

MEMORANDUM

DATE: September 5, 2007

TO: Damon Golubics, Senior Planner, City of Benicia
City of Benicia
250 East L Street
Benicia, Ca 94510

REGARDING: Lower Arsenal Mixed Use Specific Plan EIR, July 2007

FROM: Bob Berman
250 West K Street
Benicia, CA 94510
707-745-5845

MESSAGE:

Below are my comments regarding the *Lower Arsenal Mixed Use Specific Plan EIR*, July 2007

PROJECT DESCRIPTION

Exhibit III-1 provides square footage of land uses "after Buildout of Specific Plan". The project description needs to provide a discussion of how these square footage figures were developed. Also, it is not clear if these figures represent a projection by the land use planners and / or the EIR consultants of the expected future level of development or if it represents the total amount of development that could occur under the Lower Arsenal Mixed Use Specific Plan. CEQA requires that for general plans and specific plans that all allowable development must be analyzed in the DEIR. Nowhere in the DEIR is there a description of the total amount, type and location of residential and non-residential development that could occur under the Lower Arsenal Mixed Use Specific Plan. This is an omission that must be addressed.

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HAZARDS AND HAZARDOUS MATERIALS

It appears that the setting section for Section E. hazards and hazardous materials is based solely on records searches and no site reconnaissance (see page 148). It is clear that development in the Arsenal area will require the cleanup of sites where hazardous substances have been previously used and / or released. The DEIR must conduct assessments of historical land uses to identify the specific sites that have been contaminated by past use of hazardous materials. Such additional analyses must be conducted now in order to identify those sites where additional assessments / soil sampling etc. will need to be conducted as part of a site-specific CEQA document. This additional survey work must be conducted now.

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MITIGATION MEASURES

In many instances the mitigation measures are general and do not provide specific, feasible actions that will actually improve adverse environmental conditions. Many of the mitigation measures include a future study and future actions that result in deferred mitigation measures. For example, impact AIR-2 says that future residents within the Lower Arsenal Specific Plan could be exposed to potentially high cancer risks from exposure to diesel emissions from the adjacent port operations.

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First it is unclear why impact AIR-2 is limited to “future residents” when the discussion on page 246 clearly indicates that the BAAQMD has determined that **any project** with the potential to expose sensitive receptors (including residential areas) or the general public to substantial levels of toxic contaminants would be deemed to have a significant impact. Given this statement why is the impact limited to future residents? Furthermore, given the seriousness of this issue a health risk assessment needs to be completed now to determine in which areas of the lower arsenal would residents, employees, and visitors be potentially exposed to substantial levels of toxic air contaminants. It is also not clear if diesel particulate matter is the only toxic air contaminant of concern or if they are other of concern.

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Furthermore Mitigation Measure AIR-2 does not meet CEQA’s standards for mitigation measures. The measure is nothing more than a future study without any assurance that it will actually be implemented. Furthermore, it is not clear if the mentioned “interior air filtration system” would be the only way to mitigate for the exposure to toxic air contaminants nor is there any evidence that such a system would actually be able to successfully mitigate the impact.

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Another example of inadequate mitigation measures are those included for Impact NOI-3. Both Mitigation Measure NOI-3a and NOI-3b state that project-specific acoustical studies shall be performed for various proposed projects. Measure NOI-3a says “the acoustical studies shall describe how the city’s exterior and interior performance standards ... will be achieved”. NOI-3b says “these studies shall include mitigation that would reduce these stationary noise impacts to comply with the City’s standard set forth in the City’s Municipal Code section 8.20.140”.

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These mitigation measures need to be revised to explain how the specific measure will be designated and implemented, identify performance standards to gauge the success of the mitigation and provide for contingent mitigation if monitoring reveals that the success standards are not satisfied.

In addition to the specific requests above, I request that all of the EIR’s mitigation measures be reviewed and revised to meet CEQA’s requirements.

CUMULATIVE IMPACTS

The discussion of cumulative impacts (beginning on page 349) states that this cumulative analysis uses the development assumptions in the City’s General Plan. The section does not, however, include a summary of development projections included in the City’s General Plan. Furthermore, the City’s General Plan was adopted in 1999 and development projections may be out of date. There is no evidence that the development projections included in the City’s General Plan are accurate, up-to-date and represent an accurate description of cumulative development assumptions. CEQA requires not just a list of past, present, and probable future project **or** a summary of projections in an adopted planning document **but a combination of the two approaches.**

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Please review and update the cumulative analysis by providing a list of past, present, and probable future projects, including projects outside the control of the City of Benicia (especially projects not anticipated in 1999) and combine with the projections in the City’s General Plan for an accurate discussion of cumulative development. Are there any current development projects in the Arsenal area that are included in the cumulative analysis?

I would like to know how the proposed Benicia Business Park project was considered in the cumulative analysis. There is no evidence that this project was considered. Furthermore, it appears that there are inconsistencies between the cumulative analysis in the *Lower Arsenal Mixed Use Specific Plan DEIR* and the *January 2007 Benicia Business Park DEIR*.

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For example, Table IV.G-18 in the Benicia Business Park DEIR shows Cumulative Plus Project Conditions Freeway Level of Service by Segment. In this table westbound I-780, west of East 2nd Street shows a future PM volume of 4,527 with a LOS of F. A significant impact.

Table IV.G-21 in the Arsenal EIR shows Cumulative Plus Project Conditions Freeway Level of Service by Segment. Here westbound I-780 west of East 5th Street shows a future PM volume of 3,230 with a LOS of D. Not identified as a significant impact.

I realize that the two segments are not exactly the same but they are similar and the differences seem significant. I do not think it is likely that nearly 1,300 westbound vehicles exited at East 5th Street. Please explain the differences in the cumulative analyses in the two EIRs, including the traffic analyses, and please redo the cumulative analysis in the Arsenal EIR consistent with the Benicia Business Park EIR.

