	4.51	13.19
3	1.59	4.51	4.34
31	1.59	4.51	13.47
37	1.59	4.51	5.06
4	1.59	4.51	16.93
41	1.59	4.51	0.01
45	1.59	0.78	0.00
5	1.59	4.51	5.88
6	1.59	4.51	7.59
7	1.59	4.51	0.48
8	1.59	4.51	9.39

Analysis ended Tue Apr 04 19:18:21 2006

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Original Comments submitted March 12, 2007
with Addendum Comments submitted March 26, 2007

addressing

Public Review Draft

**BENICIA BUSINESS PARK
ENVIRONMENTAL IMPACT REPORT**

PREPARED BY LSA

JANUARY 2007

MARILYN BARDET
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March 10, 2007

Charlie Knox, Planning Director
Cindy Gnos, Contract Planner
City of Benicia
250 East L Street
Benicia, CA 94510

**Comments Regarding Benicia Business Park
Draft Environmental Impact Report - prepared by LSA Associates, Inc., January 2007**

Dear Charlie and Ms. Gnos,

Thank you for the opportunity to comment on the Draft EIR for the “Benicia Business Park” development being sponsored by Discovery Builders, a Seeno company. The first DEIR was submitted for public review and subsequently withdrawn—after serious public rejection of the document’s

It’s taken me the full 45 days, plus two extra weeks of the extended comment period, to understand the reason for the depth of confusion I felt reading the new DEIR in its entirety and formulating comments, page by page, about what it purports to evaluate. I’ll try to be very clear about my fundamental concern, which goes to the heart of the DEIR’s assertion that the “proposed project” is a “Master Plan”. I’ll then follow up with specific comments about the “Plan” as described and evaluated for potential significant impacts. I will be submitting comments today, March 12, the deadline, and extend those comments by subsequent submissions, up until the City Council hearing date.

I believe the DEIR is fatally flawed in fundamental ways. The Seeno DEIR, in describing the “proposed project” as a “Master Plan”(“Plan”), encourages the reader to assume that the document is both a presentation of a developed master plan —how it was developed is not explained—to purportedly give guidance for a twenty-five year long, vaguely described “phased development” of an “office park” on a 315 acre site located within Benicia city limits—property privately owned by housing developer, Albert Seeno. The DEIR appears to do double duty, serving to present and describe a “plan” as if there’d been a public process to gain consensus and support its development, but also, serving to review the environmental impacts of the Master Plan laid upon us, *presto*, complete! There were two scoping sessions for the DEIR called “workshops”. The public understood these to be scoping sessions to aid preparation of the DEIR. These sessions cannot be considered a “planning process” for a “master plan” for a project that will “conclude” in 2031.

Other clues to the conundrum this “double duty” DEIR presents: There is no other stand-alone document entitled “Master Plan for the Benicia Business Park” to which the DEIR refers. There is no separate “economic report” prepared by independent consultants, either referred to in the body of the DEIR or in an appendix, to support the assertions about the necessity of the kinds of commercial

business ventures suggested to be suitable for serving “the local business community” as the DEIR states. We should have had a bona fide “master plan” planning process over the last two years, since the first DEIR was withdrawn. To fairly understand implications of a twenty-five year “phased development” program for the City of Benicia and the community, considering the strategic location of the “project site” and its substantial size, we should have had a programmatic EIR to investigate the scope of the project as a whole, what the community would envision as most desirable, necessary and contributive to Benicia’s quality of life, the design layout for lots, consideration for topography, lot size, location of streets and buildings and their types, and the potential economic benefits and “downsides” of any particular scheme, with alternatives proposed. [See appended “hard copy” submittal for an example of a “master planned” project under CEQA review of a “program EIR”. Submittal contains an executive summary of the Draft EIR on the Sacramento Regional Wastewater Treatment Plant 2020 Master Plan”, which defines the uses of a “program EIR” as it relates to a master plan, and the process by which the master plan was created.]

Most importantly, we should be able to gain clearer understanding of the current meanings of “sustainability” through a master planning process. The concept and intent to implement it, is the central, overarching goal of our Benicia General Plan adopted in 1999. A master plan process for the site could develop criteria for judging a proposed project’s conformance with basic standards, now being articulated, representing “sustainability” as the concept relates to new development and new practices in “green” engineering, architecture, design, materials and technology. Considering that we are responsible for understanding the environmental implications of a growth-inducing project of the magnitude presented in the DEIR’s “Plan”, the DEIR fails to give the public either adequate description or analysis of all of the total “costs” of doing “business as usual”, which is what the Seeno-inspired project so predictably embodies.

The intent, in 1999, of the General Plan’s land use designation for the project area, and for policy guidance with respect to sustainability, was to promote economic development *within* city limits, while protecting environmental resources, our physical topography, historical “small town” character and quality of life. For the sake of these fundamental values, sustainability was established as principle goal of the General Plan. The definition of sustainability found in the General Plan’s introduction, page 22, borrows from the U.N.’s first official declaration of its meaning, established by The World Commission on Environment and Development’s Brundtland Report of 1987. The basic definition given then has been reiterated in many ways and with much expanded description and criteria by international, national, regional and local agencies of all kinds, retain the fundamental premise of sustainability as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” [*The Sustainability Revolution: Portrait of a Paradigm Shift*, Andres. R Edwards; New Society Press, 2005] The reasons now grow in number every day for upholding the prime visionary value of “sustainability” as a guiding principle of development planning. Latest scientific research pertinent to global warming phenomena and the effects of greenhouse gas emissions from all sources is demonstrating the cumulative, drastic “costs” to the environment of continuing to do “business as usual”. Many companies are inventing new ways to evaluate their processes, considering opportunities for “cradle-to-cradle” production values involving recycling and reuse of materials. As widely reported, CEO’s of major US corporations, including US energy companies, agree with environmentalists that

concern about energy consumption is an issue of “national security” as well as “survival” for global human civilization: US resource consumption—the US consumes 25% of the world’s total resources, but represents only 5% of the world’s population—is now being rivalled by China, with India “in line” next to equal or surpass US consumption rates. Exponential “unlimited” growth poses dire global consequences for ecosystems and the biosphere generally: environmental “costs” of global warming and resource depletion are already manifest in changing conditions everywhere on the planet for wildlife, fisheries, oceans, forests, fresh water supply, air quality, coastal living, food production and transportation, to name some of the basics.

We have new information regarding potential effects of greenhouse gas emissions on climate, as well as uncertainties being described about energy security and the need for conversion to “renewables” in our state and nation-wide. The DEIR presents and reviews an alleged “Plan” meant to serve Benicia over the next twenty-five years and beyond, but it doesn’t have a section on climate change or energy consumption/conservation, despite widely available reports on the “global warming” phenomenon and its potentially far-reaching local and regional consequences for water supply, biological resources, wildlife habitat and food production. For example, along the Suisun Marsh shoreline, Benicia could potentially suffer significant losses of wetlands if there is a sea level rise of between 1 and 3 feet before the end of this century, as reported recently in the Contra Costa Times and San Francisco Chronicle, with both newspapers offering maps showing areas of predicted inundation in the Bay Area, including in Benicia, along our eastern marsh, where Valero Refinery’s wastewater ponds are located. Where will we put a public transit hub now? The DEIR does not address the real problem of retooling a city to address the challenges posed by projected sky-rocketing costs of fossil fuels, including natural gas. The need to develop local energy security and conservation programs is of paramount concern.

As it stands, the DEIR fails as either a planning tool or an environmental review. It appears that the “proposed project” would be designed like a suburban residential tract development, complete with cul-de-sacs hooked into one main boulevard linking them (Boulevard “A”). To accomplish this, the project proposed would excavate 9 million cubic yards of soil, destroying wildlife habitat and covering over wetlands, creekbeds and natural seeps. The Alternative Projects described are not characterized sufficiently to know how they would appear nor to understand what seem to be arbitrary “areas” marked “industrial” and “commercial”.

Obviously, it would be highly desirable to fulfill General Plan goals and policies to protect the environment and natural topography while supporting suitable, economically and socially beneficial development that would actually contribute to local and regional “quality of life”, even accounting for the tremendous uncertainties posed by climate change, energy disruption and resource depletion. But should we expect that a car-centered, suburban design layout with cul-de-sacs on flattened mesas answer any immediate call for this kind of “business development” in Benicia? And what about future needs? The DEIR does not and cannot sufficiently address cumulative and significant impacts because it lacks adequate supporting documentation to claim that the suggested economic benefits of the proposed “Plan” would outweigh the sum total of potentially significant environmental cumulative impacts (“Biological Resources”, “Hydrology”, “Air Quality”, “Transportation and Circulation”, “Visual

Resources” and “Urban Decay”).

The DEIR’s vague characterization of the Plan itself and its “project alternatives” does not offer a reasonable person the possibility of understanding the Plan as guidance for the WHOLE of the project, neither as a “master plan” or as a description of an aggregate of development projects. There is simply not enough information to fully characterize the proposed “phased development” strategy during the twenty-five year time-frame of its implementation, or the resultant development’s sustainability during the development phases and beyond so-called “buildout”.

It’s impossible from the DEIR’s scant visual simulations to know how maximal development of the project site is intended to look after 25 years. There is little or no discussion of the potential cumulative significant impacts of extending the industrial park westward, linking it to Lake Herman Road, with respect to the nearby Water’s End and Southampton Hills residential areas.

Indeed, my first obvious clue to determining “what’s wrong” with the “Plan” as presented in the DEIR should have been my wondering at the complete absence in the DEIR of any discussion of Opticos Design, Inc’s “Lower Arsenal Mixed Use Specific Plan” (“LAMUSP”), an independent planning document which was legally required to be created (since the Arsenal property encompassed ~50 acres) and ordinances to define and characterize “mixed use” had not been established. In fact, economic analysis such as provided in the LAMUSP by an economist subcontracted by Opticos Designs Inc. is nowhere referenced in the Seeno DEIR, with respect to the assumptions about viability of a conference center and other office buildings as part of the Business Park’s “tenant mix”; YET, the LAMUSP’s economic analysis supports the Specific Plan’s conception of creating a “destination campus” for conferences, business meetings and special events on the Jefferson Ridge, with six new 3.5 story buildings proposed. How can both a conference center suggested as viable for the Seeno property and one at the Jefferson Ridge property both be feasibly supported—year in, year out—given the size and location of Benicia and given the competition with other communities’ facilities within a 30 mile range?

To further illuminate the confusion about what the DEIR claims constitutes a “master plan” with what the Arsenal Specific Plan represents, by its method of formulation: The LAMUSP is an evolving product of a planning effort officially begun in August, 2006. It represents a consensus-building public participation process that offered extended opportunities for direct conversation and interaction with Opticos urban planners, designers, architect, economic analyst, and draftsmen. A “form-base code” was adopted for determining the general appearance not only of individual building types but of streetscapes, roadways and landscaping patterns. Public involvement helped give shape to development options and also alternative “options”. This arsenal planning process is still on-going: In February 2007, the LAMUSP was available to the public for review and comment; the document was formally presented for public hearings held by commissions and city council. Right now, the public awaits the preparation of an environmental report on the LAMUSP, with distribution of the EIR and public review slated for this summer.

The DEIR does make clear that there is precedent for considering economic impacts of potential

“urban decay” to occur as a result of a project’s implementation. However, if the “proposed project” is actually a “master plan”, then economic analysis done for the prominent area in the lower Arsenal where mixed use incorporates light industrial as well as commercial enterprises, should be fully considered in the DEIR. For example, the DEIR should explain the potential for a glut of office space vacancies, should both the Seeno site and the lower Arsenal become developed according to their respective “plans”.

What speculative economics is presented in Chapter IV., Urban Decay does not constitute sufficient analysis: What would be the potentially significant cumulative impacts to the City of Benicia and the community of a foreseeable, chronic economic down-turn affecting commerce at the Business Park itself over the course of the development “phases”, and beyond buildout, including impacts to residential property values in the vicinity of the project site itself? What about potential for growth in crime? The costs of crime to the City and community? The separate economic report, submitted to the City in 2006, entitled “Economic Impact Analysis of the Proposed Benicia Business Park” should be included in the DEIR in a separate appendix, for ease of reference. The data described in Table IV. N-1 “Existing Retail Sales and Leakage- (2005)” and N-2 “Supportable Square Feet of Retail Development” are used to demonstrate support for the premise that *maximum* development of the project site can be expected, and that maximum development of the site is both optimal and sustainable despite claims made elsewhere in the DEIR that the Benicia Business Park is primarily intended to serve “the local business community”. This is of enormous concern, considering that the proposed project, said to be a “master plan”, is meant to account for the life of the project as a WHOLE, during the 25 year phased development, and the future beyond buildout, e.g., beyond 2031. There is no discussion that the lease governing use by Amports PLC of the City of Benicia’s wharf will be expiring in 2032, thus opening the possibility of the City deriving revenues at last from its port property.

If it is to be as accurate as possible as a forecasting tool in a fast-changing world, with new uncertainties added to public concern everyday about developing energy crisis and climate change, a more thorough and honest economic analysis would require support for statements and speculations suggesting the economic need for the proposed Office Park’s light industrial and commercial businesses suggested as suitable and viable. Such analysis would have to account for the foreseeable possibility of economic down-turn, which the DEIR doesn’t bother to entertain except in briefest summary: the possibility of urban decay occurring at the Office Park itself. What would be the effect on Benicia as a whole and to surrounding neighborhoods of chronic or cyclic vacancies at the “business park”, wherein undesirable tenants (such as the Auto Auction located off Park Road below our historic district) may be “invited in” to fill up empty warehouse buildings or office buildings? What about the suggestion for “truck servicing center” at I-680 and This possibility calls up potential cumulative impacts unaddressed by the DEIR, perhaps because under CEQA only “significant environmental impacts” are considered, not “economic impacts”. However, the DEIR claims to be reviewing a “Master Plan” which should be supported by an independent economic report. What could happen, with this “Plan”, ten years out from first grading activities or ten years past build-out, if the economy changes, as we might foresee, for instance, given fluctuating and rising energy costs? What if there is disruption to the energy grid? Or supplies of fossil fuels? Costs to the City could be astronomical of such decay, including depressed housing prices in the vicinity of Waters’ End and Southampton Hills neighborhoods which are nearest

the project site.

At one time utilized as grazing land and pasture from the 1870's onward, the hilly northern property, with its remains of a dairy farm, borders Lake Herman Road—our General Plan-designated two-lane scenic rural route, along most of which our Urban Growth Boundary was established by citizen initiative to protect rural open space north of it. That initiative expires in 2023, within the 25 year time-frame of the proposed Plan's "development buildout". However vaguely the DEIR outlines the Plan, as described, its full implementation would certainly have cumulative and far-reaching negative environmental impacts, as the LSA preparers point out. Not the least, the widening of Lake Herman Rd. and the creation of an extension of Industrial Way to Lake Herman Road would bring more people, including "Business Park" employees, into the rural area on a daily basis, thus, for example, increasing needs for services and more park amenities at Lake Herman recreation area. According to estimates in the DEIR, there would be roughly ten to twelve thousand more daily vehicle trips per day expected along our "scenic route" just from the traffic to and from the office park development alone. It's not hard to imagine the growth-inducing pressures exerted by such cumulative impacts as the "Plan" would represent if fully built out, employing ~7,600 people: housing builders would eagerly, and perhaps more easily, pursue residential "sprawl" development of Sky Valley. As another example of the DEIR's failure to fully characterize the extent of growth-inducing factors: there's no mention of Solano Transportation Authority's characterization of Lake Herman Road as a connector or "feeder" to I-680 from Vallejo. According to STA projections stated at a public meeting I attended in Vallejo, (I can't recall the date, whether in 2005 or early '06)?, Lake Herman Road is expected to eventually be widened to four lanes. STA officials professed not to know that the Road was protected in our General Plan. Were STA officials ever consulted, at the time of the preparation of the first or second DEIR, about Seeno's plan to build an office park bordering Lake Herman Road? Also, the DEIR does not account for the fact that, last year, 400 new homes were permitted for the former Bordoni Ranch property now annexed to the City of Vallejo, just outside Benicia's western city limits. This development will increase pressures on Benicia's services, on parking at Southampton shopping center and add to traffic in and out of town, directed to commercial areas and parks.

The General Plan's land use designations for the Business Park project site, are "light industrial" and "commercial". The DEIR states that Discovery Builders' development application includes a Vesting Tentative Subdivision Map and a request for a "*Master plan overlay zoning district, including adjusting the commercial and industrial zoning designation to be consistent with the Master Plan.*" [DEIR p. 61 Project Background]. According to the City of Benicia, a Master Plan is required for developing sites of 40 acres or more.

The DEIR treats the "proposed project" as a "master plan" in a highly confusing manner, as I've tried to describe. For instance, it doesn't tell how the layout and configuration of lots was decided upon, nor the reasons for the particular numerical order of the parcels. Does the numbering have anything to do with when parcels are expected or desired to be sold or developed around certain cul-de-sacs? What does "phased development" mean with regard the distribution of lots, their sizes, and the division between "light industrial" areas and the "commercial" area? If lots are intended to be sold off and independently developed, is it expected that there would be ONE developer who would sweep in and buy

all the lots, then present a cohesive development application? How will the integrity of the WHOLE of the project as a “development project”, to be called “Benicia Business Park”, be ensured, if there is not more specific planning policy guidance that regards the particulars of the WHOLE project site? Are General Plan policies and planning staff, Planning Commission and Historic Preservation Review Commission evaluations of individual project applications to suffice to create a “whole, integrated project” encompassing 315 acres? I think not.

I will be submitting further comments by pdf file, to extend these general observations and with “specifics”, as I continue to type them out, from written comments I’ve logged filling two legal pads.

Sincerely,

Marilyn Bardet

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March 13, 2007

Charlie Knox, Planning Director
Cindy Gnos, Contract Planner
City of Benicia
250 East L Street
Benicia, CA 94510

**Comments Regarding Benicia Business Park
Draft Environmental Impact Report - prepared by LSA Associates, Inc., January 20**

Letter regarding ADDENDUM TO ORIGINAL SUBMISSION

March 13, 2007

Dear Ms. Gnos,

Because of time constraints typing out hand-written specific comments taken down on a page-by-page reading of the DEIR, I intend to submit several batches of comments as ADDENDUM to my comments submitted March 12th.