REFERENCES

It is interesting to note that in the list of Persons Consulted During Report Preparation (pages 353 and 354) the only persons listed are seven City staff members. Given the serious issues of hazardous materials, air quality, transportation, etc. it is difficult to understand how this DEIR could be prepared without contact with staff of various state and Federal agencies, such as the California Department of Transportation, Bay Area Air Quality Management District, State Department of Toxic Substances Control, and the U.S. Environmental Protection Agency.

Please make contact with staff of the various county, state, and Federal agencies with an interest in this project and document the consultation.

USE OF EIR

Please confirm that the use of this program EIR is limited to identifying the general effects of the Arsenal Specific Plan, as stated on page 1, and that individual development projects will receive project-specific specific environmental evaluation. On page 62 it is indicated that this program EIR will only be used in the city's consideration for three specific actions related to the Arsenal Specific Plan.

Because future development projects will clearly be proposed in the Arsenal area it would be helpful to further describe the process the City will implement to ensure that each project will receive the necessary project-specific environmental evaluation. I am concerned that future project proponents of residential projects will claim an exemption from CEQA since their individual project is consistent with the Arsenal Specific Plan or that proponents of other types of projects will seek to limit the analysis of environmental effects due to the preparation of this program EIR. Based on the statements on page 1 and 62 of the DEIR I do not believe that this is the City's intent but I request confirmation of that.

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COMMENTOR C3

Bob Berman

September 5, 2007

- C3-1: Refer to Response to Comment B1-6 for a description of how the maximum development envelope for the Plan Area was estimated. The maximum development envelope is the total amount of development that could be approved under the Draft Specific Plan and represents an inventory of existing land uses in the Plan Area plus new building square footage that would be developed as part of the Draft Specific Plan. As stated on page 2-6 of the Draft Specific Plan and page 44 of the Draft EIR, the Draft Specific Plan contemplates a net change in development of 215,050 square feet of development. The total type and amount of development proposed by the Draft Specific Plan and evaluated in the Draft EIR is listed in Table III-1 on page 44 of the Draft EIR. As described in Master Response #4, the mix of land uses anticipated for the purpose of the environmental review does not preclude other mixes of land uses from being developed in the Plan Area; however, different mixes must undergo preliminary analysis to determine whether they would result in impacts that exceed those identified in the Draft EIR. As the Draft Specific Plan presents a program for development in the Plan Area, it does not provide the exact type and location of residential and non-residential development to be located in the Plan Area.
- C3-2: Refer to Response to Comment E4-8.
- C3-3: Refer to Master Response #3 concerning deferral of mitigation measures. The Draft Specific Plan covers a large range of land uses and a large study area. Given these two factors, the most appropriate documentation of the potential health risk for a given site would be based on the proposed use of an individual site and potential emissions sources located in the vicinity of a particular site. The need for a project-specific evaluation of air quality concerns is particularly important because air quality conditions (including the constituents of air pollution) may change over time, and a health risk assessment conducted for the entire Plan Area may not account for air quality conditions in the Plan Area 5, 10, or 15 years from now. Therefore, Mitigation Measure AIR-2, which would require that any new residential development projects ensure that existing industrial uses would not expose new receptors to significant sources of emissions, is believed to be the most effective way of dealing with that potential impact. New development associated with the proposed project is not expected to include sources of toxic emissions. However, any potential new toxic sources would be subject to the BAAQMD's New Source Review requirements, including a prohibition on exposing sensitive receptors to toxic emissions resulting in a risk of 10 in a million or more. New Source Review requirements would require a health risk assessment independent of this Draft EIR. Diesel particulate matter (PM) exhaust poses the greatest cancer risk among all identified air toxics, as well as the area of highest public concern.

When comparing whole diesel exhaust to speciated diesel exhaust (e.g., polycyclic aromatic hydrocarbons, metals), potential cancer risk from inhalation exposure to whole diesel exhaust will outweigh the multi-pathway cancer risk from the speciated components. For this reason, there are few situations where an analysis of multipathway risk is necessary.

- C3-4: Refer to Master Response #3 concerning deferral of mitigation measures. Interior air filtration systems, such as upgraded heating, ventilation, and air conditioning (HVAC) systems, have been shown to reduce indoor particulates by more than 90 percent, and are considered the most effective measure to improve indoor air quality. As stated in Mitigation Measure AIR-2, any residential site determined to exceed the 10 in 1 million criterion would be required to reduce exposure levels to an acceptable level. The report would provide the analysis of the reduction achieved by the interior air filtration system to ensure that the health risk standard would be met. The commentator's question about whether an interior air filtration system "would be the only way to mitigate" for exposure to TACs reinforces the point that speculation today about TAC exposures and risks at some future date, when mitigation options may also have evolved, would not be as appropriate as a future study when an actual project is proposed.
- C3-5: Refer to Master Response #3 concerning deferral of mitigation measures and Response to Comment B1-8 regarding performance criteria for the noise mitigation measures referenced in the comment.
- C3-6: Given that the Draft EIR provides a program level of review, it is appropriate to use the broader assumptions provided in the General Plan (which are incorporated into the Draft EIR by reference). All current area projects are well within the development envelope that was anticipated for General Plan buildout. This maximum development envelope likely anticipates more development than would occur in Benicia during the actual buildout period, and thus encompasses past, existing and planned development projects. The assumptions regarding development in the Plan Area for use in the cumulative analysis are those assumptions used in the Draft EIR and summarized in Table III-1.
- C3-7: As stated on page 198 of the Draft EIR under Cumulative Conditions Traffic Volumes, "[i]ncluded in the Solano/Napa County travel demand model are all approved projects that can reasonably be expected to be in place by the year 2030, including the Benicia Business Park project." As such, the Cumulative and Cumulative Plus Project Conditions analyzed in the Draft EIR include additional traffic volumes associated with the Benicia Business Park project. The large increases in traffic volumes are most notable at intersections closer to the Business Park and at freeway segments most likely to carry a bulk of the Business Park traffic.
- Non-truck traffic traveling to and from the west is likely to use I-780 and East 2nd Street to reach the Business Park area. Benicia Business Park non-truck traffic is not expected to use the I-780 segment between East 2nd Street and East 5th Street.