Because getting the best Master Plan possible for the future of the 527.8 acre Seeno property is so hugely important to the future of Benicia; and because the "Plan" presented in the DEIR is so woefully lacking in respect to the goals and policies of the Benicia General Plan; and because there was no community participation in any "master planning process" that contributed to the formulation of the proposed "Plan"; and because new information has not been incorporated in this second DEIR that the community would expect that this second iteration would address: for all these reasons it is imperative that LSA give opportunity for citizens to add to existing submissions that met the deadline of March 12th.

I would very much appreciate knowing that additional comments, submitted in the form of addendums to already submitted comments, will be respected and evaluated by LSA.

Thank you very much for your consideration,

Marilyn Bardet

MARILYN BARDET
333 East K St. Benicia, CA 94510

ADDENDUM — # 1

Comments Regarding Benicia Business Park

Draft Environmental Impact Report - prepared by LSA Associates, Inc., January 20

Under CEQA, an EIR should give sufficient information to make clear to a reasonable person the WHOLE of a “proposed project”; to fully expose and discuss its potentially significant environmental impacts, discuss cumulative and/or irreversible impacts, and produce plans to reduce them via mitigation or provide compensatory plan(s) in the case of irreversible or irreducible impacts. The EIR must fully discuss likely alternatives to the project, including the “no development” alternative, to explore and determine an “environmentally superior alternative” that would better address concerns and impacts of the “proposed project” as it is discussed in the EIR.

PROJECT DESCRIPTIONS: defining the term “Proposed Project”.

There are confusing shifts in meaning contained by descriptions of the “proposed project” as pertaining to the purposes of the DEIR and public understanding of the “whole” of the project.

Please note discrepancies in the following texts that confuse the definition of the “proposed project”:

Page 1, I. INTRODUCTION — A. PURPOSE OF THE EIR: . . . *“this report describes the environmental consequences of the Benicia Business Park proposed for the development of approximately 527.8 acres...”*

Page 1, I. INTRODUCTION — B. PROPOSED PROJECT:

“The project consider in this EIR is a proposed Master Plan for a 527.8 acre site northeast of downtown Benicia. . . The proposed Master Plan development would locate commercial development at the eastern end of the project site and industrial development in the central and western portions of the project site. . . . Under the proposed Master Plan, a total of 280 acres would be developed for limited industrial. . .”

Page 5, II. SUMMARY - PROJECT UNDER REVIEW:

“This EIR has been prepared to evaluate the environmental impacts of the proposed Benicia Business Park (project). The project would result in the development of a business park on approximately 527.8 acres in the City of Benicia. A detailed description of the proposed project is provided in Chapter III. Project Description. The key elements are summarized in Table II-I.

The project site would be divided into 80 lots to allow for the development of approximately 280 acres of limited industrial uses and development of 35 acres of commercial uses. No specific site plans have been created in association with the proposed project, and no tenants have yet been identified for the proposed commercial

and industrial space. However, for the purposes of this environmental analysis, reasonable assumptions have been made about the maximum development on the site that could occur as part of the project. These assumptions are based on anticipated lot layout, proposed land uses, development intensities permitted in the Benicia General Plan and Zoning Ordinance and market research. [my emphasis in bold.] Based on these assumptions, the project would result in the construction of 857,000 square feet of commercial building space and 4,443,440 square feet of industrial building space (for a total of 5,300,440 square feet of building space). It is also expected that the project would result in the direct creation of approximately 7,680 jobs.

The project would result in approximately 9,000,000 cubic yards of grading at the site. Cut and fill would be balanced on the site by placing fill portions of the site that are currently low-lying, such as the locations of intermittent streams and swales. The project also includes approximately 180 acres of open space, concentrated mostly in the northern and central portions of the site. A 54-acre reach surrounding a major drainage on the site would be included as part of the proposed open space. Approximately 7.28 acres of mitigation wetlands are proposed as part of the project.”

Page 59, III. PROJECT DESCRIPTION:

“This chapter describes the Benicia Business Park Project (project) that is evaluated in this Environmental Impact Report (EIR). A description of the project’s objectives, location, background, and site characteristics is followed by details of the project itself and a summary of required approvals and entitlements.”

Page 61, III. - C. PROJECT BACKGROUND:

“The proposed project has been in existence in various forms since the early 1980’s. In 1981, an Environmental Impact Report (EIR) was prepared for a mixed-use development proposal that included the project site.” . . . “An EIR was prepared for a subsequent business park proposal in 2001. However, after the Draft EIR was circulated for public review, the project sponsor at that time (Albert D. Seeno Construction Company) paused to make changes to the project, and the environmental review process was put on hold.” ... “The current application has been developed to respond to various environmental concerns raised from earlier applications. . .” “The current application includes a Vesting Tentative Subdivision Map and a request for a Master Plan overlay zoning designation, including adjusting the commercial and industrial zoning designation to be consistent with the Master Plan. A Master Plan is required by the City of Benicia General Plan for properties under common ownership which comprise more than 40 acres. The goals of the master plan process are to encourage the best and most effective use of properties and to allow the city to anticipate and plan future public services and facilities.”

Page 65, III-E. PROPOSED PROJECT:

“The following sections provide an overview of the project and a description of plan features including proposed uses, densities, projected employment and construction phasing.”

Page 65, III. E. 1. Project Overview:

“The proposed Master Plan locates commercial development at the eastern end of the project site and industrial development in the central and western portions of the project site.” . . .

Page 66, III. E. 1. Project Overview:

“A Master Plan showing the proposed subdivision is shown in Figure III-2. . . . “Development of the Master Plan would require extensive grading to provide level building pads and to construct the proposed roadway system. The major portion of grading would occur on the western, southern, and eastern portions of the site.

- Apparently, the project proponents and DEIR preparers view the term “proposed project” as correlative or equivalent with the following: “Benicia Business Park”, “the development”, as well “the plan” and “Master Plan”. Are these terms meant to be formally and officially, or casually, interchangeable in the DEIR? Are they understood by the DEIR preparers to be synonymous with regard to the content of analyses? If they are neither interchangeable or synonymous, please explain in what way they are differentially employed and why, using the referenced descriptions quoted above and other examples.
- Neither the brief text in Chapter I.’s INTRODUCTION, PROPOSED PROJECT nor the slightly longer text of Chapter II’s SUMMARY, PROJECT UNDER REVIEW cite or reference a “master plan” or “master planning process”. However, a switch occurs in the project descriptions in Chapter III, PROJECT DESCRIPTION, where references are made in the chapter’s sub-sections to a “master planning process” and “Master Plan” [PROJECT BACKGROUND, PROPOSED PROJECT, Project Overview, and Plan Features]. Please explain the reasons for this discrepancy between descriptions given in Chapters I and II, as compared to the description in Chapter III.
- Please verify whether or not the “Proposed Project” under CEQA review *is indeed* the “Master Plan”. If so, why isn’t the DEIR titled “**Public Review Draft - Benicia Business Park Master Plan - Environmental Impact Report**”?
- It appears that statements regarding “development of the project” and “development of the Master Plan” are confused. **Page 66, “III. E. 1. Project Overview”**: *“A Master Plan showing the proposed subdivision is shown in Figure III-2. . . . “Development of the Master Plan would require extensive grading to provide level building pads and to construct the proposed roadway system. . . .”* Shouldn’t the sentence be instead: “Development of the *project* would require extensive grading...” Similarly, if the proposed project being reviewed is the required Master Plan, then the sentence would not be describing “extensive grading to provide level building pads, but something like: “Development of the Master Plan involved [what?]. . . and was guided by [what?]”.
- Please explain why a separate, independent “stand alone” Master Plan document was not produced, with supporting materials: economic report(s); traffic studies; comparative analysis of features and elements of the first “proposed project” with current one; reports on public process since 2001; actual reported findings that account for changes made in the proposed project since 2001; findings in analyses

of potential cumulative environmental impacts relevant to reconsideration of the original 2001 project layout, which led to changes in design, if any, of the project site's lot distribution and layout, open space allocation, circulation and access as described in **FIGURE III-2 "Benicia Business Park EIR Master Plan"**.

- Please explain what constituted the "master planning process" that produced the current Proposed Project, in light of the statement, [page 61, C. PROJECT BACKGROUND]: "*A Master Plan is required by the City of Benicia General Plan. . . The goals of the master plan process are to encourage the best and most effective use of properties and to allow the City to anticipate and plan future public services and facilities.*" [bold for emphasis].
- Since 2001 when the first project was withdrawn after public review, what actions were taken in order to "develop" (e.g., produce) the current and new "Master Plan" as it is presented in **Figure III- 2 Master Plan?**
- In the years since 2001, (when the first project application was withdrawn), what process determined changes to the "proposed project" as then described?
- The introductory summary [Page 1., PROPOSED PROJECT] should clarify the DIFFERENCES and SIMILARITIES between the current "proposed project" and the first one proposed which the public reviewed in 2001.
- In the 5 -1/2 years since the public reviewed the 2001 EIR, the only public opportunities the community has had to voice concerns about the "proposed project" were during two scoping sessions assumed to have been held in preparation for the new anticipated 2007 DEIR. In what way have project proponents sought to ensure that a proposed development plan would *best reflect the goals of the Benicia General Plan?*
- New information has come to light since 2001 with respect to the challenges presented by the need to reduce energy consumption and fossil fuel emissions. Neither the subject of energy conservation nor climate change is addressed in the DEIR, yet these issues are of statewide and national and international public concern, and Benicians are no exception. Please explain reasons for the obvious missing information and discussion in the current DEIR, and the implications for the DEIR's evaluation of cumulative and irreversible impacts of the Project as currently described.
- Please explain how the proposed "Master Plan" "[encourages] *best and most effective use of properties*" with respect to compliance with the Benicia General Plan goals and policies. Thus, explain why the 2007 "Master Plan" was designed such that it lacks fundamental compliance with Benicia's General Plan of 1999, and lacks any reference to "new information" that has come to light since the first 2001 DEIR was reviewed for a very similar project.
- "*The goals of the master plan process are to encourage the best and most effective use [underline my emphasis] of properties. . .*" What does "best" and "most effective use" mean to the project

proponents (as opposed to the residents of Benicia), for example, in relation to the kind and amount of grading proposed and the lot distribution around cul-de-sacs? Explain the advantage to the project proponents of the proposed grading plan and lot divisions and distribution.

- **Figure III-9, “Grading Plan”** is not an sufficient representation of the grading plan and its visual results and impacts to natural topography. In fact, for this “reasonable person”, the grading plan is not comprehensible. The planview map needs to be supported by a three-dimensional physical model and 3-d computer simulations of various “phases” of grading, seen from different angles and view points .

- How much grading will be done (in what areas, cubic yards, etc.) for construction of infrastructure at the outset of project construction in “Phase I”? What amounts of grading will occur at each of the 5 phases of the whole site’s development? What are the differences in heights of the land, if any, between proposed cul-de-sacs in the limited industrial areas?

- **Page 80. PROPOSED PROJECT - 3. Development Phasing and Infrastructure Improvement:** *“The project site is expected to be built out within 20 years of the beginning of construction... The development of roadways in the site would proceed in phases.”* In the economic analysis associated to potential for urban decay [Page 343, URBAN DECAY - C. Retail Demand], the DEIR cites a different date for build-out: *“The project sponsor anticipates that the commercial and lodging portion of the project could be developed within 8 year time span, while industrial uses would require at least 25 years to fully develop.”*

Please clarify what the correct time-frame is for maximum build-out of the industrial portion of the development.

- The proposed 2007 “Master Plan” as briefly accounted for in the DEIR [Pages 66-67, E. PROPOSED PROJECT, 1. Project Overview and 2. Plan Features] appears to promote and embody 20th century assumptions that underlie current “market research”. But the current market research cited for the region seems wholly lacking in any consideration LONG-RANGE for potentially extreme variables in costs and disruptions associated to access to energy and resources or the cost of transportation, distribution of goods, etc. There is no assessment of conditions that could produce a “worst case scenario” for prolonged economic downturn. Such a downturn would challenge “reasonable assumptions” for “maximal development” over twenty-five years. The rosy market research cited in the DEIR supporting the proposed “Master Plan” seems cherry-picked to fit what can be assumed might be the project proponent’s hope of selling off parcels in consecutive “phases”, with land prices rising. This raises the question: how can the current Master Plan represent an integrated plan for a whole project as it evolves over 25 years, when the Plan does not address any external contingencies that could potentially affect the viability of the project as a whole or in part? As implied by the DEIR’s statements, why are “assumptions [supporting maximal development] ONLY based on CURRENTLY *“anticipated lot layout, proposed land uses, development intensities permitted in the Benicia General Plan and Zoning Ordinance and market research”*”?

- The Master Plan suggests no innovation in conception or layout for a 21st century “business park”.

For instance, it does not suggest flexibility in layout for synergistic cooperation among businesses that locate together to recycle and share materials in order to more efficiently make use of materials, reduce waste and limit costs associated to accessing supplies. Please explain how the five phases of development proposed can accommodate significantly distinct or different approaches to strategic planning for businesses that could be recruited to locate here for the above reasons.

- The proposed pattern of development shown in **Figure III-2** appears to replicate Benicia's existing Industrial Park development along the upper part of East Second Street on the south side. Please describe how the project will be innovative in any sense, as a 21st century development project.
- Considering that the DEIR states that the business park development is "*expected to be built out within 20 years of the beginning of construction*" [**Page 80, III. PROJECT DESCRIPTION - E. PROPOSED PROJECT - 3. Development Phasing and Infrastructure Improvement**"] and that there would be "5 construction phases"—with each phase involving a number of separate development projects requiring applications and formal review—please explain why the referenced "Master Plan" is in any way sufficient to explain the project as a WHOLE across 20 - 25 years of separate construction projects, e.g., multiple numbers of separate project applications, reviews and approvals and all that this implies with regard "consistency", "standards", changes in economic conditions, costs, etc.
- Please enumerate conditions related to "phases of development" and explain how the project site will look BEFORE maximum buildout or in the case that there is no "maximum" buildout. How much grading will occur upfront? Will cul-de-sacs be built along with development of underground utilities, etc.? What will the Project look like at every phase of development in the limited industrial zone, in the case of maximal development during each "phase"? And in the case of less intense development of an area? In other words, do project proponents intend to pave cul-de-sacs throughout the project site when underground utilities are put in? Could we be "stuck" with half-pepared sites that remain unleased or unsold for longer than two years or 5 years or 10?

Please explain how "phasing" as a development strategy would work to maintain maximum benefit to the community and City of Benicia. Please explain how "phasing" would address the following scenario: Police, fire and emergency service "sub station" has been constructed, the infrastructure for utilities, cul-de-sacs, sewer, drainage, etc., are constructed, a fast food restaurant and gas station and truck service center are operating in the eastern commercial zone, and within 10 years, less than 1/3 of the 80 parcels shown on the "master plan for Benicia Business Park" have been purchased or leased, with less than 2/3 of those lots completed. What are the potential impacts of "phasing" development, with regard to economic factors and potential cumulative impacts of Urban Decay?

- [**Page 5, II. SUMMARY. PROJECT UNDER REVIEW**] "*. . . No specific site plans have been created in association with the proposed project, and no tenants have yet been identified for the proposed commercial and industrial space. However, for the purposes of this environmental analysis, reasonable assumptions have been made about the maximum development on the site that could occur as part of the project. These assumptions are based on anticipated lot layout, proposed land uses, development intensities permitted in the Benicia General Plan and Zoning Ordinance and market*

research.” [underlining my emphasis]. How can “reasonable assumptions” about the entire direction of the project’s evolution toward “maximum development” be based primarily on lot sizes and their distribution and current “market research”? Please explain THE ABSENCE OF ANY DISCUSSION of potential changes to the project driven by changes in the market: e.g., in regard to PREDICTED ENERGY COST INCREASES WITHIN THE TIME-FRAME OF ESTIMATED PROJECT BUILDOUT AND OVER THE LIFE OF THE PROPOSED PROJECT, and presuming that significant increased costs for energy and transport would reverberate through entire sectors of the economy, including construction. Please discuss with regard the assumption that maximum development would occur within 25 years.

- **Pages 66 - 80, III. E. 2. Plan Features:**

“The proposed land uses would be predominantly industrial with some commercial and open space. Proposed future land use locations are shown in Figure III-3. Proposed development intensities by phase and lot, for those areas of the site proposed for industrial and commercial use are listed in Table III-1. Features of the Master Plan are described below.” . . . “Plan Features” are briefly and vaguely described under categories, and in Figures III-3, III-4, III-5, III- 6, III-7 : “Limited Industrial Development”; “Commercial Development”; “Infrastructure”; “Open Space and Landscaping”; “Grading”; “Projected Employment”. Do these features as outlined on pages 66 - 80 represent the whole “Master Plan”?

- The DEIR’s summary of the “proposed project” lists the Project’s key elements. Table II-1 lists these elements according to categories: “Project Land Use”, “Size/Number of Units” and “Description”. The text then cites the number and layout of 80 lots, their size and distribution between “limited industrial” and “commercial” areas, as well as the amount of square footage suggested for maximal development of each area. Total acreage allowed to remain open space is cited, as are “circulation and access” via new roads. The DEIR alludes to “reasonable assumptions” for projected maximum development of certain types of businesses, based on “market research” cited but also, based on the configuration of “key elements”. It appears that “lot size and distribution” were determined to attract certain kinds of businesses, based on the cited market research for Solano County and the region. How are the assumptions about what types of businesses will be part of the “business park” different in 2007 compared to assumptions made in 2001? Is the current lot distribution and number proposed by the Master Plan, **Figure III-2** adjusted MAINLY in relation to the currently cited “market research”?

- What chance is there that lot sizes and lot distribution as currently shown on **Figure III-2** will be significantly altered if there are changing economic conditions that would arguably favor one sort of business over another? What would be the effect, overall, of adjustments in lot distribution or size on the visual appearance of the project through five phases and at buildout?