That freeway segment – “I-780: West of East 5th Street” – was analyzed in the Draft EIR because it is the link where the proposed project would have the greatest effect on traffic operations. There is no inconsistency between this EIR and the certified Benicia Business Park EIR.

C3-8: Whereas in years past, direct personal or telephone contact with staff of regulatory agencies was required in order to obtain critical information, the advent of digital media and in particular the world wide web now allows the posting of enormous quantities of these materials and the compilation of such data by EIR authors without the need for direct contact with staff. Each of the potentially interested agencies cited in the comment (with the possible exception of U.S. Environmental Protection Agency) have been notified of the Draft Specific Plan and its EIR during the scoping process and at the time of the Draft EIR and recirculated sections. The California Department of Transportation submitted comments on the NOP and Draft EIR and the Department of Toxic Substances Control submitted comments on the Draft EIR.

In developing the analysis of transportation-related impacts, the most recent data available for each aspect of the analysis was sought. The most recent travel demand model from STA was obtained for cumulative traffic forecasting. The most recent info on Benicia Breeze from the City of Benicia’s website was obtained for transit discussions. The most recent pedestrian and bicycle information was obtained from the City of Benicia General Plan and from Solano County for pedestrian and bicycle discussions.

Additionally, as noted in the sources for each of the tables shown in the air quality section of the DEIR, the latest data from the California Air Resources Board, the Environmental Protection Agency and the BAAQMD were used for this analysis. LSA consulted with both the U.S. Army Corps of Engineers and the Department of Toxic Substances Control (DTSC) to update and revise Section IV.E, Hazards and Hazardous Materials, which was recirculated in April 2008.

Page 65 of the recirculated Section IV.E, Hazards and Hazardous Materials is revised to include the following references:

DTSC, 2007. Meeting between DTSC (Donn Diebert and Christine Parent), City of Benicia (Charlie Knox and Heather McLaughlin), and LSA Associates, Inc. (Dennis Brown). December 3.

U.S. Army Corps of Engineers, 2008. Meeting between U.S. Army Corps of Engineers (Mike Shields and Kathy Greene), Brown and Caldwell (Wendy Linck), City of Benicia (Charlie Knox and Heather McLaughlin), and LSA Associates, Inc. (Dennis Brown). January 9.

C3-9: Refer to Master Response #4 regarding the program-level nature of the Draft EIR and using the Draft EIR to evaluate specific development projects. Individual development projects would require project-specific environmental review, and

would not be exempt from CEQA review (unless they would be Categorically or Statutorily Exempt under CEQA and would not result in significant environmental effects). Individual development projects are not listed as a specific bullet point under “Uses of the EIR” on page 62 of the Draft EIR because additional environmental review would be required for such projects.

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September 6, 2007

COMMENTS ON
LOWER ARSENAL MIXED USE SPECIFIC PLAN (LAMUSP)
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)

Public Review Draft: December 22, 2006, prepared by LSA, July 2007

Submitted to:

Charlie Knox, Community Development Director
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cc

Christine Parent, Project Manager, DTSC, Cal-EPA — Benicia Arsenal F.U.D.S. Project
Don Diebert, Chief, Office of Military Facilities, DTSC, Cal-EPA
Bruce Handel, Project Manager, USACE— Benicia Arsenal F.U.D.S. Project
Heather McLaughlin, City Attorney, Benicia
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September 6, 2007

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COMMENTS ON
LOWER ARSENAL MIXED USE SPECIFIC PLAN (LAMUSP)
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)

Public Review Draft: December 22, 2006, prepared by LSA, July 2007

Dear Mr. Knox and Mr. Golubics,

Thank you for this opportunity to comment on the DEIR for the Lower Arsenal Mixed Use Specific Plan (“Plan”) for which the City of Benicia is serving as lead agent. At the August 9th public hearing at the Planning Commission, I read from my letter, (dated August 9th), which attempted to capture in summary comments my fundamental disagreement with the DEIR and my judgment that it is incomplete, inadequate and hopelessly flawed. Comments submitted in this letter will amplify and extend basic themes and concerns I’ve presented both verbally and in writing, on the substance of the LAMUSP itself and the DEIR.

As you may already understand, but for the record I will state again, my highly active involvement as a community member with each of four major environmental cleanup projects in Benicia from 1995 to the present, (Braitto Landfill, IT Class I Hazardous Facility Closure, Tourtelot Project (former Arsenal leased property) and the Arsenal F.U.D.S. investigation-to-date), accords my experience under CEQA as that of a “local expert” e.g., with legal “standing” for this review. (see attached bio pertinent to the following comments and future discussion).

My highly active involvement as a community member, 1995 - the present, continuously following four major environmental cleanup projects in Benicia from 1995 to the present— Braitto Landfill/Rose Drive Project, IT Class I Hazardous Facility Closure, Tourtelot Project (former Arsenal leased property), and the Benicia Arsenal F.U.D.S. Restoration Project (10 year, on-going)— accords my varied experience under CEQA as that of a local expert e.g., with legal standing for this DEIR review.

Over twelve years— which represent for me a period of unexpected education and apprenticeship under various project managers for Cal-EPA’s Department of Toxic Substances Control (DTSC) and Army Corps of Engineers, and also with Jody Sparks, an independent environmental consultant, hired by the City of Benicia, and CEO of Toxics Assessment Group—I gained considerable understanding of site investigation protocols and hazardous waste cleanups for residential properties and former military properties, under auspices of DTSC and the Army Corps. I know about the problems of assessing “safety” of properties suspected of contamination and military wastes and munitions, with regard to existing standards for cleanup of former military land for reuse, and for those formerly used defense properties slated for residential end-use. I am familiar with, and have commented on various kinds of investigation documents: preparation for

scope of work/site characterization, remedial investigation field studies and data analysis, preliminary endangerment assessments, health risk assessments, feasibility studies, remedial action plans and environmental impact reports.

As a result of my community oversight work on both the Tourtelot and Arsenal FUDS investigations, and because of my interest in history generally, I have spent considerable time reviewing the history and military record of the Benicia Arsenal since its earliest founding in 1847, and its expansion by President Lincoln, in 1862, as well as its enormous growth in activity during especially WWII. I therefore have great respect for the Arsenal's 117 years as significant contributor to national, state and city history. The distinction given by the National Trust for Historic Preservation (as well as the State Office of Historic Preservation) through designation of two historic "National Register Districts" within the lower Arsenal certainly helped convince me of the importance of the whole District's protection, for both economic and cultural reasons.

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GENERAL COMMENTS ON THE POOR QUALITY OF THE DEIR

I restate here comments I made in my first letter, dated August 9th letter, but extend and amplify them.

Despite my great hope for the public process that brought us to this juncture, I am highly disconcerted by the poor quality of the DEIR, which I read thoroughly. The haste with which it was evidently compiled and what could be ascribed to a lack of focused oversight of its preparation, may account for the DEIR's *gross and significant omissions*, basic errors, confusions of terms, incomplete and/or inaccurate project description (including errors and omissions in descriptions of alternative "options", with errors in at least one plan-view diagram), and flawed and inadequate analysis of potentially significant and cumulative impacts pertinent to land use planning, human health and safety (contaminaton/hazards), cultural resources, visual (aesthetic) resources, biological resources, air quality, traffic and circulation, hydrology and water quality, urban decay and cumulative impacts as well as compliance with the General Plan's overarching goal of "sustainability" with respect to future potential and cumulative negative consequences for our City from global warming and resource and energy depletion. I will cite examples of the major problems I have found with the DEIR that pertain to "the whole of the project vision" of the LAMUSP under CEQA.

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I consider the DEIR so fatally flawed as to require its immediate withdrawal for re-thinking, re-drafting and eventual re-circulation, for basic troubling reasons, which I will try to demonstrate below in specific comments and by examples. What *is* the rush? The City has invested an incredible sum to create the Arsenal Specific Plan and to get this far along in the process. Now's the time for second thought, serious re-appraisals and adjustments for sake of the Plan's feasibility.

* * *

SIGNIFICANT OMISSIONS — FUNDAMENTAL FATAL FLAWS
Relevant to EIR Scope, Project Description,
Impact Identification and Analysis, Mitigation Measures
Cumulative Analysis of Impacts and Project Alternatives

Neither the LAMUSP or the DEIR references nor offers any explanatory discussion of the Department of Defense’s now ten-year-long and continuing Benicia Arsenal Formerly Used Defense Site Restoration Project, (“Arsenal FUDS investigation”) led by the Army Corps of Engineers with oversight from Cal-EPA’s Department of Toxic Substances Control (DTSC).

Latest findings of, and information on the Arsenal FUDS investigation should have been part of the scoping preparation and research for both the LAMUSP and the DEIR, and such researched materials should have been summarized and published in the DEIR, with references to the “Archives Search Report—Findings—Benicia Arsenal Site No. J09CA075600, March 1994”, (which can be found in the Benicia Library along with shelves of documentation on both Tourtelot Project and the Arsenal FUDS Project. The FUDS investigation is Arsenal-wide, e.g., not limited to the lower Arsenal. The Tourtelot site was originally part of the Arsenal FUDS Project, as a leased property of the Arsenal, but since its prospective end use was single family residential (“highest and best use”) the investigation and cleanup for HTRW (hazardous, toxic, and/or radioactive waste) and remaining potential explosive ordnance (“OE”) finally had to be taken over by DTSC, wresting authority as lead agent from the City of Benicia. The Tourtelot investigation and cleanup ended up being privatized (corporate funded) and fast-tracked by Ford Motor’s Granite Management. The Tourtelot investigation on its separate, independent track began with Granite Management hiring its own private contractors in the early 90’s; lessons learned the hard way on Tourtelot’s cleanup are pertinent to any discussion of future development in the lower Arsenal, especially since two large, separate residential development projects are now being considered for city approval under the LAMUSP and DEIR. The cleanup of Tourtelot and the gradual restoration of private and public properties in the Arsenal Historic District over the life of a 25-year Specific Plan, can be seen to share certain basic problems and features, but they also represent many *differing challenges*. Raising fundamental questions *now* about these similarities and differences is essential to the viability of the LAMUSP as a planning and land use policy document. And, the accuracy of any analyses in the DEIR addressing potential health and safety impacts owing to envisioned or proposed development in the lower Arsenal is critically dependent on close understanding of past experience with Tourtelot, unsettled inter-agency controversy over the limits, extent (completeness) of site characterization, and the problem of the safety of properties contiguous or nearby any land slated for housing that is also required to be investigated. (See DTSC Chris Parent letters, dated March 27th and Sept. 6th, 2007)

The Arsenal FUDS investigation, whose first assessments and research preparations began as early as 1988, and officially got underway by 1997-98, is now stalled or held up, because of DoD funding constraints and controversy since 2005 (see below) but it is surely not over.

The seeming lack of current interest or awareness of the Arsenal FUDS investigation on the part of City officials might be owing to staff changes and turn-over since the Tourtelot cleanup was completed. But Planning Commissioner Bonnie Silveria, a native Benician as well as former employee of the Benicia Arsenal, and also a long-time employee of J.R. Schneider in the lower Arsenal, echoed my concern at the scoping session, citing recent Benicia history with toxic waste and military cleanups (Tourtelot investigation 1996 - 2003, and Braito Landfill cleanup project involving 100 homes on Rose Drive, 1991 - 1998.) .(To my knowledge, The RAB has not held a meeting since last year. I am also a founding member.)