- **Page 69, 2. Plan Features, a. Limited Industrial:** The range of types of “limited industrial” uses permitted by the Benicia General Plan does not mean that any and all prospective business types would be equally welcome by the community or necessarily beneficial to Benicia, yet the DEIR seems to assume that a unified, integrated “business park” would be achievable simply by opening up leases (or sales of individual lots) to any or all businesses that fall into the acceptable categories. This approach is

not a “plan” for an intergrated business park, nor does it respect that the project site is highly visible and marks a “gateway”to Benicia via a rural route. For instance, it would not be desirable to have auto dealerships and service centers and mini storage in a highly visible location, where instead might be envisioned, tucked between the hills, a “high quality” research facility and campus that could have less impact on the environment overall, be built to be more visually accommodated to the natural topography, and help diversify our industrial base while being more compatible aesthetically with residential neighborhoods that overlook the project site.

- **Figure III-2 Master Plan** seems to suggest that anything and everything permitted under “limited industrial”, without preference, is suggested by the layout. Please explain if this is not the case.

- **Figure III-4 Possible Industrial Lot Development** gives no idea of how development sites might accommodate a “auto sales and services” or “wholesale distribution and storage” or “mini-storage”. None of these types of lot configurations [building + parking lots] would be suitable at our rural gateway or along along the proposed extension of Industrial Way, since that new extension, even if turned into a 4-lane boulevard, would still intersect with Lake Herman Road, designated as our “rural scenic road”. Maintaining the rural character of our northern city limit as a “gateway” that suggests Benicia’s historic “small town character” can be accomplished through better design standards for the layout of the entire project and by careful design of buildings and parking adjusted to the EXISTING topography. Parking lots should NOT face roadways. Benicia suffers from having too much asphalt already: we have 42,000 parking spaces total serving the Port of Benicia’s car import operations, according to recent findings presented in the Lower Arsenal Mixed Use Specific Plan. The example given of a “manufacturing site” fronting on Industrial Way is not acceptable, from standpoint of ugly “gateway” appearance and cumulative negative visual impacts of more asphalt visible in Benicia from main roads.

- **Page 69 2. Plan Features, b. Commercial Development:**

- The proposed Master Plan is not only fundamentally out of compliance with the General Plan, it is also already out-of-date. Please explain how the “proposed project” or “Master Plan”, revised since 2001 for review in DEIR of January 2007, helps the City “*anticipate and plan for future public services and facilities*”, when there is no discussion or section devoted to analysis of the proposed project’s estimated energy consumption at buildout with relation to recent state mandates for conservation and reduction, no overall plan or conception proposed for “green energy” sourcing for the entire project, (for example, solar arrays aggregately serving the entire site; wind turbines and/or purchasing of “green alternative” energy), and no acknowledgement of the climate crisis and new state requirements for reductions in greenhouse gas emissions within the time-frame of the proposed project’s buildout.

- The Master Plan in 2007 should not only discuss strategies to conserve energy overall and reduce greenhouse gas emissions, but develop performance standards and benchmarks for measuring and accounting for the effectiveness of an energy reduction/conservation program. It should encourage and promote green engineering for buildings, with L.E.D. certification incentivized.

- The proposed “Master Plan” fails to be innovative or pro-active with respect to the Benicia General Plan’s over-arching goal of sustainability. Building without regard for local and regional sustainability and without acknowledgment of the real potential catastrophes in the next 25 years and beyond of dwindling energy supplies, rising energy costs and effects of global warming is antithetical to the Benicia General Plan. The Master Plan as presented in the DEIR fails to address the most pressing moral imperative humanity must take up right now: to design today with regard for the needs of future generations and all life, thus without sacrificing chances for survival of ecosystems generally, meaning protection for local wildlife habitat, bio-diversity and watershed.
- The Master Plan should suggest a proactive approach to development of an energy and climate plan in anticipation of local initiatives, such as that of Sonoma County and its cities [All nine mayors in Sonoma County have signed on to reduce greenhouse gas emissions. Citizens are campaigning for a “Sonoma County Climate Action Plan” to reduce greenhouse gas emissions through planning to reduce daily car traffic, re-orient and design new development in cities for pedestrian/bike/public transit, etc., and supporting alternative strategies for providing energy.] It follows that there will be significant public push in Solano County and the Bay Area generally for a similar “climate action plan”. achieved by local and regional initiatives.
- The 2007 Master Plan doesn’t address the proposed development’s projected draw on energy and water in the case of extreme, but plausible regional emergency in which disruption or prolonged curtailment of services could occur. For example, catastrophic collapse of levies in the Delta could potentially affect water availability and distribution in the region, including Vallejo and Benicia. Please discuss how a master plan for new development could address “emergency planning” for energy security and water provisioning within the project site. Why does the 2007 DEIR fail to discuss, considering that the prospect of Delta levy failure has been in the news frequently, the subject has been raised to high level of concern by the Governor since the failure of levies in New Orleans resulting from Katrina?
- Climate change is predicted to involve varied disruptions in what we’ve come to consider as “normal” seasonal patterns of rainfall and snowfall in California. Scientists predict incremental, varied and cumulative changes to such patterns over this century, with rising sea levels also expected as a result of melting ice caps. Over the next 25 years—said in the DEIR to be the estimated time span for buildout—longer periods of hotter weather generally could mean even greater competition for water among urban, industrial and agricultural users, while adequate protection for health of river habitats for fish and other wildlife dependent on them will be of even greater importance, with respect to sustainability of the region’s environment and economy. Please explain why the Master Plan does not discuss potential climate change impacts on water supply and availability. Please discuss projections for annual water consumption and provisions for conservation in the context of scenarios suggested by climate scientists for our state and region, and analyse implications with respect to “growth-inducing” cumulative impacts of the proposed project overall.
- **Page 70, 2. Plan Features, d. Open Space and Landscaping: [Figure III-8]** Little appears to have

changed from the project as presented in 2001. The northwestern hill bordering Lake Herman Rd at the intersection with the extension of Industrial Way [Lot A] is to play “host” to a water tank on its southern exposure, thus disturbing the natural form of the hill most visible from the project and surroundings. This hill is the most visible landform “signature” at our northern gateway. Please explain how the distribution and allowances for Open Space have changed from the 2001 Master Plan Tentative Map, Figure III-2 in the 2001 DEIR. Also, please show visual simulations of “landscape berms” and close ups of the proposed landscaping. How does suburban type landscaping conform or contribute to the rural open character of Benicia’s natural landscape? Why are there not plans for oak groves, olive groves, and pepper trees, which would at least be more historically in keeping with earlier Portuguese plantings around Benicia, especially in old town and the Arsenal?

- There is no discussion of the possible future need within Benicia city limits for pasture or grazing land to serve the local population. From the late 19th c thru the 1930’s, the project site once served Benicians as a dairy, as the DEIR points out. Lands now considered marginal for agriculture could become more valuable as locally productive land, if the interior of the state suffers hotter climate conditions for greater parts of the year. Benicia enjoys a micro-climate suitable for fruit and olive orchards and dairying. A discussion of this prospect, under the “**no project**” alternative, should be part of any consideration of future land uses for the site..

- There is no guarantee that the entire project site will be built out within 25 years : [Page 343, **URBAN DECAY - C. Retail Demand**], *“The project sponsor anticipates that the commercial and lodging portion of the project could be developed within 8 year time span, while industrial uses would require at least 25 years to fully develop.”* . Considering that the DEIR states that one of the main goals of the master planning process is to aid the City of Benicia’s ability to “*anticipate and plan for future public services and facilities*”, please explain why the currently proposed Master Plan does not account for the anticipated increasing levels of uncertainty surrounding future development in the next 25 years and beyond, under the conditions of rising energy costs and rising construction costs. [Construction cost increases were said by contractor, bidding to build a water recycling facility to serve the Valero refinery, were projected to increase by 6% to 12%, between October 2006 and May 2009. See PURE Committee Report to City Council, March 21, 2007].

- The overall scope of the project has not been either fully articulated or supported such that the public can understand the project as a whole. The DEIR’s analysis of “maximum development” is based on limited economic and environmental assumptions and inadequate descriptions that are vaguely generalized, such as the description of the phasing of development as related to the grading plan. There are few supporting visual materials, certainly not enough and without sufficient detail to judge the whole of the project, especially regarding traffic circulation changes, types and sizes of buildings representing ALL uses permitted, roadways, paths [bike and pedestrian], landscaping, topographical changes, visual access to open space. The planview “Figures” are a highly limited tool for understanding the project.

- To understand the whole project visually and aesthetically—as it develops spanning two-and-a-half decades—the public needs more details, visual representations, 3-d computer simulations and at least one 3-d model of the entire project site as it is proposed for “maximum development”, showing the

appearance of the project as it will look through sequential “phases”, including during First Phase.

- **Project Alternatives** should also be modeled three-dimensionally so that the public can understand and fairly judge the two most likely alternatives, the **Waterway Preservation Alternative** and the “environmentally superior” **Hillside/Upland Preservation Alternative**. **Figures V-I and V-2** showing the alternatives in schematic form are too unspecific to help fairly judge the proposed alternatives in comparison to the proposed project layout shown in **Figure III-2 Master Plan**. There are no topographical lines on the maps depicting the project alternatives and no depictions of the lots and their distribution. How would changes suggested by the alternative projects [**Figures V-I and V-2**] affect lot distribution and/or lot size in the 5 areas depicted for “phased development”?..
- **Page 70 “Extension of Industrial Way”**: Proposed extension of Industrial Way is slated to be “48 feet wide” with “ten foot wide bike path”. How wide is the roadbed compared to other main arteries in Benicia? Will it look like a secondary road or primary boulevard, compared to East Second Street? How many lanes would it be? Is it to be landscaped with center divider with trees on both sides of the road plus down the length of the center divider? What will the “cut” look like that creates the new roadway?
- How will the removal of existing Reservoir Rd affect the original hill it climbs?
- Widening of East 2nd Street from Industrial Way to Lake Herman Road will cause the road to be 70 feet wide. Please give comparison to other main arteries in Benicia.
- The graded embankment along East 2nd Street would have slope of approx. 30% and would range from 16 to 40 feet in height. Please describe and show with visual simulation where the maximum height of slope would occur and for what distance.
- There is no description of the slope grade or height of embankments for a new extension of Industrial Way beyond Dolan’s Lumber. What will the slope look like travelling along the new extension? What will the views be like from the road?
- “Water would be provided by new pumping facilities and two new tank reservoirs...” Please describe the size and proportion of the new storage tanks and describe the pumping facility as they would appear in the landscape. What impact will they have on the contours of hills they are set into, considering they must be “set” on flat pads?
- **PAGE 80 Figure III-8 and Storm Water Drainage Plan [Figure II-7]** proposes drainage to created wetland and pond areas within the project site. If the ponds and and “new” wetlands are located north of the developed portions of the project site along Lake Herman Rd., how can they serve as drainage basins if they are uphill of the development that produces the problematic increased run-off and also disturbs or destroys existing natural creekbeds, intermittent streams and underground seeps?
- The DEIR should describe the locations of each natural water resource and why it is an existing asset. How would creation of new wetlands for wildlife habitat be affected if used for storm water run off, if the

run-off was “point source” pollution from roadway surfaces, parking lots, driveways, etc.?

- **Page 80, Grading:** Describe the amount of soil to be graded and excavated for the whole business park, as an equivalent to something comparable: is 9 million cubic yards of soil more or less than the amount graded during the Tourtelot cleanup and residential development of Water’s End?
- The DEIR does not account for the significant and cumulative loss of natural topography, wildlife habitat and biodiversity owing to the Water’s End development and the Seeno business park as proposed. Physically located as adjacent developments, the two taken together irreversibly alter roughly 700 acres of what was “rolling hills”.
- Proposed slope cuts and slope grades should be visually simulated, and then compared to those already existing in town and along Columbus Parkway. This issue was raised at two scoping sessions. Chronic problem of slope erosion owing to slope gradients and heavy clay soils is not adequately addressed in the mitigation plans which seem to only call for routine annual “slope monitoring” and restoration at presumably City expense. How can the proposed project avoid cutting new extension of Industrial Way? How can steep slopes and cuts be avoided?
- **Page 80, Employment:** What evidence is there for need of 5, 823 industrial jobs located in our area? Please compare to statistics on available “business park” space in Contra Costa and San Jose area.

CHAPTER IV: SETTINGS, IMPACTS AND MITIGATION MEASURES:

- **Setting, a. Existing conditions and land use:** “Remains of a farm building and water tank remain at the site.” “The project site has not been identified as “prime farm land” or “farmland of statewide or local importance”. Nevertheless, “grazing” has occurred on the site for decades and historically the land was used for dairying and pastureland. Obviously, then, grazing supported local needs in previous eras, and could once again, in some future time, support local needs of the then existing population: There is no analysis of trends toward restoring “local agriculture” even within city limits to help reduce costs of transport of agricultural goods, etc.
- West of the project site, within easy walking distance of the proposed extension of Industrial Way is the Benicia Police Department’s practice firing range. The DEIR does not address this problem and the hazard it signifies, if public uses of the northern area are increased and Lake Herman Road becomes much more traveled between Lake Herman recreation area and the new Industrial Way. The DEIR should recommend removal of the firing range.
- The area from Reservoir Rd to West Channel Rd was NOT subject of the Army Corps of Engineer’s FUDS cleanup, nor part of the Tourtelot property cleanup under the lead of state EPA’s Department of Toxic Substances Control. The DEIR should discuss any archival evidence that guarantees that military activities did not occur at the western end of the project site nearest the Tourtelot property, AND also anywhere else within the project site.

- **Page 95.** *“The goals of the Master Plan process are to encourage best and most effective uses of properties....”* Please describe how the commercial development scheme proposed for the easternmost section of the project site would “best serve” the local population. How would commercial development located farthest from residential development serve Benicia residents and discourage use of cars?

- **TABLE IV A-1 Relationship of Project to Relevant Benicia General Plan Goals:** The Table demonstrates the proposed project plan’s near total disregard for the actual intent of 16 goals, 34 policies, and 17 programs of the General Plan, which were written to reflect community values expressed in results of an extensive and highly successful public survey. The General Plan was written by a diverse 17-member City Council-appointed General Plan Oversight Committee, of which I was a member for the final 2-1/2 years of its task. I’m thus highly familiar with the content of the General Plan as an integrated document serving residents of Benicia in their desire to promote SUSTAINABILITY and a high quality of life, thus preserve the environment, as well as preserve and enhance the character and atmosphere of Benicia as an historic small town, and increase economic diversity without sacrificing those values. The DEIR identifies an “environmentally superior” Project Alternative, but unfortunately does not adequately describe its plan in relation to other suggested Project Alternatives, by way of more detailed comparisons and visual simulations. THEREFORE: It’s impossible to judge the full scope of the proposed project from the DEIR’s descriptions and analyses of impacts, and it’s also impossible to fairly judge the merits and potential impacts of the proposed Project Alternatives.

- Please describe overarching goal of sustainability [page 22 of General Plan] as it relates to undesirable growth-inducing aspects of the proposed project, including the prospects of inducing future residential development of Sky Valley, (which would be in conflict with Goal 2.2). The DEIR’s analysis fails to account for the fact that the citizen initiative now protecting Sky Valley as open space will expire within the time-frame of the proposed project’s development.

- The continuation of more widening of Lake Herman Road would be potentially induced, which would be in accordance with Solano Transportation Authority designation as a “feeder” road from Vallejo to I-680, but which is a designation in conflict with Benicia General Plan goal of maintaining Lake Herman Road as a two-lane scenic rural route.

- **General Plan program 2.5.C** “evaluate future uses on a cost/revenue basis, taking into account economic diversity for the long term and environmental costs and benefits.” The DEIR does not evaluate benefits of individual projects considered in the aggregate, since the “tenant mix” is alleged to be unknown at this time. This built-in vagueness of the Master Plan doesn’t allow for the kinds of evaluation the General Plan calls for.

- **G.P. Policy 2.6.5:** “Establish and maintain land buffers between commercial and industrial and residential.” What constitutes a “buffer” between the commercial area and the limited industrial areas? In what sense will the commercial area or industrial areas be “screened”, since the landscaping plan does not seem to account for possible three-story buildings and grading will create highly visible “mesas”? It would seem that the only way to create a true “buffer” is to maintain the natural one of hills running north - south in direction.

- According to project proponents, why is it necessary for the project's success to connect East Second Street to Lake Herman Road via extension of Industrial Way? Why not direct traffic to an improved public transit nodal station that could be part of the project's commercial development, near the intersection of Lake Herman Road and I-680 interchange? Why not direct car and truck traffic associated to the project through the existing Industrial Park, AWAY from Lake Herman Road and East Second Street by eliminating the extension of Industrial Way?

- **Page 103, Thresholds of significance: (1) regarding dividing an existing community:** Removal of Reservoir Rd constitutes a loss of rural character, a gentle, visually pleasing "transition" with beautiful distant views from Lake Herman Road into Benicia. The extension of Industrial Way would be completely different, since it is proposed to be a wide, steeply cut, heavily trafficked boulevard with existing and new development on both sides. Loss of Reservoir Rd constitutes a loss of physical tie and continuity with Benicia's past, expressed through the remaining natural landscape setting of our town as seen from a "rural road".

- **Page 103, (3) Agricultural Land:** No assessment of possible future need of local grazing land within 20 years or 50 years of the project's development. Since loss of natural hills constitutes an "irreversible loss", it's especially important to identify recent trends toward use of marginal ag land and open space for local food production and grazing. [See ag uses of open space bordering city limits in Sonoma County].

- **Page 103 (4) Conservation Plan:** If a Conservation Plan is currently being prepared by Solano County and the Seeno business park will be developed over 20 - 25 years, then the Conservation Plan should govern the development: it would be consistent with local goals and policies of our General Plan to honor the HCP/NCCP being drawn up for Solano County's public lands and conservation easements.

- **Pages 104 - 105, C. SIGNIFICANT LAND USE IMPACTS:** *"This project would substantially conflict with policies in the General Plan adopted for the purposes of environmental protection. . . The project would result in significant and unavoidable impacts".* The DEIR's conclusive paragraph, page 105, says it all. Even on the basis of the presented (inadequate and incomplete) analysis, The proposed project must be rejected since it is significantly out of compliance with the General Plan, and would create potentially significant unmitigatable, irreversible and cumulative impacts with respect to hydrology, biological resources, air quality, transportation and circulation, aesthetics, utilities and infrastructure and urban decay). Mitigation plans as outlined do not adequately address or compensate for these impacts [see below]. The DEIR does not adequately describe cumulative impacts relating to human health and "quality of life"

- **Pages 107 - 112 Population, Employment and Housing:** What types of jobs—and what percentage of those jobs—would the proposed business park provide, with expectation that a significant percentage of employees could locate and afford housing in Benicia under current market conditions?

- **Pages 114 and 121, C. Geology and Seismicity and P125 Impact GEO 3, and Page 126:**

“Much of the project site has been identified as being susceptible to landslide and debris flow”. Also “Potential long-term deformation related to construction of deep fills and cut slopes could occur as a result of the proposed project.” Also: “for slopes greater than 30 vertical feet in height, debris benches not less than 8 feet wide should be constructed, with concrete V ditches to control surface water runoff.” Please describe, through visual simulations, the appearance of “deep fills” and “cut slopes”. Describe adequacy of 8 ft benches for 30 foot slopes and for comparison, discuss in relation to “slumping problem” conditions along Columbus Parkway as well as along I-80 west.

- **Page 126 Mitigation Measure GEO 36:** Please describe slope maintenance plan and its financing. What constitutes a “self perpetuating” plan for maintenance and who pays for this plan to be implemented on a regular basis?
- **Page 127,** *“Cut and fill slopes greater than 15 ft in height should be no steeper than 3:1; slopes up to 15 ft. in height no greater than 2:1.”* Please describe with visual simulation, using examples of existing slopes in the area that meet this criteria. Also use cut-away diagrams.
- **Page 128, Mitigation Measure GEO-5:** Please describe possible scenarios in the case of flooding owing to earthquake induced rupture at water tanks or city water distribution and treatment facility? Please describe how the design of the project protects against such disaster. How would underground city pipes be accessed for repairs if they underlie the development? It’s difficult to ascertain location of all the underground utilities including water mains from the Figures in the DEIR, and especially since there are no site specific plans for individual lot developments.
- **Hydrology and Water Quality:** The proposed plan is unacceptable since it would destroy natural streams, seeps, occasional pools and wetlands, including associated vegetation and wildlife habitat.
- **Page 139:** Describe the “Drainage Plan”, which should be prepared as a condition of approval of the Master Plan.
- How will the landscape plan mitigate run-off from all paved surfaces within the project site?
- **Page 143, HAZARDS AND HAZARDOUS MATERIALS:** regarding the Tourtelot cleanup and F.U.D.S. [Formerly Used Defense Sites] investigation of the former Arsenal properties: Have “spurs” A, E, and G in Area R (Revetment Area) been investigated and characterized yet for possible contamination? If so, when are results slated to be reported? Please explain the difference between the standard adopted for cleanup on the Tourtelot property for residential, under guidance and lead of EPA’s Department of Toxics Substances Control, and the standard applied by the Army Corps of Engineers FUDS investigation, under which investigation would occur at the spur sites cited above and elsewhere in the “no man’s land” between Tourtelot’s eastern property line and the western boundary of the Seno property.
- **Page 152. IT Corporation Panoche Facility:** Describe potential impacts, if any, to drainage area, within or adjacent to the proposed business park site, in the event of a catastrophic collapse or significant

rupture of the Toxic Waste Dump's "clay dam" (earthen barrier below ground) which is located at the southeastern foot of the I.T. property near its entrance to Lake Herman Rd.

• **F. BIOLOGICAL RESOURCES, Pages 168 and 172 (1) Vegetation Communities and Wildlife Habitat:** With regard to field surveys cited throughout this section, it appears that LSA

biologists' most recent field "reconnaissance" surveys were taken on two occasions, August 5, 1999 and August 31, 2006. On March 8, 2000, a "bat roost" survey was taken. Please explain how a single survey on August 31, 2006 can account for "changing conditions" at the site for wildlife habitat in the context of climate warming trend that brings spring up to two weeks earlier, extends hotter summer weather farther into fall, and therefore poses new threats to habitat and wildlife food supply. Also, please explain how a one day survey can identify the potential for habitat to be found or actual critters to be located. Doesn't a truly valid survey require close study of an area over time, e.g., throughout one year cycle of seasons at the very least? It seems that project proponents have had since 2001 to do extended, more detailed surveys of biota and species existing on the site or passing through. Why is the biological survey record so limited in scope?

• No documentation has been made of the existence or any siting of a **red-legged frog** within the project area, although seasonal wetlands exist and the region is home to the species. Could this be due to lack of on-site survey data, thus from lack of extended period of observation during our wet seasons?

Page 181: *"Surveys were conducted during both daylight and night hours in 1999, but no California red-legged frogs were detected during any of the surveys."* Were the surveys referred to conducted on the one day of August 1999 [previously cited]? Please explain the seeming arbitrariness of the time parameters of the surveys cited for August 1999 and August 2006. If the "plunge pools" dry up in August, why not survey the site in February when the natural seeps are in full weepage? (I have hiked the Southhampton hills in February and found huge puddles, streamlets and "oozings, especially in swales of the south and north valleys of the former Tourtelot site, before it was excavated.)

• **Page 178,** The DEIR states that **ornamental trees** on site—**English plain tree, English walnut, California Black Walnut, also, almond and plum**—are located *"near abandoned milking shed and barn"*, and that they represent *"a small ecosystem wrested from times past, supporting numerous wildlife and providing roosting, nesting and foraging habitat."* Also, *"golden eagles have been reported by staff of Water Treatment plant but are not confirmed by project sponsors' biologists or LSA."* Please explain the value of retaining as much existing habitat as possible. Discuss implications of wider habitat and ecosystem losses, considering cumulative impacts of loss, relating the potential losses proposed by the business park project to the losses caused by development of the adjacent rural area to the west of the project site—the Tourtelot property which was drastically altered through massive excavation for cleanup of the land for the development of 400 housing pads comprising Water's End.

• Please describe intent and extent to survey on site for **Callippe Silverspot butterfly** by project proponents' biologists and LSA. Please explain the lack of actual surveying and dependence on reports of "closest known occurrence of Callippe Silverspot approximately 4.3 miles north of project site". Please detail efforts that are being made in the Bay Area to restore habitat and food supply for these endangered butterflies. Does observing one single butterfly qualify as "an occurrence", and if so, does

one butterfly's existence in the region signify that it would be possible to restore the butterfly's habitat and provide for its possible survival?

- **Page 182 - 185 Table IV F-1: Special Status Plant Species Potentially Occuring on or in Vicinity of Project Site**": The Table makes clear that the most recent on site "focused surveys" on which the DEIR analysis appears to depend were conducted in 1997 and 1998. Example: Congdon's turplant "*was observed in 2005*" within 5 miles of project site, but was "*not observed during 1997 and 1998 focused surveys on site.*" Please explain who did the surveys in 1997 and '98, and whether it is common practice to rely on 9 - 10 year old survey data, especially in the case where biota is potentially threatened or considered a "special species of concern" (or other designation suggesting its vulnerability to extinction) and especially considering the added pressure on survival of vulnerable species from global warming effects.
- Example of "**pappose tarplant**": LSA explains that pappose tarplant was observed during 1997/98 focused surveys, yet it was not observed on the site during the August 31, 2006 reconnaissance survey of the site. The DEIR goes on to say "*but this survey was not extensive and so the presence of the plant on the site cannot be excluded.*" What is the explanation for the consistently limited surveying for wildlife and plantlife at the project site?
- **Table IV F-2: "Special Status Animal Species Potentially Occuring on or in Vicinity of Project Site"**. Example of inadequate evaluation of the **Callippe Silverspot butterfly** on site: "*... is not likely to occur on site. Host species, Johnny Jump Ups, were not observed during plant surveys, but species occurs in the region. Closest known occurrence is approximately 4.3 miles north of the project site.*" It seems clear that migrating butterflies must be looked for at a given time of year, especially now with respect to changing start times of seasons, since spring conditions arrive approximately 2 weeks earlier, according to scientists. Would seeding hills with Johnny Jump Ups potentially encourage the survival of the Callippe Spot butterfly in our hills? What mitigation can be proposed that could help survival of the butterfly within the project area?
- Most entries in **Table IV F-2** state "*possibly occurs on site, with a few noted as "not likely to occur on site"*". Please explain the uncertainty factor in these statements with regard the goal of environmental protection for endangered habitat and increasingly rare species of once locally adapted plants and wildlife with respect to additional pressures on their ecosystems exerted by effects of climate change.
- **Page 189**: Please explain the territorial range of the **white-tailed kite**. The DEIR provides inadequate information. Who is responsible for the sighting of the single occurrence mentioned in August 1999?
- **Page 189**, Example of inadequacy of survey data for "species of special concern". "*The cooper's hawk is a fairly common winter visitor to urban areas and could nest where large dense stands of trees occur.*" Surveys were conducted on single days in August 1999 and August 2006—8 years apart. No winter surveys were conducted. The probability of occurrence (sightings) would INCREASE if cooper's hawk habitat was CREATED on site. Mitigation: Plant stands of appropriate trees!!

- **Page 189, northern harrier:** "... nests from April to September". "One harrier was observed foraging at the project site during the 1999 reconnaissance survey. This species could nest on site...although previous grazing may reduce the suitability of the site for this species". . . . "Northern harriers nesting in the general area could include the project site as part of their foraging area." The DEIR lacks sufficient basic information on the range of the harrier's territory for nesting and foraging patterns. The one day August 1999 reconnaissance survey was done at nearly the end of the nesting season. With seasonal changes due to global warming effects, nesting and breeding time may be affected. What is the latest available research on nesting times and habits and sightings for the northern harrier? There is no indication that the project site's grasses cannot be restored in order to make the area more suitable for this bird species.

- Generally, restoration of habitat is not presented as an option in the proposed project or the Project Alternatives. Please explain reasons for this lack of innovation. Please research and provide information on development projects in the region or elsewhere that attempt to achieve this balance, by implementing restoration of ecosystems as part of enlightened designs for development. One option is to limit the size of the proposed area for development, with environmental restoration taking on greater importance through dedication of more land for open space. The Project Alternatives seem to point in this direction but do not give sufficient detail to evaluate, since the amount of area devoted to "hardscape" hasn't been significantly altered.

- * **Page 190, golden eagles:** The DEIR states that "*breeding territories can range 20 to 60 square miles*" and that the species "*feeds on medium size mammals*" and "*golden eagles are known to forage on site and may nest within the project vicinity.*" LSA did not observe any eagles in August 2006, but such a survey is obviously inadequate to account for nesting and foraging patterns. Restoration, including planting of grasses and protection of water sources for mammals, and planting of tall trees for the eagles would potentially RESTORE golden eagles' habitat and chances of locating prey.

- Analysis of cumulative impacts to species and their chances of survival must account for total losses of foraging and nesting habitat, within the various migratory and foraging ranges of each species likely to be found at the project site. Evaluation of the chances for survival should consider the need to maintain adequate "corridors" for migration, foraging for food supply and nesting.

- Similar survey limitations and inadequacy of data affect analysis of the probability of finding "special species of concern" including western burrowing owls, tri-colored blackbirds, loggerhead shrikes, saltmarsh common yellowthroat, California horned lark and American badgers on site.

- **Page 193: IMPACTS AND MITIGATION MEASURES:**

Obviously, loss and removal of grasslands will affect foraging and nesting of wildlife. 435.5 "affected" acres represents a tremendous cumulative loss of existing wetland and grassland habitat for local wildlife and plant species.

- **Page 193 b. Less-Than-Significant Biological Resources Impacts:**

Based on the inadequacy of the surveys conducted, the following assumption must be challenged:

“Because no special status wildlife species are likely to inhabit the grasslands on the site, impacts to wildlife that inhabit the grassland habitat would be less than significant.” This assumption is speculative, given the limited extent of any kind of surveying whether “focused” or “reconnaissance” type done by project proponent biologists or LSA. Only two reconnaissance surveys, done on August days, 8 years apart, supplied first-hand data for this DEIR’s analysis of many of the wildlife species considered to be possibly present at the project site; in the absence of sightings, other data was supplied by other survey records from the region. Further, the statement *“...because the project site’s southern boundary is bordered by industrial development, impacts to wildlife movement corridors are expected to be less than significant”* does not account for the disruption of wildlife corridors from *within* the 517 acres of the proposed project, nor across the hills to the west, toward Lake Herman. For example: what is the impact of creating 2 new boulevards (80 ft and 48 ft wide) bordering and within the project site? Also, what is the impact of substituting asphalt and cut and fill pads for grassland on wild life corridors within the project area, considering that similar drastic excavation was done at the Tourtelot property site for environmental cleanup in preparation for construction of 400 homes?

- **Page 193 c. Significant Biological Resources Impacts: Impact BIO -1** Regarding removal of mature trees: The new Draft Benicia Tree Ordinance should be review as part of the DEIR. since it has been developed during the time of the preparation of the current DEIR. For the first decade, small trees planted will not serve as habitat for golden eagles or other large birds or raptors. Please explain the impacts to nesting habitats if large stand of trees and “specimen natives” are removed, and replacement with small trees cannot meet nesting needs for at least 5 - 10 years.

- **Page 196 IMPACT BIO -2**, regarding loss of wetlands and creation of “new” ones: Mitigations proposed would relocate wetlands near Lake Herman Road. The mitigation monitoring over 5 year period should account for the possibility of wetland failure. How and where would a new set of wetlands be located **WITHIN** the project site, if lot distribution and size are not adjusted to accommodate their relocation? Please describe and account for failure rate of restored “patches” of wetland, such as are proposed.

- Albert Seeno Construction Co. has apparently earned a public reputation for environmental negligence by the company’s disregard for such things as vernal pools during grading for a subdivision and other questionable practices during construction. An “education program” for construction workers and once-a-week or every-two-week inspections to ensure adequate protection of existing marshes is insufficient protection, given the publicly known Seeno environmental track record and the company’s historic lack of compliance with grading regulations, for instance, as related to protection for the red-legged frog. Daily on-site inspection during construction by an independent, professional observer contracted on behalf of the City of Benicia and paid for by curent project porponents should be mandated.

- **Mitigation Measure BIO 2a, BIO2b:** *“The project sponsor shall obtain. . . “and all work . . . shall be in complince with all terms and conditions of the permits.”* Please explain on what basis faith in the

project sponsor as a “responsible party” can be upheld, in light of the project sponsor’s past performance record on environmental regulatory compliance? [See attachment “RECORD”]

- **Page 197.** Surveys have been less than adequate to characterize the likelihood of finding pappose tarplant on site. **Mitigation Measure BIO-3** recommends that “*prior to construction, a survey shall be conducted for pappose tarplant, to locate and map any individuals of this species*” ...It’s then advised that “*impacts shall be avoided completely*” and that measures included would be “*redesigning the project footprint*” . . . “*avoiding the hydrology of the plants’ habitat.*” The DEIR finally promises that “*long-term avoidance measures shall also be developed to ensure the long-term stability of the population.*” Such suggested measures, given the importance of a plant as yet undocumented, arouse concern: (1) a proper study should first have been conducted to be part of the DEIR analysis as a planning tool for design of the currently proposed project footprint; (2) A possible and plausible alternative footprint design of the project should be submitted as part of the DEIR; and (3) Long-term “avoidance measures” must be described as part of the DEIR evaluation of the measure’s potential effectiveness.

- **Regarding pappose tarplant:** the DEIR states that if impacts to pappose tarplant are unavoidable, “*the project sponsor shall develop and implement a salvage and recovery plan for individuals, prior to initiation of construction*”. This plan for “salvage and recovery” should be submitted as part of the DEIR for evaluation of the recovery plan’s effectiveness.

^ **Page 198, IMPACT BIO-4:** “*Project may result in loss of aquatic and terrestrial habitat for the Pacific pond turtle and the California red-legged frog.*” The DEIR states that neither the **pond turtle** nor **red-legged frog** were observed at the project site. A new extended survey should be conducted and submitted as part of the DEIR in order to judge the project’s impacts and the Project Alternatives. It seems highly unlikely that the proposed grading plan and lot distribution would be changed to accommodate a sighting of any endangered species should the DEIR have been approved and construction begun.

- The DEIR is unclear about whether **Mitigation Measure BIO-4b** would have to be accomplished once only at the onset of construction for Phase I or whether repeated surveys would have to be conducted for each phase of development. If the latter is the case, then how could adequate compensation, at the ratio of 3:1 replacement of frog habitat be accommodated, if much of the site has already been developed through several phases and no land has previously been set aside for red-legged frog habitat replacement?

- **Pages 201-202, IMPACT BIO-5 and BIO-6, and Mitigation Measures BIO 5a and 5b and Mitigation Measure BIO-6a:** Nesting habitat loss for various raptors and burrowing owls owing to removal of mature trees, barn structures and grading: There’s no evidence that small landscape trees will compensate for loss of mature trees for raptors; and it’s clear the loss of grassland and buildings will discourage burrowing owls. The mitigation plans are vague. The DEIR should include actual plans for compensation of losses and devise a habitat restoration plan for raptors and burrowing owls to be implemented within the project site. To provide assurance of environmental protection, will there be daily

oversight and inspection of grading and construction activities by an independent biologist inspector?

- **Page 202 IMPACT BIO 7:** *“the Project may result in direct take of the American badger through injury or mortality.”* **Mitigation Measure BIO-7** *“A qualified biologist shall conduct surveys of the grassland habitat onsite to identify burrows.”* The DEIR suggests that badgers are likely to be found on the project site during construction and that they may be injured or killed in their grassland burrows as a result of excavation work. If a biologist finds badgers on site, what precautions will be taken and what way will badgers be protected and spared such a fate?