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The FUDS investigation is highly pertinent to the DEIR's discussions of hazards especially in light of two proposals for substantial residential development in the lower Arsenal:

- both residential proposals were considered by Opticos in 2006, and,
- the DEIR's review of the Specific Plan is alleged by the City, (as I understand it) to stand as sufficient environmental review of both the Solano Housing Authority project and the Grant St. project, e.g., with significant and cumulative impacts identified. A total of 102 units of residential can be accommodated by the Specific Plan at maximum development, governed by Form Based Code zoning, (see further discussion below). The DEIR is highly confusing in this regard, pertinent to impact analysis.

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MISSING FROM PUBIC RECORD IN APPENDIX A, AND BY REFERENCE AND DISCUSSION IN DEIR —DTSC SCOPING LETTER OF MARCH 27, 2007

The scoping comments addressing the DEIR in the form of a letter dated March 27, 2007, from DTSC's Project Manager for the FUDS investigation, Office of Military Facilities, Christine Parent (see below), should have been incorporated in preparation and formulation of analyses in the DEIR, and copies of materials and maps from the Army Corps' archives, relevant current findings and the March 27th letter, should have been published in the Appendices. DTSC's March 27th letter should have been of utmost importance to the preparation of the DEIR. It should have been published in Appendix A, "Notice of Preparation and Scoping Letters and Comments", but it was not. Not only is the DTSC letter omitted from Appendix A, neither its existence or its content is referenced anywhere in the DEIR, including in Chapter VII, "Report Preparation".

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There are also, apropos this omission, other oversights: there is no reference to Cal-EPA Department of Toxic Substances Control in the entire DEIR! Nor in Chapter VII. Report Preparation, either in "Persons Consulted" or in "References". This means that neither Christine Parent or her boss, Don Diebert were contacted by the City or LSA for preliminary conversation, research of existing records, etc. The Army Corps of Engineers is also not mentioned in Chapter VII or anywhere else in the DEIR. The Army Corps, as lead agent on the FUDS investigation, is mentioned in the Chris Parent March 27th letter.

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Current information and findings of the FUDS investigation and DTSC's March 27th letter are crucial to evaluation of the the Plan's potentially significant impacts and prospects, with regard feasibility of implementation of the Plan, *AND* especially if family residential, now being proposed, (Solano Housing Authority for 80 units on the Jefferson Ridge and 22 single family row houses on 1+ acres along Grant

Street) is allowed as an end use now or as a future option, considering necessary protocols outlined by DTSC for determining preliminary dangers, risks and further site characterization with regard to human and ecological health and safety.

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The LAMUSP raises the issue of potential for hazards to public health and safety in Chapter 5, Financing and Implementation, Policy 2 page 5-28: “*Work to safeguard public health, safety and prosperity by providing and maintaining facilities that enable the community to live in harmony with sustainable practices and natural systems.*” This policy declaration is followed by relevant suggested “Actions” numbered 8 and 9: “*Require a soil and/or groundwater analysis prior to new development in areas where there has been prior hazardous materials use or storage, including unexploded ordnance and explosive waste. Monitor and identify potential areas of concern.*” AND “*Test and remediate sites known or suspected to have unexploded ordnance or a toxic history before development can occur.*” But the DEIR does not take up the discussion of ordnance removal protocols or any reference to explosive hazards at all.

It is still beyond me to understand how these omissions were overlooked by City staff, even given allowances for staff turnover since the Tourtelot investigation and since the FUDS investigation has stalled. Implications of the FUDS investigation’s **inter-agency controversies** (see below) are simply too crucial to have been dismissed or overlooked. The content of the DTSC letter go to the central issue of impact analysis and the practical usefulness of the LAMUSP itself, *where cost of environmental remediation work is a major factor in planning a 25-year development vision*, especially when construction costs are estimated to rise steeply, anywhere from between about 2.5% per year (2004 estimate, during time new police station was proposed to be built) and between 6% - 12% per year between 2006 and 2009. (estimate by independent consultant for Valero Refinery, regarding proposed construction of a wastewater retreatment system called “PURE” for supplying clean water for the planned new sulfur scrubber for the refinery’s main stack. Valero found that the construction costs for the system were going to be so steep as to be unacceptable, and this fact pushed them to find a technical alternative, a “waterless” method of scrubbing sulfur, to eliminate a need for excess water and the cost of retreated water, if costs of construction of the system were factored into the total project costs and benefits. Valero’s example is a pretty good one, if we are to understand the actual costs of implementing the LAMUSP.)

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Case in point: Mitigation Measures, HAZ1a and HAZ1b: They are the ONLY mitigations proposed to deal with, e.g. to help reduce and if possible avoid significant and potential negative impacts to human health and safety and ecological resources from known or suspected toxic, dangerous ground level or subsurface conditions. The DEIR doesn’t discuss except in vaguest terms what these might be. The mitigation measures cite visual inspection as one method of apprehending potential contamination, and their descriptions presume that preliminary excavation work is *about to begin or is already in progress* at the time of such inspection of such things as ground “staining”. First, these are “phantom paper” mitigations: there are no actual “plans” existent prepared for submission as part of the DEIR, which is unacceptable under CEQA, since mitigation measures are meant to ensure implementation and monitoring to protect human health and safety and ecological protection of resources. Secondly, underlying the assumption of both mitigation measures is that approval for development has already been granted, with necessary permits for grading, and excavation for infrastructure. HAZ-1a vaguely, and rather glibly addresses “hazards” that may be encountered: “underground storage tanks, abandoned drums, or other hazardous materials or other wastes” (DEIR, page

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11) but doesn't mention or articulate "military wastes" which include,—according to the Arsenal Archives Search Report of 1994, the basic research document for the Arsenal FUDS investigation—"explosive ordnance" ("OE") and/or "Hazardous, Toxic and/or Radioactive Wastes"(HTRW). It is a heresy to assume, given findings from the FUDS investigation-to-date that development can be approved without *a priori* site inspections for hazardous and potential endangerment and soil testing, at the very least, according to DTSC's letters of March 27 and Sept. 6th, which the mitigation measures FAIL TO REFERENCE. Mitigation Measure HAZ1-b deals with intrusions and digging around pipelines, sewer and waterlines and on site "controls" during the period of excavation or soil removal. This is certainly not an adequate mitigation for all the reasons above. These mitigation measures could be useful if applied to my backyard, but not on former military properties that remain incompletely characterized for OE and Non-OE military wastes.

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In fact, HAZ-1a and HAZ-1b are the "red-herrings" that show up the complete lack of evaluation of military hazards available to the public for assessing the true scope of implementation of the LAMUSP at maximum development presumed allowable by the Proposed Project as described in the DEIR and the significant impacts of implementation of the Specific Plan as a whole.

Apparently, the City did not, as lead agent, reflect upon historical precedents set by the Tourtelot project in attempting to understand the implications of DTSC's March 27th letter, to at least realistically assess the City's own liability exposure. No personal contact with either USACE or DTSC project managers was made in preparation of the DEIR by either the City or DEIR preparers, LSA—at least none was reported in the DEIR, (Chapter VII). There is no reference to contact made with DTSC's Project Manager, Christine Parent or Don Diebert, chief of the Office of Military Facilities, (Chris Parent's immediate supervisor), nor the Army Corps of Engineers Project Manager, Bruce Handel. Community members who have familiarity with the FUDS investigation could have been contacted for basic introduction to the subject, if staff members were unfamiliar. In 1999, a citizens' initiative created a Restoration Advisory Board, which held meetings in Benicia for community members' education, between 2000 and 2005. Various founding members of the Arsenal RAB have included Arsenal stakeholders and community members including: myself, city councilmember Bill Whitney, current planning commissioners Bonnie Silveria and Richard Bortolazzo (also Arsenal property owner), Nancy Pagan (for Amports), Dale Cross (for Valero, during that time period), Bob Whitehead (Arsenal property owner), Rick Ernst, John Ash, Stephen Piatek, then councilmember Dan Smith, Linda Lindgren and Peter Baker. An official three-ring binder full of information, the same as provided by the Army Corps for RAB members, would still be in the possession of the city attorney. I have consulted mine, to write some of these comments.

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For my part, since August 2006, I've tried repeatedly to convey my urgent concern: that it was essential to recognize the Arsenal FUDS investigation and for decisionmakers, staff and key Arsenal stakeholders interested in developing residential projects to speak with the Army Corps and the Department of Toxic Substances Control to better understand restrictions and protocols involved in planning for reuse of former military properties, especially for residential reuse—and, as the Tourtelot investigation demonstrated, to understand the problem of uncharacterized sites in the immediate vicinity of lands proposed for residential. I met several times with city planning staff and interviewed with the Opticos team *before* the Opticos charrettes

had begun, and then subsequently, I spoke about the FUDS investigation and DTSC in various workshops, private meetings and in informal conversaton as well as at planning commission and council hearings on the LAMUSP. (I have had varied conversations with key Arsenal stakeholders, including Mark Hajjar, Kathleen Olson, Reed Robbins, Valero, Amports and Andrew Allen), I feel I've endlessly repeated, politely but firmly, my urgent message, based on my 7 years reviewing documents and attending pubic "community advisory group" meetings for the Tourtelot investigation as well as participating on the Arsenal Restoration Advisory Board since its formation in the late 1990's, that both the Army Corps of Engineers and Cal-EPA's Department of Toxic Substances Control (DTSC) should be contacted directly for "background info" on the FUDS investigation, for the formation and review of the Arsenal Specific Plan itself as well as for preparation of the DEIR.

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Don Diebert supervised the Tourtelot investigation and cleanup. It's relevant to remember here: *the Department took over lead agency responsibility from USACE on this project for the primary reason that highest, most conservative standards for military site cleanup had yet to be finally established, and given the fact that the site was zoned and planned for residential development, but also, because of the fact that DoD will not fund (highly expensive) cleanups of former military sites for residential reuse under the restricted mandate of the Defense Environmental Restoration Program, (DERP) established and funded in 1986* (with little understanding then of the prospect of astronomic escalating future costs associated to the growing number of closing, formerly leased properties and bases: the number of FUDS that would turn up, nation-wide, like Tourtelot and the Benicia Arsenal needing cleanup). Many of these would be bought up by development interests, many interested in housing developement. Those of us who weathered the Tourtelot investigation understand the predicament. At the time of the Tourtelot project, there had been little or no previous experience by DTSC in ordnance removal activities and remediation *for preparation of residential development*. This may explain the continuing caution and conservative approach to FUDS cleanups that DTSC has adopted, which is proving to be the case in the Arsenal FUDS investigation. However, it should be noted that DTSC's project manager had no idea that housing developments were being considered (again) for the lower Arsenal until I spoke with Ms. Parent last year. (In 2001, citizen actions prevented a housing project from being developed, before DTSC would have probably had to rule that further testing was called for on contiguous properties...)

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Factoring all of the above, I believe DTSC's March 27th letter offered a polite but firm warning that goes to the heart of the question of the Plan's "feasibility", especially since residential reuse of properties is envisioned, and since the Plan would govern reuse of former military properties that were highly utilized, (from the Civil War to the Korean War). According to DTSC, many of these properties remain uncharacterized for hazards and toxics. Cal-EPA would also be concerned about the properties' condition,, whether or not suspected explosive hazards or toxic contamination of soil or ground water had been caused by former military activities or subsequent uses.