- **IMPACT BIO-8, and Mitigation Measure BIO-8a:** Regarding the potential loss of foraging and roosting habitat for the **pallid bat** and **other bat species:** Since there is no plan for construction schedule that indicates what time of year grading and other construction would take place, phase by phase, will there be adjustments to the grading schedule and timing of construction in accordance with bat roosting season? The limited bat survey conducted did not find evidence of bat roosting in the remnant of the old barn structure. It's not sufficient to propose mitigation for loss of bat roosting habitat **ONLY IF** the barn is found to have bats at the time of construction. Since it is well known that bats exist in Benicia and that bats love barns for nesting [one winery I know in the Carneros region of the Napa Valley actually built a “bat barn” to provide habitat for these critters, since they keep the insect population down.] The DEIR should give examples of bat habitat restoration programs that could be part of the proposed project site and could co-exist with proposed development. An actual plan for such habitat restoration should be part of the DEIR. Can the old barn be restored, both as an historic visual element in the landscape to suggest Benicia's early history, but also, to provide bat habitat?

- **Mitigation Measure BIO-8e:** The DEIR states, *“Removal of maternity roosts for special status bats shall be coordinated with CDF6 prior to removal”*. The DEIR goes on to say that *“roosts will not be demolished until the young are able to fly independently of their mothers.”* Please explain whether or not bats customarily return to an original roosting habitat location. Please also explain how bat roost replacement would suffice to attract bats elsewhere if barn structures are removed. Again, I suggest that the barn structure could be simply renovated as a mitigation, to keep a piece of Benicia's agricultural history currently present on the project site, and also to be used to provide bat habitat.

- **Page 205, G. TRANSPORTATION AND CIRCULATION; DESCRIPTION:**

The DEIR cites condition statistics from 2005, for vehicle traffic, within the vicinity of Benicia city limits, for I-680 (62,000 vehicles per day) and for I-780 (58,000 vehicles per day). It cites other major roads—Military East, Rose Drive, Park Rd, Industrial Way, Lake Herman Rd and Reservoir Rd—but DOES NOT give 2005 statistics for daily vehicular traffic on these important, well-traveled roads that are within Benicia city limits. The DEIR should account for daily vehicle trips on these roads WITHIN THE MAIN BODY of the DEIR. Without those figures accurate estimates and evaluation of cumulative traffic and air quality impacts cannot be made with regard the contribution to local air pollution represented by increased traffic trips owing to the development of the proposed business park. The many tables documenting various intersections' activities and LOS include the statistics most necessary—the volume of vehicles passing through intersections at various times of day—but these charts are nearly INSCRUTABLE. The tables are impossible to compare and the type size is so small the reader needs a

magnifying glass. Therefore, the Appendix with traffic flow information is rather useless for purposes of understanding impacts of the project-induced increases in traffic.

Cumulative impacts to human health and the environment of air pollution. must be estimated based on statistics for existing and future estimated vehicular trips on Benicia's main arteries, INCLUDING I-780 and I-680.

- **Figure IV G-2** should locate Semple Elementary School, since children's health and safety is greatly affected by existing traffic and effects of cumulative traffic around the school contribute to increase in health and safety impacts to children attending.
- An error should be corrected: Intersections identified as "West Military and East Second" should be "East Military and East Second". Also, the intersection at First Street involves EAST Military, not West Military.
- Page 215: "As shown on Table IV. G-3 "all of the study intersections operate at Los D or better during the AM and PM peak hours." How does Table IV G-3 indicate LOS D? Appendix B's main volume figures for each intersection should be integrated into the Table for ease of reference throughout the discussion.
- Page 217, "*No pedestrian facilities, such as sidewalks or off-street paths, are currently provided in the project site vicinity*". Does this statement mean that there are no "pedestrian facilities" within and also in the vicinity of the project site? If so, why does the proposed project, if it is to be consistent with the Benicia General Plan , not call for pedestrian-oriented design and layout of the project site and connections via sidewalks and crosswalks and paths to adjacent areas, including the Water's End residential development?
- **Page 227, Figure IV G-7 Project Intersection Traffic Volume:** These diagrams are not easy to read, without familiarity with the schema. Three dimensional visual representations of key intersections that will be affected by increased traffic volume owing to the proposed project should be included in this section for ease of understanding. For example, shown in boxes #4 and #5: the intersection involving entrance and exit ramps from I-780 to East Second Street—where westbound traffic flows up to a traffic signal at a very busy three-way stop near Semple Elementary School—should be represented with photos and 3-d simulations. ALSO, why does he East Second and Military East intersection (box #6) show no traffic impacts?
- **Page 236 - 237, TABLE IV.G-13, Existing Plus Project Conditions Intersection Impacts and Mitigation Measures:** This table describes but does nothing to help visualize the proposed changes to intersections that are said to accommodate increased traffic and improve traffic flow. This is of great concern near Semple Elementary School. We need much more visual information to understand the impacts of changes proposed for widening I-780 at the East Second on-ramp.
- **Page 244, Impact TRANS-14 and Impact and Mitigation Measure TRANS-15:** : Effect of adding turn lanes at I-780 Westbound ramp at East Second should be evaluated taking into account the

added pressure of “getting over” to those lanes, when there is increased traffic coming from the Benicia Bridge via the exit ramp that takes vehicles from the bridge and dumps them into a lane that merges with I-680 traffic coming from the east. These conditions should be simulated in three dimensional images in the DEIR. Impact of this widening would represent a significant health and safety concern for Semple Elementary School children and the surrounding neighborhoods.

- **Page 244, Impact and Mitigation Measure TRANS-16:** Intersection of Lake Herman Rd and the proposed extension of Industrial Way would make a much more prominent, urbanized, gateway, with signalized traffic light. Although this change would decrease “LOS” at that intersection, other concerns are raised by the widening and extending of Industrial Way that the DEIR does not adequately address. If Industrial Way is to be a 4-lane boulevard, then traffic flow is encouraged toward Lake Herman Road, with many consequences to the Lake Herman Recreation Area. Growth-inducing impacts are even suggested and symbolized by creation of a signalized traffic light on a rural scenic road; the growth-inducing factor is also made evident in the DEIR’s **Mitigation Measure TRANS-17**, which recommends a plan to widen Lake Herman Road “*from the intersection of A Street/Lake Herman Rd to the intersection of Lake Herman Road/I-680.*” The suggested widening of Lake Herman Rd may attempt to mitigate “LOS” problems—the level of service at nearby intersections—but the Mitigation Measure itself creates further growth-inducing impacts as well as aesthetic impacts to the visual character of Lake Herman Rd. The same problem holds true for **Mitigation Measure TRANS-18**: the “cure” for unacceptable “LOS” at one intersection produces negative side effects elsewhere. The DEIR ignores these various impacts from the discussion of proposed improvements for better traffic flow such that the reader cannot reasonably evaluate the “cost/benefit” of mitigation measures proposing signalized lights and road widenings.

- **Transit Facility Impacts:** Without the mitigations suggested the proposed project is totally out of compliance with Benicia’s General Plan. **Mitigation Measure TRANS-23** should include plan for transit hub for commuter bus lines that would run in and out of Benicia from the proposed business park site, in addition to providing transit stop for Benicia Breeze bus service. Please explain how the Master Plan could be adapted to include a “public transit hub” in consideration of the fact that the City had explored having a train station and transit hub east of the project site near Suisun Marsh. However, because of climate change, sea level rises are predicted to inundate that portion of the marsh. [SF Chronicle, Sunday, Feb. 18, 2007, story by Jane Kay: “Consequences of a Rising Bay, Global Warming: New set of maps reveals how melting polar ice could change shoreline and carry a high price for entire region” QUOTE: “. . . industrial ponds for the Valero oil refinery in Benicia, and the Chevron refinery in Richmond, would be inundated by the projected rise in the bay.” ALSO: Contra Costa Times, Jan 26, 2007, story by Mike Taugher: “Sea level a rising threat”. Quote: “At risk are airports, highways, buildings and other key public works projects such as the East Bay Municipal Utility District sewer plant in Oakland and the railroad tracks near Benicia.”].

- **Page 247, n. Pedestrian and Bicycle Facility Impacts:** The proposed project would be out of compliance with General Plan policy if the Mitigation Measures suggested by the DEIR are not implemented. The intent must be to encourage bicycling and walking within and around the project site (to and from), connecting new paths and sidewalks to existing ones outside the project site.

Improvements to Lake Herman Recreation Area should be counted among mitigations, since increased use of the lake area can be predicted, since many employees from the city and industrial park already take lunch time at the lake, according to those who know the area well. Pedestrian paths to Lake Herman should be created from the project area connecting to paths created on the west side of Industrial Way leading through hills to Lake Herman. As said elsewhere, for safety sake, the police department's firing range needs to be relocated away from the entire area, considering the increase projected for vehicle traffic and pedestrians owing to the proposed business park..

- **TABLE IV. G-22, Impact TRANS-26: and Mitigation Measure TRANS-26:** The statement “*upon completion of all or most of project construction activities, the project sponsor will identify any impacts to roadway conditions*” is troublesome. What happens when damage to pavement occurs on major roads listed, at an earlier stage of construction? How would it be guaranteed that the project sponsor would “*install improvements and/or pay an impact fee to mitigate any damage to the existing street pavements on East Second St., Industrial Way and Lake Herman Rd to and from the project site.*”? Please consider the recently reported [in the Contra Costa Times] legal battle Albert Seeno has sought, to challenge the City of Pittsburg’s imposition of increased traffic impact fees associated to the proposed widening of Highway 4. Seeno wants the highway widened, but doesn’t believe he should have to pay increased impact fee as a developer.
- **TABLE IV. G-22, Impact TRANS-22 and Mitigation Measure TRANS-22:** The DEIR suggests that the impact associated to projected decrease in LOS (level of service) at intersection at Westbound I-780, West of East 2nd Street, should be addressed by widening I-780 to 3 lanes for this stretch of the freeway. The problem is that this widening, although accounted for long-range by Solano Transportation Authority plans as well as in Solano County’s Capital Improvement Program, the impact on Benicia would be huge and irreversible: the traffic increase would increase noise levels beyond acceptable level in surrounding neighborhoods and the freeway would be an even more formidable divider of old Benicia neighborhoods and the downtown from Southampton residential development. The apparent division would be greatly reinforced, further eroding the sense of Benicia as having “small town character”. We do NOT want to live with a major freeway dividing our town and causing increased air pollution and noise. Speed would increase in a three lane situation, creating daily potential for increase in accidents: many young people use the freeway to get to and from downtown Benicia from Southampton’s neighborhoods, and there are already many accidents. Widening I-780 is not acceptable and would be out of compliance with basic policies of our General Plan.
- **Page 253, H. AIR QUALITY:** The first paragraph suggests but doesn’t describe the limitations of the analysis of air quality impacts set forth in subsequent pages of the section as they relate specifically to local public health. The DEIR should explain what the discussion DOES NOT, because CANNOT, adequately or accurately evaluate pertinent to the health of the local population: :the ambient air quality of Benicia, day to day, season to season. The DEIR relies on Air District statistics taken from regionally located air monitors. As it points out, there is only one Air District monitor in Benicia, and it samples for a single chemical, SO2. Other monitors—one in Crockett, one in Vallejo, and one in Concord—monitor “criteria pollutants” for purposes of measuring whether “attainment” of acceptable standard levels (for each pollutant) established by federal and state laws have been achieved generally in the SF Bay “air

basin". The nearest monitor is said to be Vallejo's, which is upwind of Benicia. Regionally gathered ambient air sampling and air-modeling data cannot tell us about specific LOCAL ambient air quality in Benicia. LOCAL air quality is what residents want to know about. Right now, it's impossible to estimate total cumulative impacts to health related to chronic daily low-level exposure to multiple chemicals in Benicia's air. To evaluate the proposed project from the perspective of the community's desire to know more about LOCAL air quality, the DEIR would not only need to have baseline statistics gathered from routine local ambient air-monitoring, but also accurate estimates of the increased numbers of vehicular traffic expected as a result of the proposed project's maximum development, and also, data gathered from monitoring for ALL tailpipe emissions.

- The DEIR announces: *"This section has been prepared using methods and assumptions recommended in the air quality impact assessment guidelines of the Bay Area Air Quality Management District (BAAQMD). In keeping with these guidelines, this chapter describes existing air quality, impact of future traffic on local carbon monoxide levels, and impacts of land use-related vehicular emissions that have regional effects. Mitigation measures to reduce or eliminate potentially significant air quality impacts are identified, where appropriate."* The first section outlines the limited framework the DEIR preparers used for discussion of air quality and air quality impacts that would potentially be owing to maximum development of the project site and *"land-use related vehicular emissions."* Impacts analysed are explained in relation specifically to "regional attainment" of standards that represent acceptable levels of single "criteria" pollutants found in the air, in parts per million or billion, that are considered by federal and state EPA to be reasonably protective of human health and safety. The DEIR does not and cannot portray "existing air quality" within Benicia, because ambient air quality in Benicia has never been measured and so there's no public data available. However, an air-monitoring "experiment" is being set up this spring 2007, sponsored by the Air District, Valero refinery and the Good Neighbor Steering Committee to test and compare different air monitoring systems, and to evaluate data from the several systems. The experiment sets out to measure and record ambient air constituents in real time from one single location at Tennys Road, just west and south of the refinery.. Currently,, there's still no monitoring being done yet that could help account for cumulative and chronic daily low-level routine exposures to multiple and synergistic chemicals from ALL sources: roadways, freeways, port, refinery, other industries, wood-burning, construction dust, etc.

- **Page 253, 1. Setting:** The description lays out the fact that between federal and state laws, a certain set of chemicals has been established that are to be monitored by regional Air Districts [under jurisdiction of CAL-EPA's California Air Resources Board], as the DEIR comments, *"to protect the health and welfare of the populace with a reasonable margin of safety."* The federal *"health-based Ambient Air Quality Standards"* consider *"six air pollutants: carbon monoxide, ozone, nitrogen dioxide, sulfur dioxide, lead and suspended particulate matter (PM)."* The DEIR description continues, *"In addition, the State has set standards for sulfates, hydrogen sulfide, vinyl chloride and visibility reducing particles."* There are also standards for levels a limited number of chemicals identified by the state that trigger regulatory response to protect human health in the case of an acute, accidental "release". As the DEIR describes, these standards, called "episode criteria" involve measuring O3 [Ozone], CO [Carbon Monoxide], NO2 [Nitrogen Oxide], SO2, [Sulfur Dioxide], and PM. It should be stressed that the DEIR evaluates potentially significant and cumulative impacts of specific "criteria" emissions as related to

standards to be achieved “*based on a determination of the consistency of the project with the regional Clean Air Plan*”, e.g., NOT with specific interest or concern for LOCAL ambient air conditions that impact our LOCAL “affected” population, but with concern to measure “attainment” of acceptable levels of criteria pollutants REGIONALLY. The fact that LOCAL ambient air sampling for an array of typically present air-borne pollutants has NOT been done as part of the evaluation of air emission impacts in the DEIR should be clearly stated.

- The DEIR does not make perfectly clear why only the concentration level of carbon monoxide was recorded as a tailpipe emission at various intersections..
- **Page 261 (3) Toxic Air Contaminants:** The individual constituent chemicals that together make up TAC emission category should be enumerated and described.
- 2005 statistics were NOT given in the MAIN BODY of the DEIR for existing numbers of vehicle trips per day occurring on main arterial roads within Benicia city limits, so that percentage or numerical total INCREASE of vehicle trips per day on these roads CANNOT be readily estimated or understood for purposes of evaluating significant and cumulative emission impacts, and thus, the contribution to total local air pollution by increased traffic trips owing to the development of the proposed business park. The many tables documenting various intersections’ activities and LOS include the statistics most necessary—the volume of vehicles passing through intersections at various times of day—but these charts are nearly INSCRUTABLE. The tables are impossible to compare and the type size is so small the reader needs a magnifying glass. Therefore, the Appendix with traffic flow information is rather useless for purposes of understanding impacts of the project-induced increases in traffic. How can cumulative impacts of air pollution on human health and the environment be estimated without comparisons of existing statistics for vehicular traffic trips and future estimated vehicular trips on Benicia’s main arteries, INCLUDING I-780 and I-680?
- The same is true about the charts in the Appendix showing levels of carbon monoxide measured at each intersection: the charts are nearly impossible to readily compare.
- Initial description of the obviously significant potential impact of increased air pollution as a result of the development’s contribution to daily vehicular traffic trips in and out and around Benicia fails to address the whole scope of the subject. The DEIR fails to identify and address the full array of toxic contaminants involved in tailpipe emissions and refinery emissions, and the risks these airborne chemicals and particulates pose daily, in synergistic ways with other contaminants from other sources, and through chronic daily exposures over years, to human health. The DEIR fails to identify health risks associated to air pollution as a primary concern for residents of Benicia and especially “sensitive receptors”[pregnant women, infants, young children, the elderly, and individuals with compromised immune, neurological and respiratory systems]who are daily exposed to toxic air impacts cumulatively coming from freeways, major roads, an active port, a refinery and other industries.
- The DEIR explains that it was not possible to estimate PM2.5 emissions, because the Air District as yet doesn’t have standards set for “attainment”. The DEIR should explain the major difference in

potential health impact between PM10 and PM2.5 with regard to lung development and chronic respiratory diseases such as asthma. Please cite and discuss available literature on Southern California's "Children's Health Study" [see attachment] and also Contra Costa County's children's health study, which showed significant health risks associated to deteriorating lung performance in young students attending school sites that are located within 500 feet of a major roadway or freeway carrying a minimum 25,000 cars per day.