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Neither the LAMUSP or the DEIR can be said to be accurate, if what matters is an accurate-as-possible accounting of current environmental conditions in the lower Arsenal with full respect given to the meaning of "unknowns" and "uncertainties". The City of Benicia, as lead agent on the DEIR, should care about giving the benefit of doubt to the community, on the side of human and ecological health and safety: This should be

the first responsibility of the City to its residents. “Uncertainties”, which are considered by DTSC to be potentially significant risks of incompletely characterized sites, could be exposed during any phase of the the Specific Plan’s implementation. Proposals for a total of 102 housing units are now under review with this DEIR—a FACT, *despite the confusion the DEIR spins about the total number of units that would conceivably be accommodated by the Proposed Plan, whether “by special permit” with Option 2 or outright, with Option 3*; the City’s letter of Notice of Preparation signed by the community development director—the notice presented at the very beginning of the DEIR—states that (only) 22 units of residential are proposed, whereas, a maximum of 80 condo units have been proposed by Solano Housing Authority with a development option on 7.5 privately owned on the Jefferson Ridge, within the boundaries of National Register Historic District C; and whereas, these 80 units must be added to the 22 single family row houses proposed for Grant Street. Thus, a grand total of 102 residential units are proposed—a total number which does not appear anywhere in the DEIR (at least I could not find it—see further comments). As a result of the confusion about the maximum number of housing units that the Plan could accommodate and the omission of the DTSC letter, as well as basic findings-to-date of the FUDS investigation, the DEIR obscures understanding of how much residential would be possible at maximum development under the Specific Plan, and also therefore most probably underestimates the degree of possible risk to human health and safety of incompletely or inadequately characterized former military properties in the lower Arsenal.

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In fact, vague environmental assumptions about existing conditions coupled with rather rosy, market research forecastings found in the LAMUSP, Chapter 6, Appendix B, “Market Conditions and Recommendations” (page 6-7) are not trustworthy, especially if key factors are omitted, e.g., if evaluations of the economic feasibility of implementing the Plan leave out pertinent data about actual estimated costs and timelines of military site remediation work., let alone, or coupled with, rising construction costs. The LAMUSP represents a highly ambitious 25-year development vision that must factor existing varied uses, existing conditions, as well as newly proposed development, including possible residential, in making its recommendations: the DEIR’s environmental evaluation, if “breadth and level of analysis” is to be deemed “sufficient”, must *absolutely demonstrate to the public the various findings and implications of the Army Corps’ and Cal-EPA’s understanding of the FUDS investigation*, which right now is stalled for financial reasons. *And*, to be completely current, the DEIR should explore the implications of the **as-yet-unresolved controversy** (disagreement) that has developed over the past years between the Army Corps and Cal-EPA regarding the extent and level of site characterization: where soil and water contamination and remaining ordnance could be suspected.

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According to DTSC’s Chris Parent, (with whom I’ve spoken on at least four occasions in the last year and a half), the **inter-agency controversy** pertains to disagreement about the scope of the investigation, the extent and completeness of characterization of former Arsenal properties, and, therefore, the potential risks to human health and safety still existent in the lower Arsenal from former military uses e.g., from soil, water and air contamination, as well as from potentially explosive remnant ordnance and ordnance fragments (“OE”). Privately-owned fenced areas, some which are known to contain former military landfill material or “dumps” in the vicinity, pose potential hazards especially to children (potential future residents) who could be tempted to climb fences attracted to a perceived public nuisance. Contiguous or nearby properties that are allegedly restricted and posted “off limits”, e.g., properties that are located within walking distance of land

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now being proposed for residential, could therefore pose risks to the health and safety of future “sensitive receptors” via soil-born or air-born exposure pathways. (This was an issue that had to be resolved during the Tourtelot cleanup, to best ensure the safety of future residents, especially children).

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To date, little remediation work has been accomplished, according to DTSC. The inter-agency **controversy** over the extent to which properties should be investigated and remediated also points to **another real sticking point** for the City of Benicia as well as other private stakeholders seeking to improve or develop their property: *how any and all required environmental remediation work will be paid for*—the economic bottom line. It is my understanding, from recent conversation with DTSC, that the Department of Defense expects property owners to pay for remediation work up front, especially in the case where it cannot be proved that suspected contamination was caused by former military uses. Reimbursement for work privately contracted — investigation and remediation of contamination known to have been caused by military uses — can be applied for to DoD. (The privatized Tourtelot investigation and cleanup is grand example: Granite Management/Ford Motor paid ~\$14 million to remediate 190 acres for development of “Water’s End”; the potential sale of 400 homes was expected to more than pay for clean up costs and produce significant profit, *and*, Ford Motor—with its corporate clout—could expect partial reimbursement from DoD. But with the lower Arsenal—a compact area with properties divided among a number of very large and small stakeholders—the up front costs for private work contracted to expedite cleanup would have to be factored into any cost/benefit assessment of reuse development projects. This is no small economic impediment and goes to the heart of the Specific Plan’s assumptions.

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Also, it is my understanding that for the Plan to be certified by the state, the City of Benicia must agree to implement certain basic infrastructure upgrades. However, making such improvements requires digging, excavation and often soil removal — (for example: in the case of repair or construction of new city-owned roads, storm drains, sewer and water lines, Grant Street stairs and overpass, and landscape or parking lot creation or improvements around the grounds of the Clocktower and Commanding Officer’s Residence)—and therefore would be considered by DTSC an “intrusion”, potentially exposing construction crews and those working and living in the lower Arsenal to air-born contaminated dusts and soils; also, remnants or fragments of ordnance or live explosives could be suspected and uncovered. Such work, therefore, might require timely and costly environmental review, including a “Preliminary Endangerment Assessment” (PEA) under terms specified by DTSC (see DTSC, Chris Parent letters, dated March 27th and September 4th, 2007). Presumably, given our experience with the Tourtelot remediation work, extra requirements or restrictions would apply in the *entire* lower Arsenal *if residential zoning were to be approved.*

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I would assume that if the City still entertains the idea of approving residential use in the lower Arsenal after review of this DEIR and after studying the ramifications of the DTSC letters, then the requirements for remediation of properties could only increase at DTSC’s direction: the City of Benicia cannot risk the liability exposure of holding two standards for remediation of two separate former military sites for residential use.