- Pollutants are measured statistically by the Air District by averaging samples taken at different times of the day for a certain length of time. Air District sampling data does not and cannot account for "spikes" in pollutant levels. It's important that the DEIR point this out. An example of why this is important: Semple Elementary School is located within 500 feet of a major freeway and also a main boulevard, right near these roads' intersection, and is also 3/8ths of a mile from the Valero refinery. The DEIR says that the proposed project will cause an increase in traffic on I-780 as well as on East Second Street. This means that daily exposure levels to tailpipe emissions at certain times of day (rush hour) for kids playing on the soccer field will be most likely higher than at other times, and those exposures will have cumulative impact with other emissions coming from nearby heavy industrial polluter [refinery]. Averaging data over a whole day's worth of sampling does not tell the full story of acute impacts that could aggravate and cause asthma symptoms and diminished lung function in young children.
- The DEIR should reference children's health impact studies related to air pollution sources and discuss most recent findings, [including legal ruling by a judge, in favor of three Las Vegas schools in a case challenging the widening of a freeway] in light of the location of Semple Elementary School and the number of children who would be exposed daily to increased vehicular trips associated to the project's proposed maximum development. Also, cumulative impacts must be assessed for the Semple elementary school population, since there is also an on-going expansion program at the refinery to increase throughput capacity, which will ultimately result in more diesel truck traffic on East Second heading north, within less than a 1/2 mile from the school yard. [See Valero VIP EIR on air emissions.]. Since at least 2001, there have been numerous papers, articles, studies and reports, including state legislation, that have addressed effects of air pollution from diesel and auto exhaust on children's health. Some of these sources have been publicly available, including through the American Lung Association website..For example: the "East Bay Children's Respiratory Health Study::Traffic-related Air Pollution near Busy Roads", dated March 4, 2004, is available from Bart Ostro, Phd., Office of Environmental Health Hazard Assessment, 1515 Clay Street, 16th Floor, Oakland CA 94612, and by email <bostro@oehha.ca.gov>]
- I understand from a reliable source, Don Gamiles of Argos Scientific, a company that produces and sells air monitoring systems, that new information about the synergistic ability of nitrogen oxide and ammonia to form tiny, lung-penetrating particulate matter, "PM2.5", is of concern to EPA, since ammonia is present in the air of most cities and NO is a constituent of car exhaust. The deadly combination affects lung development in children and can cause chronic, cumulative, severe damage to lung tissue and function. The DEIR needs to present the latest information on the dangers of regular exposure to PM2.5.
- **Page 257, (2) Local climate and Air Quality.** Description of conditions that affect dispersal of air pollutants should include wind rosette, to show more accurately the prevailing wind directions and

seasonal variability in directions, as affected by ground and air temperature, wind speed, cloud cover, fog, etc.

- **Tables IV H-4 and Table IV. H-5:** The tables relate performance of the Air District's Tuolumne Street air monitor over the period of one year, with maximum concentrations registered over one hour period for ozone, carbon monoxide and nitrogen dioxide. What hour of the day do the statistics account for, or are they "averages"? PM10 is only registered over a 24 hour period. It is impossible from these statistics to assess daily spikes in emissions, for instance, from local freeways during rush hour. The DEIR cannot account for daily impacts during peak rush hour of pollutant emissions from traffic in the vicinity of East Second Street neighborhoods as well as Semple Elementary. Please explain the relevancy of data for sulphur dioxide to community of Benicia and also to the proposed project contributions to increased air emissions.

- **Page 258 C. Air Quality Issues:** Five key air quality issues are mentioned: "CO hotspots, vehicle emissions, fugitive dust, odors and construction equipment exhaust." Please explain all components of "vehicle emissions". Please explain why the issue of CO2 emissions are not mentioned as a concern in this DEIR.

- **(1) Local carbon monoxide "hot spots":** How many neighborhoods are affected by CO2 hotspots? What effort has the project proponent made to REDUCE need for expanding roads, intersections and separate left turn lanes.

- **(3) Fugitive dust:** How many years of excess exposure to PM10 and PM2.5 will there be from cumulative impacts, owing to the creation of subdivisions of 400 homes, a project yet to be completed, as well as the Valero VIP expansion and now the Seeno business park? Please explain the number of years that Benicians have put up with significant excavation activity.

- **Page 260 2. IMPACTS AND MITIGATION MEASURES:** The DEIR states that evaluation of impacts is based on qualitative not quantitative judgments. "*Measurements for certain criteria pollutants are taken from Vallejo monitor for this DEIR analysis.*"

The DEIR further notes that "*emission thresholds were established based on attainment status of the air basin in regard air quality standards for specific criteria pollutants.*"... "*these emission thresholds are considered conservative.*"

The problem is: thresholds can be exceeded. If air monitoring data were being collected on a "real-time" basis [thus accounting for emission "spikes" throughout the day] in an area directly near the project site and at intersections and along roads and neighborhoods where exhaust emissions would have direct impact, we would be better able to judge air quality impacts contributed by the project-induced traffic.

- **Page 261 (3) Toxic Air Contaminants:** "*The implementation of the proposed project would not result in any new sources of Toxic Air Contaminants and the project land uses would not be located near any existing major sources of Toxic Air Contaminants. The project would not have the potential to expose sensitive receptors or the general public to substantial levels of TACS... and would be deemed to*

have less than significant impacts.” Why can the claim be made that “the project land uses would not be located near any existing major sources of TAC?” What constitutes a “major existing source” of TAC emissions near the project site if not the Valero refinery? Also, the general public and sensitive receptors could be exposed to acute “spikes” of TAC emissions, if visiting a dry cleaner or “auto service center” such as an auto detail shop that could be tenants at the project site.

- **IMPACT AIR-1** “Based on emission factors provided by BAAQMD, uncontrolled construction related PM10 emissions from demolition and excavation would average 3.85 lbs. per day.” But a footnote says, “Assumes a 20 year construction period, construction 350 days per year, and 51 lbs per acre per day of PM10. Please explain footnote relative to “3.85 lbs per day”. What is the total construction period assumed for the entire project? From the assumptions listed in the footnote, the reader assumes that in the case of “maximum development of the project site there is never a day off for 20 years, except approx 15-day annual “holiday”. Please estimate the amount of water required everyday to keep the excavation site dirt from blowing away and creating PM10 fugitive dust.

- **IMPACT AIR-2:** “*Long-term project-related regional emissions would exceed the BAAQMD thresholds of significance for ozone precursors [Reactive Organic Gases, Nitrogen Oxides, PM10].*” . . . “*The proposed project would have significant effect on regional air quality*” As the DEIR states, these emissions would be caused by “mobile sources” e.g. traffic trips. The DEIR should identify what contaminants constitute “Reactive Organic Gases” [ROG]. But there’s a fundamental inadequacy to the DEIR’s discussion of air impacts: the DEIR focuses exclusively on emission impacts on REGIONAL air quality that are produced by ozone precursor chemicals; the discussion does not address LOCAL exceedences of those “criteria pollutants” that might affect LOCAL sensitive receptors, because there is no LOCAL monitoring of all the “criteria pollutants”. Local “criteria episodes” at the refinery e.g. accidental releases of BAAQMD- monitored contaminants would be reported by BAAQMD as a REGIONAL impact to air quality, and the data would most likely be derived from mathematical modeling calculated based on knowledge of routine stack emissions. LOCAL impacts of such acute episode “releases” are considered in the category of potential local emergency, but the statistics from such “accidental events” are not “averaged in” with data gathered from other BAAQMD regional monitoring data, and are therefore not used to calculate general regional “attainment” for “criteria pollutants”(whose levels are measured and averaged daily based on BAAQMD’s Bay Area-wide monitoring program).

- **AIR IMPACTS-2: ALSO:** there is no evaluation of other airborne chemical contaminants that might be associated to the proposed project, such as “Volatile Organic Compounds” (VOCs) that would be produced, for example, at an auto detailing shop, auto service center, or other company using hydrocarbon-based solvents, lacquers and paints. But since VOCs are not monitored by the Air District as “criteria pollutants” related to smog production in the regional air basin—despite the fact that VOCs cling to airborne particulate matter and thereby enter the lungs—the DEIR does not mention the potential impacts and health risks of this class of pollutants that could have LOCAL impacts to sensitive receptors, including people employed at the proposed business park.

- **Page 267, Mitigation Measure AIR-2:** The DEIR states, “*There is no mitigation available with*

currently feasible technology to reduce the project's regional air quality impact to less-than-significant. Therefore, the project's regional air quality impacts would remain significant and unavoidable." The DEIR further states: *"...One individual project having emissions exceeding a threshold does not necessarily result in adverse health effects for residents in the project vicinity. This condition is especially true when the criteria pollutants exceeding thresholds are those with regional effects, such as ozone precursors like NOX and ROG."* The DEIR concludes discussion by assuring that the potential for an individual project to significantly cause deterioration of REGIONAL air quality relative to BAAQMD "attainment" goals for the air basin is highly unlikely, as well, that the chances are slim to none that the particular project whose emissions exceed threshold levels for "attainment" would contribute to significant public health risk. The DEIR also concludes that since overall air quality in the air basin has historically been improving, even if a particular project exceeds threshold levels for regional "attainment", it is unlikely to be noticed statistically, [since data is gathered and averaged regionally]. Again, the problem with this analysis of impacts is that LOCAL air emission impacts are virtually unaccounted for, except speculatively and in generalities such as, *"One individual project having emissions exceeding a threshold does not necessarily result in adverse health effects for residents in the project vicinity."* The DEIR's focus on carbon monoxide from daily "mobile sources" ONLY addresses the threshold exceedences that would impact REGIONAL air quality in the Bay Area air basin. Again, other classes of chemicals such as VOCS and PAHs (Polycyclic Aromatic Hydrocarbons) are not even mentioned, since they do not fall into the category of ozone precursors of interest to BAAQMD's regional, LIMITED monitoring program used to measure "attainment" of certain standards for a LIMITED number of pollutants associated to smog formation and regional "visibility". These are not easy concepts or distinctions to understand, and they are a source of much local public confusion generally. An example of a confusing pair of sentences: **Page 268:** *"Because of the overall improvement trend on air quality in the air basin, it is unlikely the regional air quality or health risk would worsen from the current condition due to emissions from an individual project. Nevertheless, pollutant emissions from a specific project above a certain level are considered significant."* The logic of the DEIR argument fails to ascribe any effect of local (cumulative) air emissions from increased traffic and other "project sources" to public health in the vicinity of the project or Benicia community, or downwind of the city.

- Benicia residents breathe multiple chemicals swimming in the general "air basin" and are also exposed to local pollution presumably more concentrated here closer to the source. For example: Robert Semple Elementary School children play on a soccer field which is located adjacent to I-780 freeway carrying in excess of 55,000 cars per day and also borders a heavily trafficked boulevard. The playing field is also 3/8ths of a mile from the Valero refinery and across the street from a Valero gas station and is also very near the City of Benicia Corporation Yard where old paint and solvents are recycled. Robert Semple is also within one mile of the proposed project site, and will be greatly affected by increased traffic induced by the proposed project. Yet, there is no discussion in the DEIR about these multiple air impacts and increased health and safety concerns for children attending Robert Semple.
- The DEIR should identify all constituents of diesel emissions. *"Diesel PM [particulate matter] is a mixture of over 30 different toxic chemicals and only a portion, mainly polycyclic aromatic hydrocarbons (PAHs) may be reflected in the measurements reported in Tables 4.7-1 and 4.7-2. The*

BAAQMD has estimated carcinogenic health risks from exposure to Diesel PM in 2000 in the Bay Area was about 450 in a million (BAAQMD 2001). these region-wide risks were estimated by deriving concentrations of Diesel PM from ambient measurements of surrogate components". [QUOTE from page 4.7-4 of the Valero Refining Company's Land Use Application for the Valero Improvement Project EIR, October 2002, prepared by ESA].

- **The fact that the DEIR doesn't bother to fully explain WHY local air emission impacts have not been evaluated with respect to community concerns regarding LOCAL air impacts associated to health risks and stemming from local and regional sources is a real failing of the draft environmental review.**
- **CUMULATIVE, potentially significant air impacts from multiple numbers of contaminants in our air and effects of daily chronic exposures over a lifetime or childhood that could pose significant human health risks are simply not addressed or evaluated. The DEIR faithfully discusses BAAQMD mandated REGIONAL concerns, but not the specific concerns of the Benicia community for its own health with respect to chronic cumulative impacts from acute and also chronic daily exposures to LOCAL SOURCES of air emissions in and around the city.**
- The DEIR should enumerate sources of potentially significant cumulative impacts, factoring in additional increases of air impacts owing to refinery expansion (Valero Improvement Project) including daily and weekly increases in truck, train and ship transport trips. Please identify Valero's VIP contribution to increase in VOCs and other TAC contaminants as well as PM 10 and PM2.5 to evaluate total cumulative potential health impacts to local residents.
- Again, currently, there is no current local monitoring program yet operative within the city to measure ambient air quality for TAC emissions as well as ozone precursors and PM10. Data cited in the DEIR taken from Air District monitors outside Benicia in surrounding towns cannot give us data that would account for LOCAL cumulative air impacts to neighborhoods, etc. Therefore, no assumptions or conclusions can be made regarding the potentially significant cumulative impacts to local community and sensitive receptors within the vicinity of the project or located near major impacted roadways, freeways, etc.
- The DEIR does not adequately consider non-cancer health risks associated to multiple kinds of pollutants that could be present and produced by particular projects at the proposed business park as well as by traffic. There isn't discussion of asthma as a major health concern of Solano County. The Air District has begun monitoring for polychlorinated dioxins and furans, as the DEIR states, but there is no discussion of the kinds of health risks these dangerous chemicals pose and what kinds of combustion and other processes produce these deadly toxins.
- Considering the DEIR's failure of analysis of cumulative air impacts, and considering the need for sufficient "real time" data to evaluate local cumulative impacts: **Mitigation for significant air impacts should include financial contribution to a comprehensive air monitoring system that**

the Benicia community has sought through settlement agreement in 2003 with the Valero refinery, since, at this writing, the opportunity arises to support such a system's implementation. A new Mitigation Measure could require purchase of additional components to complement and extend the capabilities of the recently purchased "community air monitor" now being set up with other Air District monitors for a year-long experiment agreed to by the Good Neighbor Steering Committee, the Valero Benicia Refinery, BAAQMD and the City of Benicia. This experiment, representing the first step in achieving a more comprehensive local air-monitoring system capability to benefit the community, will sample local ambient air in "real time" and compare data derived from several kinds of monitors. It is envisioned that a comprehensive system could become implemented permanently in Benicia, and would measure an array of pollutants, including particulate matter. Since the experiment is being supported by Valero, BAAQMD and the City of Benicia, as well as the company that manufactured the air monitor purchased for community benefit [Argos Scientific], it would be fitting that the project proponents for the proposed Benicia Business Park contribute financially to building such a permanent air-monitoring system, to compensate for significant "unavoidable" air impacts identified in the DEIR. A more extensive system would help meet the need for evaluation of local levels of exposures and cumulative air impacts from multiple numbers of chemicals identified as being present from local sources [refinery, local traffic, freeways, port, other industries]. Such a system would be technically supported, and the data gathered and archived from extensive sampling would be made public via internet website. as will be the case during the year's monitoring experiment. [Data gathered during the experiment will account for local daily ambient air quality and also "acute spikes of emissions" that can be registered within sampling reach of the air-monitors where they are now to be located at Tennys Rd on city property. This location is within 1/2 mile from Industrial Way and therefore could support research into cumulative impacts of air emissions on our local community, including from traffic associated to the proposed project's development..

- **The DEIR's recommendations for mitigations, suggesting that plans be drawn up for more pedestrian, public transit and bike oriented design features and programs at the project site to help reduce "mobile air pollution sources", are incredibly important. Such mitigation plans and programs need to be part of the final EIR as condition of any project approval, including for one or other of the Alternative Projects. Further, mitigations should address greenhouse gas emissions and programs for reduction, including reducing conventional energy sourcing, since conventional energy production involves release of greenhouse gases.**

- **Page 285 VISUAL RESOURCES; IMPACT VIS-1: "The proposed project would adversely affect scenic vistas from several public roadways".** The visual identity and character of Benicia's northern area would be irreversibly changed, by grading 9 million cubic yards of soil, effectively destroying hills and replacing them with flat "mesa" pads to be arranged with suburban-style cul-de-sacs surrounded by block-like one-to-three story warehouse type buildings [as shown in visual simulations], with 30 ft high slopes along newly cut roads, man-made "berms", extensive, predictable suburban-style landscaping and with parking lots visible from major roads bordering the development site. There is NOTHING innovative about the design layout or conception of this project that suggests one wit of visual intelligence. Respect for the natural beauty of the hilly topography of the project site is

NOWHERE evident in the design and layout of the proposed project. Yes, scenic views from major roadways will be irreversibly altered. The existing Industrial Park will appear to have been extended north and west of its present limit at the southside of East Second Street. No amount of suburban landscaping can hide the visual FACT, **There is NO REASON to accept a project whose “scheme” [the Master Plan presented in the DEIR is no plan worth the name] insists that it must be developed by tearing down existing hills for flat pad, uniform-type warehousing-like construction.** This kind of “business as usual” design should have NO PLACE in the 21st century, if we are indeed concerned about the requirements to live “in harmony with nature”. There is NO REASON why the project can’t be better conceived for all the reasons suggested by the word “harmony”. Project proponents have had since 2001 to design a more aesthetic, “green” 21st century project. For example: buildings and roadways and paths could be designed to INCORPORATE and flow with natural topography. Groves of trees located near buildings could actually provide SHADE to reduce requirements for expensive energy-hogging air-conditioning in summer months. Lots could be shaped and oriented to take best advantage of the hills’ contours and also the sun, for harnessing solar energy. Flat rooftops could be made into “green” meadows to blend with existing hills; “greening” of rooftops is now being done in Chicago and other cities to cool buildings, reduce visual impact of massive flat roofs, reduce heat radiating from roof surfaces in summer and “naturally” insulate buildings in winter. There is absolutely NO REASON that the proposed “business park” should resemble our existing Industrial Park along East Second Street.

(1) Impacts to Lake Herman Road; effects of extending Industrial Way, creating a new intersection at Lake Herman Rd. The proposed new intersection at Lake Herman Rd where Industrial Way extends to meet the rural road, creates an “urban” juncture that would represent a new “northern gateway” to Benicia at buildout of the project, as proposed. This would change the visual rural community identity still felt to represent Benicia’s historical character as an early California town. The DEIR’s description suggests that the extension of Industrial Way and the new intersection represent “no substantial change” to the area. This is not accurate, since significant increases in traffic into Benicia from Lake Herman Road are anticipated. The visual character of the land will be “tamed” by a new broad boulevard: this “Industrial Way” would resemble Columbus Parkway, replacing rural two-lane Reservoir Rd. This kind of boulevard, with signal light(s) and divider strip contributes to a sense of community homogenization, thus sharing more and more characteristics of other suburban cities. Benicia can become visually indistinguishable from Vallejo’s suburbanized appearance, especially considering that the commercial area proposed and also limited industrial area would permit “auto dealerships” and “auto service center(s)” requiring even more paving and asphalt parking lots. The creation of an extended “Industrial Way” boulevard puts pressure on for widening of Lake Herman Road, which is envisioned by the DEIR and also by Solano Transportation Authority. planners. The foreseeable visual impacts in the aggregate, owing to project design, massive grading for proposed layout— and intentions expressed through such lifeless “design”—represent a tremendous irreversible loss to Benicia’s distinct, historical identity as a small town. The loss of a particular visual aesthetic of rolling open hills with small streams and seasonal wetlands speaks to the enormous ENVIRONMENTAL loss of wildlife habitat and biodiversity of local, complex ecosystems. Seeing is a tool of knowing. We know that fast food joints, more gas stations, roadside motels, auto dealerships, mini-storage cubicles and warehousing is not a “tenant mix” suggestive VISUALLY SPEAKING, of

an enlightened view of future requirements for more sustainable living. The project should be REDUCED and designed to MINIMIZE disruption of topography and natural habitat. I envision a campus-like arrangement of buildings clustered and designed to incorporate land contours, with landscaping minimal, but with plantings of groves of specimen and native trees, as stated above, for provisions of shade for cooling buildings and for pedestrian pathways.

- Of great concern: Slopes created by grading “cut and fill” for flat pads and new roads will require CONSTANT MAINTENANCE and new and CONSTANT RENEWAL OF LANDSCAPING, which is highly expensive. Landscaping on steep slopes inevitably MOSTLY fails in windy, dry, hot conditions, and requires vast drip irrigation and regular water to survive. Also, engineered slopes have very little humus or topsoil left, if any, and what subsoil is exposed is usually hard-pack clay highly subject to erosion and very difficult to cultivate or mulch. The DEIR should reveal statistics about landscape successes and failures of similar roadway slopes in our region. [Count the number of times the slopes along Columbus Parkway have had to be replanted in whole sections.] Weed abatement becomes a paramount reason for use of herbicides, which in wind, drift to kill other plants meant to be spared. In the event of economic recession or prolonged drought, these slopes can come to be dried out, impoverished wastelands that would be very hard to resuscitate as “man-made landscape”. The goal should be to maintain topography and as much original or existing grassland as possible. Industrial Way, if extended at all, should not be allowed to be created by 100 ft cuts into existing hills. The contour of the road should follow the contour of the hill as much as possible. (Like Reservoir Rd. does for most of its length.)

- Landscaping plan will not significantly camouflage the development’s “flat pad” warehousing appearance. Berms will look artificial, as they do elsewhere, south of Lake Herman.
- Graphic simulations do not account for the multiple story buildings that can be anticipated for such specific project types as “motel”, “hotel”, “conference center”, “office building”. Also, simulations do not show “auto dealerships” or “auto service center” or “truck service center”. or “big box retail”.or “formula based fast food”.

- **Page 299:** *“The proposed project would result in the obstruction of views of Suisun Bay from this vantage point [from Lake Herman Rd looking south and southeast towards project site] due to development of a berm along Lake Herman Road and construction of new buildings.” Also “Mount Diablo would still be seen from this vantage point after development of the project.” ...“However new buildings and graded pads would be visible over 500 ft from the road and would adversely affect the visual character of the site from this vantage point.”* Loss of total view of Suisun Bay with Mt Diablo rising above the bay is a GREAT LOSS. Benicia’s most spectacular views make whole scenes of sky-land-water with city and bridges in foreground. What guarantee is there that equivalent of a two or three story building would not be permitted at this prominent site and intersection with its vast view? What would be the resulting view if “last phased development” does not bring any building to a prepared pad within 5 or 10 years of its excavation?

- **With regard to mitigations proposed for “irreversible losses” of scenic and aesthetic visual resources, topography of natural hills, etc.:** I’ already commented extensively about the crying need

for an alternative “green” design strategy that would preserve hills and natural contours of the land, require a reduced, clustered development, and preserve as much natural grassland, wildlife habitat and water resources on the project site as possible. Landscaping would be “natural” in appearance, with groves of trees giving form, texture and shade, while providing habitat and nesting sites in the vicinity of buildings. [See comments above]. Parking would be located as much as possible where it cannot be seen from roadways. Water tanks would not be cited in such a way as to sacrifice the backside of a hill with a 30 ft. deep cut and “dug in” pad.. Lake Herman Road would not need to be widened and the hills along its southern side would be retained completely.

- **PAGE 343, URBAN DECAY:** Since the DEIR only describes a rosy economic outlook for the next 20 years, the analysis does not seriously entertain prospects of urban decay in such a way as to fully “depict” consequences. The analysis should describe possibility in 10 or 20 years for commercial or light industrial spaces to deteriorate for lack of tenancy.
- **C. Retail demand:** *“Commercial uses at the business park are assumed to be primarily local-serving. The project sponsor anticipates that the commercial and lodging portions of the project could be developed within 8 year time span, while industrial uses would require at least 25 years to fully develop”.* What sort of retail would serve LOCAL residents, considering the “mix of tenants” suggested for the site by virtue of local zoning ordinance for “commercial”? From the DEIR’s statement above, one can envision a commercial extension of the already developed area at Lake Herman Road and I-680—which mostly serves commuters and people getting off the freeway for pit stops. If industrial development lags behind commercial by at least 10 years, in what sense is the proposed new commercial going to appear to “serve” residents of Benicia in Southampton?
- The DEIR analyses a project that seems to have been ‘designed’ as if car culture will be maintained as usual 25 years from now.
- **Page 347 “Leakage”. and Hotel Demand, etc.:** Please compare market projections in the DEIR with Opticos Design’s economic analysis supporting design options presented in the “Lower Arsenal Mixed Use Specific Plan”. and the Downtown Corridor Master Plan. How do the projections for need of various types and sizes of buildings and tenants square with each other or not? the DEIR states that the commercial development at the project site would primarily serve “the local business community”. Why is this limit suggested? What impacts will the proposed commercial and light industrial developments have in terms of competition with Downtown retail and commercial and also proposed lower Arsenal mixed uses of light industrial, office, and commercial?
- **Page 349, d. Other Fiscal Impacts:** There is no economic evaluation of the prospect of energy (and construction) costs spiralling, affecting development at the site. There is no analysis of long-range scenarios for recession and need to re-tool the project. Is the project design “flexible” in this sense? [In and around the South Bay, high tech “campuses” have already run into “tenancy” problems. A high tech campus site in Rohnert park, never fully developed, is now being replanned for a “sustainable community” development featuring “smart” green building, etc..]

- **Impact DECAY-1** *“If the tenant mix of the project changes, the project could result in urban decay.”* This is a profoundly disturbing admission, since after first tenants, “second” or “third” tier tenants will be invited in, just to maintain revenue stream. The mitigation suggested—that the city would have to design and implement a mitigation to address the “economic calculus of decay” and resolve the “tenant mix” problem. This is highly troubling, since what this means is a 3 person council majority could vote to accept whatever business mix brings in the most revenue, given the economic condition of the moment. This hardly suggests a true “master plan” process that has ventured to address these sorts of contingencies and future scenarios as part of design decision-making.

- **Page 351 V. ALTERNATIVES:** I have said in previous comments that it is absolutely imperative to support preservation of existing habitat, water resources on site and contours and topography of the land as it now exists. The two Project Alternatives suggested for Waterway Preservation and Hillside/Upland Preservation show some intent toward this level of preservation, but neither Alternative, as presented diagrammatically, gives enough information, and there are no visual simulations of just how much open space and riparian corridors etc would be spared, compared to the developed areas. Also, the lot distributions don’t appear to be much altered: I do not agree with the suburban “spread” of cul-de-sacs and all that I have said about them holds true in considering “Project Alternatives”. It’s not proper to “cherry pick” parts of a design—feature here, feature there—if we want integrated planning concept. The designs presented for project layouts still do not reflect “green” values overall, since the developed portions show no respect for designing in harmony with nature.

I do not believe the DEIR succeeds in addressing either the full scope of the proposed project as described, and the devastation to the land that the so-called “Master Plan” previews. Visual simulations are not adequate to grasp the “phased development” through its 25 years to buildout. Project Alternatives point in a better direction but are still lacking in true integrated design innovation to meet challenges of the “doing business” in the 21st century.

Thank you for accepting my comments and for your considerable time in reviewing them.

Sincerely,

Marilyn Bardet

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March 10, 2007

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**Comments Regarding Benicia Business Park
Draft Environmental Impact Report - prepared by LSA Associates, Inc., January 2007**

Dear Charlie and Ms. Gnos,

Thank you for the opportunity to comment on the Draft EIR for the “Benicia Business Park” development being sponsored by Discovery Builders, a Seeno company. The first DEIR was submitted for public review and subsequently withdrawn—after serious public rejection of the document’s insufficient evaluation—by Albert Seeno Construction, in 2001.

It’s taken me the full 45 days, plus two extra weeks of the extended comment period, to understand the reason for the depth of confusion I felt reading the new DEIR in its entirety and formulating comments, page by page, about what it purports to evaluate. I’ll try to be very clear about my fundamental concern, which goes to the heart of the DEIR’s assertion that the “proposed project” is a “Master Plan”. I’ll then follow up with specific comments about the “Plan” as described and evaluated for potential significant impacts. I will be submitting comments today, March 12, the deadline, and extend those comments by subsequent submissions, up until the City Council hearing date.

I believe the DEIR is fatally flawed in fundamental ways. The Seeno DEIR, in describing the “proposed project” as a “Master Plan”(“Plan”), encourages the reader to assume that the document is both a presentation of a developed master plan —how it was developed is not explained—to purportedly give guidance for a twenty-five year long, vaguely described “phased development” of an “office park” on a 315 acre site located within Benicia city limits—property privately owned by housing developer, Albert Seeno. The DEIR appears to do double duty, serving to present and describe a “plan” as if there’d been a public process to gain consensus and support its development, but also, serving to review the environmental impacts of the Master Plan laid upon us, *presto*, complete! There were two scoping sessions for the DEIR called “workshops”. The public understood these to be scoping sessions to aid preparation of the DEIR. These sessions cannot be considered a “planning process” for a “master plan” for a project that will “conclude” in 2031.

Other clues to the conundrum this “double duty” DEIR presents: There is no other stand-alone document entitled “Master Plan for the Benicia Business Park” to which the DEIR refers. There is no

separate “economic report” prepared by independent consultants, either referred to in the body of the DEIR or in an appendix, to support the assertions about the necessity of the kinds of commercial business ventures suggested to be suitable for serving “the local business community” as the DEIR states. We should have had a bona fide “master plan” planning process over the last two year, since the first DEIR was withdrawn. To fairly understand implications of a twenty-five year “phased development” program for the City of Benicia and the community, considering the strategic location of the “project site” and its substantial size, we should have had a programmatic EIR to investigate the scope of the the project as a whole, what the community would envision as most desirable, necessary and contributive to Benicia’s quality of life, the design layout for lots, consideration for topography, lot size, location of streets and buildings and their types, and the potential economic benefits and “downsides” of any particular scheme, with alternatives proposed. [See appended “hard copy” submittal for an example of a “master planned” project under CEQA review of a “program EIR”. Submittal contains an executive summary of the Draft EIR on the Sacramento Regional Wastewater Treatment Plant 2020 Master Plan”, which defines the uses of a “program EIR” as it relates to a master plan, and the process by which the master plan was created.]

Most importantly, we should be able to gain clearer understanding of the current meanings of “sustainability” through a master planning process. The concept and intent to implement it, is the central, overarching goal of our Benicia General Plan adopted in 1999. A master plan process for the site could develop criteria for judging a proposed project’s conformance with basic standards, now being articulated, representing “sustainability” as the concept relates to new development and new practices in “green” engineering, architecture, design, materials and technology. Considering that we are responsible for understanding the environmental implications of a growth-inducing project of the magnitude presented in the DEIR’s “Plan”, the DEIR fails to give the public either adequate description or analysis of all of the total “costs” of doing “business as usual”, which is what the Seeno-inspired project so predictably embodies.

The intent, in 1999, of the General Plan’s land use designation for the project area, and for policy guidance with respect to sustainability, was to promote economic development *within* city limits, while protecting environmental resources, our physical topography, historical “small town” character and quality of life. For the sake of these fundamental values, sustainability was established as principle goal of the General Plan. The definition of sustainability found in the General Plan’s introduction, page 22, borrows from the U.N.’s first official declaration of its meaning, established by The World Commission on Environment and Development’s Brundtland Report of 1987. The basic definition given then has been reiterated in many ways and with much expanded description and criteria by international, national, regional and local agencies of all kinds, retain the fundamental premise of sustainability as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” [*The Sustainability Revolution: Portrait of a Paradigm Shift*, Andres. R Edwards; New Society Press, 2005] The reasons now grow in number every day for upholding the prime visionary value of “sustainability” as a guiding principle of development planning. Latest scientific research pertinent to global warming phenomena and the effects of greenhouse gas emissions from all sources is demonstrating the cumulative, drastic “costs” to the environment of continuing to do “business as usual”. Many companys are inventing new ways to evaluate their processes, considering opportunities

for “cradle-to-cradle” production values involving recycling and reuse of materials. As widely reported, CEO’s of major US corporations, including US energy companies, agree with environmentalists that concern about energy consumption is an issue of “national security” as well as “survival” for global human civilization: US resource consumption—the US consumes 25% of the world’s total resources, but represents only 5% of the world’s population—is now being rivalled by China, with India “in line” next to equal or surpass US consumption rates. Exponential “unlimited” growth poses dire global consequences for ecosystems and the biosphere generally: environmental “costs” of global warming and resource depletion are already manifest in changing conditions everywhere on the planet for wildlife, fisheries, oceans, forests, fresh water supply, air quality, coastal living, food production and transportation, to name some of the basics.

We have new information regarding potential effects of greenhouse gas emissions on climate, as well as uncertainties being described about energy security and the need for conversion to “renewables” in our state and nation-wide. The DEIR presents and reviews an alleged “Plan” meant to serve Benicia over the next twenty-five years and beyond, but it doesn’t have a section on climate change or energy consumption/conservation, despite widely available reports on the “global warming” phenomenon and its potentially far-reaching local and regional consequences for water supply, biological resources, wildlife habitat and food production. For example, along the Suisun Marsh shoreline, Benicia could potentially suffer significant losses of wetlands if there is a sea level rise of between 1 and 3 feet before the end of this century, as reported recently in the Contra Costa Times and San Francisco Chronicle, with both newspapers offering maps showing areas of predicted inundation in the Bay Area, including in Benicia, along our eastern marsh, where Valero Refinery’s wastewater ponds are located. Where will we put a public transit hub now? The DEIR does not address the real problem of retooling a city to address the challenges posed by projected sky-rocketing costs of fossil fuels, including natural gas. The need to develop local energy security and conservation programs is of paramount concern.

As it stands, the DEIR fails as either a planning tool or an environmental review. It appears that the “proposed project” would be designed like a suburban residential tract development, complete with cul-de-sacs hooked into one main boulevard linking them (Boulevard “A”). To accomplish this, the project proposed would excavate 9 million cubic yards of soil, destroying wildlife habitat and covering over wetlands, creekbeds and natural seeps. The Alternative Projects described are not characterized sufficiently to know how they would appear nor to understand what seem to be arbitrary “areas” marked “industrial” and “commercial”.

Obviously, it would be highly desirable to fulfill General Plan goals and policies to protect the environment and natural topography while supporting suitable, economically and socially beneficial development that would actually contribute to local and regional “quality of life”, even accounting for the tremendous uncertainties posed by climate change, energy disruption and resource depletion. But should we expect that a car-centered, suburban design layout with cul-de-sacs on flattened mesas answer any immediate call for this kind of “business development” in Benicia? And what about future needs? The DEIR does not and cannot sufficiently address cumulative and significant impacts because it lacks adequate supporting documentation to claim that the suggested economic benefits of the proposed

“Plan” would outweigh the sum total of potentially significant environmental cumulative impacts (“Biological Resources”, “Hydrology”, “Air Quality”, “Transportation and Circulation”, “Visual Resources” and “Urban Decay”).

The DEIR’s vague characterization of the Plan itself and its “project alternatives” does not offer a reasonable person the possibility of understanding the Plan as guidance for the WHOLE of the project, neither as a “master plan” or as a description of an aggregate of development projects. There is simply not enough information to fully characterize the proposed “phased development” strategy during the twenty-five year time-frame of its implementation, or the resultant development’s sustainability during the development phases and beyond so-called “buildout”.

It’s impossible from the DEIR’s scant visual simulations to know how maximal development of the project site is intended to look after 25 years. There is little or no discussion of the potential cumulative significant impacts of extending the industrial park westward, linking it to Lake Herman Road, with respect to the nearby Water’s End and Southampton Hills residential areas.

Indeed, my first obvious clue to determining “what’s wrong” with the “Plan” as presented in the DEIR should have been my wondering at the complete absence in the DEIR of any discussion of Opticos Design, Inc’s “Lower Arsenal Mixed Use Specific Plan” (“LAMUSP”), an independent planning document which was legally required to be created (since the Arsenal property encompassed ~50 acres) and ordinances to define and characterize “mixed use” had not been established. In fact, economic analysis such as provided in the LAMUSP by an economist subcontracted by Opticos Designs Inc. is nowhere referenced in the Seeno DEIR, with respect to the assumptions about viability of a conference center and other office buildings as part of the Business Park’s “tenant mix”; YET, the LAMUSP’s economic analysis supports the Specific Plan’s conception of creating a “destination campus” for conferences, business meetings and special events on the Jefferson Ridge, with six new 3.5 story buildings proposed. How can both a conference center suggested as viable for the Seeno property and one at the Jefferson Ridge property both be feasibly supported—year in, year out—given the size and location of Benicia and given the competition with other communities’ facilities within a 30 mile range?

To further illuminate the confusion about what the DEIR claims constitutes a “master plan” with what the Arsenal Specific Plan represents, by its method of formulation: The LAMUSP is an evolving product of a planning effort officially begun in August, 2006. It represents a consensus-building public participation process that offered extended opportunities for direct conversation and interaction with Opticos urban planners, designers, architect, economic analyst, and draftsmen. A “form-base code” was adopted for determining the general appearance not only of individual building types but of streetscapes, roadways and landscaping patterns. Public involvement helped give shape to development options and also alternative “options”. This arsenal planning process is still on-going: In February 2007, the LAMUSP was available to the public for review and comment; the document was formally presented for public hearings held by commissions and city council. Right now, the public awaits the preparation of an environmental report on the LAMUSP, with distribution of the EIR and public review slated for this summer.

The DEIR does make clear that there is precedent for considering economic impacts of potential “urban decay” to occur as a result of a project’s implementation. However, if the “proposed project” is actually a “master plan”, then economic analysis done for the prominent area in the lower Arsenal where mixed use incorporates light industrial as well as commercial enterprises, should be fully considered in the DEIR. For example, the DEIR should explain the potential for a glut of office space vacancies, should both the Seeno site and the lower Arsenal become developed according to their respective “plans”.

What speculative economics is presented in Chapter IV., Urban Decay does not constitute sufficient analysis: What would be the potentially significant cumulative impacts to the City of Benicia and the community of a foreseeable, chronic economic down-turn affecting commerce at the Business Park itself over the course of the development “phases”, and beyond buildout, including impacts to residential property values in the vicinity of the project site itself? What about potential for growth in crime? The costs of crime to the City and community? The separate economic report, submitted to the City in 2006, entitled “Economic Impact Analysis of the Proposed Benicia Business Park” should be included in the DEIR in a separate appendix, for ease of reference. The data described in Table IV. N-1 “Existing Retail Sales and Leakage- (2005)” and N-2 “Supportable Square Feet of Retail Development” are used to demonstrate support for the premise that *maximum* development of the project site can be expected, and that maximum development of the site is both optimal and sustainable despite claims made elsewhere in the DEIR that the Benicia Business Park is primarily intended to serve “the local business community”. This is of enormous concern, considering that the proposed project, said to be a “master plan”, is meant to account for the life of the project as a WHOLE, during the 25 year phased development, and the future beyond buildout, e.g., beyond 2031. There is no discussion that the lease governing use by Amports PLC of the City of Benicia’s wharf will be expiring in 2032, thus opening the possibility of the City deriving revenues at last from its port property.

If it is to be as accurate as possible as a forecasting tool in a fast-changing world, with new uncertainties added to public concern everyday about developing energy crisis and climate change, a more thorough and honest economic analysis would require support for statements and speculations suggesting the economic need for the proposed Office Park’s light industrial and commercial businesses suggested as suitable and viable. Such analysis would have to account for the foreseeable possibility of economic down-turn, which the DEIR doesn’t bother to entertain except in briefest summary: the possibility of urban decay occurring at the Office Park itself. What would be the effect on Benicia as a whole and to surrounding neighborhoods of chronic or cyclic vacancies at the “business park”, wherein undesirable tenants (such as the Auto Auction located off Park Road below our historic district) may be “invited in” to fill up empty warehouse buildings or office buildings? What about the suggestion for “truck servicing center” at I-680 and This possibility calls up potential cumulative impacts unaddressed by the DEIR, perhaps because under CEQA only “significant environmental impacts” are considered, not “economic impacts”. However, the DEIR claims to be reviewing a “Master Plan” which should be supported by an independent economic report. What could happen, with this “Plan”, ten years out from first grading activities or ten years past build-out, if the economy changes, as we might foresee, for instance, given fluctuating and rising energy costs? What if there is disruption to the energy grid? Or

supplies of fossil fuels? Costs to the City could be astronomical of such decay, including depressed housing prices in the vicinity of Waters' End and Southampton Hills neighborhoods which are nearest the project site.

At one time utilized as grazing land and pasture from the 1870's onward, the hilly northern property, with its remains of a dairy farm, borders Lake Herman Road—our General Plan-designated two-lane scenic rural route, along most of which our Urban Growth Boundary was established by citizen initiative to protect rural open space north of it. That initiative expires in 2023, within the 25 year time-frame of the proposed Plan's "development buildout". However vaguely the DEIR outlines the Plan, as described, its full implementation would certainly have cumulative and far-reaching negative environmental impacts, as the LSA preparers point out. Not the least, the widening of Lake Herman Rd. and the creation of an extension of Industrial Way to Lake Herman Road would bring more people, including "Business Park" employees, into the rural area on a daily basis, thus, for example, increasing needs for services and more park amenities at Lake Herman recreation area. According to estimates in the DEIR, there would be roughly ten to twelve thousand more daily vehicle trips per day expected along our "scenic route" just from the traffic to and from the office park development alone. It's not hard to imagine the growth-inducing pressures exerted by such cumulative impacts as the "Plan" would represent if fully built out, employing ~7,600 people: housing builders would eagerly, and perhaps more easily, pursue residential "sprawl" development of Sky Valley. As another example of the DEIR's failure to fully characterize the extent of growth-inducing factors: there's no mention of Solano Transportation Authority's characterization of Lake Herman Road as a connector or "feeder" to I-680 from Vallejo. According to STA projections stated at a public meeting I attended in Vallejo, (I can't recall the date, whether in 2005 or early '06)?, Lake Herman Road is expected to eventually be widened to four lanes. STA officials professed not to know that the Road was protected in our General Plan. Were STA officials ever consulted, at the time of the preparation of the first or second DEIR, about Seeno's plan to build an office park bordering Lake Herman Road? Also, the DEIR does not account for the fact that, last year, 400 new homes were permitted for the former Bordoni Ranch property now annexed to the City of Vallejo, just outside Benicia's western city limits. This development will increase pressures on Benicia's services, on parking at Southampton shopping center and add to traffic in and out of town, directed to commercial areas and parks.

The General Plan's land use designations for the Business Park project site, are "light industrial" and "commercial". The DEIR states that Discovery Builders' development application includes a Vesting Tentative Subdivision Map and a request for a "*Master plan overlay zoning district, including adjusting the commercial and industrial zoning designation to be consistent with the Master Plan.*" [DEIR p. 61 Project Background]. According to the City of Benicia, a Master Plan is required for developing sites of 40 acres or more.

The DEIR treats the "proposed project" as a "master plan" in a highly confusing manner, as I've tried to describe. For instance, it doesn't tell how the layout and configuration of lots was decided upon, nor the reasons for the particular numerical order of the parcels. Does the numbering have anything to do with when parcels are expected or desired to be sold or developed around certain cul-de-sacs? What does "phased development" mean with regard the distribution of lots, their sizes, and the division between

“light industrial” areas and the “commercial” area? If lots are intended to be sold off and independently developed, is it expected that there would be ONE developer who would sweep in and buy all the lots, then present a cohesive development application? How will the integrity of the WHOLE of the project as a “development project”, to be called “Benicia Business Park”, be ensured, if there is not more specific planning policy guidance that regards the particulars of the WHOLE project site? Are General Plan policies and planning staff, Planning Commission and Historic Preservation Review Commission evaluations of individual project applications to suffice to create a “whole, integrated project” encompassing 315 acres? I think not.

I will be submitting further comments by pdf file, to extend these general observations and with “specifics”, as I continue to type them out, from written comments I’ve logged filling two legal pads.

Sincerely,

Marilyn Bardet

MEMORANDUM

DATE: February 23, 2007

TO: Cindy Gnos, Contract Planner
City of Benicia
250 East L Street
Benicia, CA, 94510

REGARDING: Comments regarding *Benicia Business Park Draft EIR*, January 2007

FROM: Bob Berman
250 West K Street
Benicia, CA 94510
707-745-5845

MESSAGE:

Below are my comments regarding the *Benicia Business Park Draft EIR*, January 2007.

Page	Comment
69	The proposed project includes 35 acres with a General Commercial (CG) zoning designation. The DEIR states that uses in the commercial area may include all CG permitted uses. On page 345 in the discussion of the anticipated retail mix it states that "no big box retail establishments are anticipated". These statements contradict each other. Assuming that the statement on page 345 is correct please revise the project description to clearly state that no big box retail establishments are proposed or included in the proposed project.
111	<p>It is concluded that the proposed project would not induce substantial population growth (identified as a less-than-significant impact). The DEIR apparently comes to this conclusion because "the County's existing housing supply, combined with a limited supply of land zoned for residential uses, would ensure that the project would not induce substantial population growth due to job creation."</p> <p>There is, however, no evidence provided in the DEIR to come to this conclusion. What is the existing and future housing supply in Benicia? What is the existing and future housing supply in the rest of Solano County? What would typical wages be for the 7,680 new jobs? What would be the created demand for new housing as a result of the project? Based on the typical wages what housing prices would be required to meet the new demand? How many existing houses in the identified price ranges are currently for sale in Benicia and Solano County? Where will new housing in this price range be built to meet this demand?</p>
138	Impact HYDRO-1 is confusing. The impact states that the project could cause downstream flooding and therefore it is a significant impact. Although there is reference to a Technical Memorandum prepared by the project sponsor the impact does not provide any detailed information regarding the downstream flooding impact. Where will the downstream flooding occur? What creeks (Paddy Creek? Sulphur Springs Creek?) would be affected? The impact discusses "three strategies" that would be used to provide mitigation. Are these strategies a part of the proposed project? Where would the upstream detention basins be constructed? Where would the downstream detention basins

Page	Comment
	<p>be constructed? What are the environmental impacts of the construction of the upstream and downstream detention basins? Please provide the analysis that documents that the proposed Mitigation Measure HYDRO-1 would reduce downstream flooding to a less-than-significant level.</p>
194	<p>Impacts BIO-2 says the project would adversely affect wetlands, creek channels, and associated habitat. The impact discussion discusses compensatory mitigation plans prepared for the project and mitigation measure BIO-2b states that the project sponsor shall implement the wetland mitigation monitoring plan prepared by Sycamore Associates.</p> <p>In the project description Figure III-8 is titled "Wetland Mitigation and Riparian Restoration Areas". Does Figure III-8 represent the wetland mitigation plans and the Sycamore Associates wetland mitigation and monitoring plan?</p> <p>Please clarify what the applicant proposes in terms of wetland mitigation and please analyze what is proposed in terms of impacts to wetlands, creek channels, and associated habitat.</p>
220	<p>There is a discussion here of planned roadway improvements. Are all of these planned roadway improvements included in the analysis of Existing Plus Project Conditions and Cumulative Plus Project Conditions? Only roadway improvements that are approved, fully funded, and assured of full implementation should be included in the analysis of traffic impacts. Please describe the specific improvements number 2 through 5 listed as included in the Benicia General Plan and their funding. Also, in regard to the 2005 CMP Capital Improvement Program please describe the specific improvements in items 1, 2, and 3 and the funding to implement the improvements.</p> <p>Please analyze Existing Plus Project Conditions and Cumulative Plus Project Conditions only with future funded roadway improvements.</p>
236	<p>Table IV.G-13 provides a long list of required mitigation measures. Please describe the timing for each mitigation measure. Will each mitigation measure be required to be completed prior to the occupancy of the first building at the Benicia Business park? Please provide the similar timing for the other traffic mitigation measures (i.e. Tables IV.G-16, IV.G-19, IV.G-20, IV.G-21).</p>
249	<p>The mitigation measure for Impact TRANS-22 is to widen I-780, west of East 2nd Street to three lanes or provide an auxiliary lane for all or portions of I-780 between East 2nd Street and Columbus Parkway.</p> <p>Please describe the feasibility of this mitigation measure. Please describe the expected environmental impacts of this mitigation measure. Is adequate right-of-way available for this mitigation measure? What would the grading impacts be? Air quality and noise impacts? What is the timing of this mitigation measure?</p>
290	<p>The discussion of visual resource impacts inadequately discusses and illustrates the impacts of the proposed grading. According to the project description an estimated nine million cubic yards of soil would be excavated. Cuts would be up to 100 feet deep and fills would be 30 to 50 feet deep. Please provide additional descriptions of where the grading would occur. Provide graphic examples of the proposed grading so we can better understand what is being proposed. For example provide 1) topographic maps at a scale that can easily be read, 2) sections of the site that show "before" and "after" conditions and 3) visual simulations that show the proposed grading (i.e. without buildings) and at a scale that the viewer can easily understand and see the proposed grading. The photographs used for the visual simulations in the DEIR were taken at such a far distance</p>

Page	Comment
	<p>from the project site that it is difficult to visualize the impact of a 100 foot cut.</p> <p>The proposed mitigation for the immense amount of grading is to develop a landscaping plan that among other things protects views from public roadways. This is inadequate. Planting of trees may help to screen individual buildings but it will not mitigate nine million cubic yards of grading! What type and amount of landscaping will be required to mitigate the proposed fill resulting in embankments 16 to 40 feet high along East 2nd Street? Please describe additional mitigation measures that would mitigate the impact of the proposed grading. As a part of this please describe alternative grading concepts that could be used to reduce the amount of grading and the visual impacts.</p>
294	<p>Each of the visual simulations shows the proposed project with mature landscaping. Does "mature" mean one year, five years, 20 years after planting of the landscape material? It is unclear what the mature landscaping shown in the simulations is based on. The project description includes a brief discussion of open space and landscaping (page 70) and a mention of a landscape plan on page 79 but there appears to be no landscaping plan in the project description. Is there a landscaping plan? Was the landscaping plan relied on to prepare the simulations? Also, the simulations do not appear to include any signs (either attached to buildings or freestanding). Observations along East 2nd Street or Interstate 680 clearly show a significant number of highly visible signs. What is the proposed sign program for the Benicia Business Park and what will be the visual impacts of the signs?</p>
345	<p>In preparing the economic analysis assumptions were made regarding the retail mix at the project site. It appears that a retail mix that would be favorable to the project applicant and produce results favorable to the project was assumed. It states that "no big box retail establishments are anticipated". What is this assumption based on? What guarantees do we have that there will be no big box retail? The 35 acres of commercial land is zoned General Commercial (CG) and allows for a wide range of permitted uses. What would be the urban decay impact if the commercial area included major retail facilities that would draw both local and regional shoppers such as a Home Depot (with a garden center) and a Kohl's Department store?</p>
347	<p>The discussion of "local impacts" focuses on Downtown Benicia plus some discussion of other commercial areas. The argument, in part, seems to be that the type of commercial center for the Benicia Business Park would be substantially different than any existing retail centers. While I do not agree with this assumption I request that the analysis be expanded to include an analysis of the Benicia Arsenal Area. The City of Benicia is proceeding ahead with a Lower Arsenal Specific Plan. This specific plan is geared to attracting more of the same type of uses that are assumed for the Benicia Business Park commercial area. It appears that the Benicia Business Park could result in adverse economic effects in the arsenal leading directly to further urban decay and deterioration. Please include the Lower Arsenal area in the urban decay analysis.</p>
348	<p>There is a conclusion that the proposed project would not compromise the vitality of bed and breakfasts or similar hotels in Downtown Benicia. This appears to be based on the notion that the proposed hotel would capture the regional market for business-oriented lodging. For the existing bed and breakfasts plus hotels in Benicia (not just in Downtown) how much of their customer base is business-oriented? Why would not this customer base be diverted to the proposed hotel?</p>
349	<p>After giving assurances that there will be no urban decay impacts the DEIR provides a one sentence impact description (DECAY-1) that if the tenant mix of the project changes, the project could result in urban decay. Please provide additional discussion of this impact. If a Starbucks was included in the tenant mix would this result in an urban decay</p>

Page	Comment
	<p>impact? If a 100,000 square foot Home Depot was included in the tenant mix would this result in an urban decay impact?</p> <p>The mitigation measure states in part that "prior to issuance of an occupancy permit for the proposed project, the City shall review the anticipated tenant mix of the Business Park and determine whether the mix has substantially changed from the tenant mix analyzed in this EIR." Please explain how this mitigation measure would be implemented. What authority does the City of Benicia have to withhold issuance of an occupancy permit? Based on the City's recent experience with the location of several Starbucks in town it appears that the City does not have the authority to withhold the issuance of permits such as would be necessary to implement this mitigation measure.</p>
351	<p>Alternatives are required to be designed to avoid or substantially lessen any of the significant environmental impacts of the proposed project. In the description of the three build alternatives (Waterway Preservation, Hillside/Upland Preservation and Mixed-use Alternative) it is difficult to determine which specific project impacts are being addressed and what aspects of each alternative would avoid or substantially lessen the identified impacts. Please describe the specific aspects of each of the build alternatives that have been designed to reduce identified impacts. For example, the DEIR identifies several significant transportation impacts. Please describe an alternative that would avoid or substantially lessen the identified transportation impacts of the proposed project.</p>
	<p>The analysis of the alternatives relies too much on generalized qualitative factors. In order to have a meaningful evaluation of the alternatives there must be a quantified comparison of impacts. For example, there are several tables (see tables IV.G-12 and IV-G-13) that quantify transportation impacts for the proposed project. Similar tables need to be prepared for each alternative. Please quantify the impacts of each of the alternatives.</p>
371	<p>In the discussion of growth inducing impacts the DEIR credits several factors that would ensure that the project would not have growth inducing impacts. Among these are a regulatory process that discourages development on open lands, an Urban Growth Boundary, and the City's propensity for moderate to slow long-term growth. Please explain the city's regulatory process and propensity for moderate to slow long-term growth and how these can be guaranteed to ensure that there are no growth inducing impacts. Also, the City's Urban Growth Boundary expires in 2023. According to the project description the proposed project will be built out within 20 years. So, assuming a start up date of 2008 the Benicia Business Park would be built out around 2028 - or five years after the expiration of the Urban Growth Boundary. Please explain potential growth inducing impacts associated with the expiration of the Urban Growth Boundary in 2023.</p>
	<p>In 2007 no comment letter regarding the adequacy of a DEIR is complete without a comment regarding global warming. In light of the passage of AB 32 by the California legislature please discuss impacts of the proposed project relative to global warming. Assuming full build out of the proposed project what would be the estimated greenhouse gas emissions associated with the project? Please describe feasible and cost-effective greenhouse gas emission reduction measures that could be implemented as a part of the proposed project.</p>