Also, it appears at this writing, that all further investigation of the Arsenal is completely dependent not only on the willing cooperation of current private property owners in the Arsenal, but also *their willingness to*

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bear considerable costs for investigation and remediation, if and when deemed necessary.

What do these revelations, which should have been known to the City, (and new city staff, at least in 2006), spell for future development in the Arsenal? This is a question that should have been researched and analysed as part of the economic analysis prepared for the Specific Plan, and certainly within the context of the DEIR's assumed approach to site remediation in the case of maximum development that includes family residential. ("senior housing" and "row houses" included).

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THE CASE AGAINST PERMITTING RESIDENTIAL IN THE LOWER ARSENAL—NOT DISCUSSED OR EVALUATED IN THE DEIR WITH RELEVANT INFORMATION

I have read DTSC's second letter with comments on the DEIR, dated Sept. 4th, addressed to our City Attorney. The DEIR should give serious consideration to this and any subsequent comments from DTSC in light of the assumption expressed in the LAMUSP that the City will have ultimate authority to permit residential—*other than work/live*—in the lower Arsenal "by permit" on the Jefferson Ridge and outright on Grant St. if the DEIR were to be approved and the alternative "superior" project be adopted.

The DEIR should discuss, with reference to the FUDS investigation, the Plan's acknowledgement that uses of buildings can change over time, and that the City of Benicia could potentially allow residential by permit, as suggested in the LAMUSP's "Market Conditions and Recommendations", Appendix B, "Key Findings" "*Residential uses will not conform with the character of the Arsenal, but could likely be built anyway given the present strong demand for residential development in the region. It is up to the City to decide whether residential uses will be allowed in the Arsenal.*"

Immediately following, the "Key Findings" section in the LAMUSP, Appendix B, there is the section "Land Use Policy Recommendations" wherein it is again stated that the City will determine whether to permit residential, other than work/live or "non-conventional" residential in the lower Arsenal areas north of Adams Street (Jefferson Ridge) or in the Adams-Grant Area. The point being made in this particular case is that that there could be compatibility problems arising between residential and other existing uses. This is a point that is not sufficiently addressed by Form Based Code, which privileges "appearance of form" over "ultimate use". In fact, Form Based Code in the lower Arsenal can disguise the problem, since an "end use" is not prescribed. "Compatibility of uses" is a question that is quite confused by discussion in the DEIR, especially in discussion of OPTION 3 (see Reed Robbins letter, DEIR comments) in relation to impacts to commercial businesses of allowing housing distributed on the Jefferson Ridge and becoming the predominant "use". Protections for the integrity and future commercial uses of the National Register Historic Districts C and D are at stake, both from an aesthetic view point, but also, because the character of the Ridge area, as a 19th c landscape setting will be thoroughly compromised by the addition of residential, with either 9 or 15 new buildings (depending on which option would be accepted) requiring 6 or 7 new roads.

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My main point is to show how the LAMUSP gives unqualified acknowledgement that the City retains full authority to determine whether residential will be allowed in the Lower Arsenal without mentioning the FUDS investigation, and DTSC's protocols for military site cleanups for residential end-use as a proverbial

“flag on the play” for housing development. For without DTSC’s approval on site characterization and remediation protocols for the cleanup of the lower Arsenal as a whole, there can be no “safety” for future residential use. The LAMUSP advises that appropriate state recommendations and guidelines for environmental clearance would have to be followed. This clearly falls short of the mark as an “advisory”. Remediation protocols certified by Cal-EPA for potentially affected lower Arsenal properties would have to be considered a condition of approval of residential use, other than for work/live in the lower Arsenal. Such a recommendation should require a Cal-EPA certification NOT ONLY for specific properties now considered for residential development on the Ridge and Grant Street, but for surrounding properties as well, since these areas may potentially contain contaminated soils, hazardous materials and even ordnance fragments, etc., from former military uses and would especially pose a health and safety risk to children and other sensitive receptors living in the immediate area.

The Plan urges commercial development on the Ridge for a “campus” that could promote compatible and integrated uses of the existing historic structures and new proposed buildings, to compose and promote “a center for heritage tourism”. The text goes on to explain: “*Should the City and property owners choose to pursue an historic entertainment for this area, residential uses should be limited as they conflict with the noisy evening operations of current and future entertainment venues and do not address the need to draw visitors by establishing a contiguous presence of entertainment, lodging or other commercial uses. If the City and property owners choose not to pursue this concept, the allowable land uses and design guidelines should be sensitive to the presence of uses in this area that are not compatible with conventional residential development due to potential noise and traffic conflicts. Non-conventional residential development built with sensitivity to neighboring issues, such as loft space accommodating residents who are aware and tolerant of weekend and evening events, may be an acceptable use in this situation.*”

The point here is that residential should not be considered permissible at all, *AT LEAST UNTIL* the lower Arsenal is deemed “cleared of hazards under a highest standard approved for residential” by Cal-EPA; thus, by standards set by precedent-setting experience of DTSC as lead agent, with oversight by the Army Corps of Engineers, in the course of designing and conducting the investigation and remediation of the 200 acre Tourtelot site for residential development in Benicia.

We cannot set conditions up in the DEIR or LAMUSP that allow two separate environmental standards to co-exist for residential development in Benicia on formerly used properties of the Benicia Arsenal. To do so would pose a significant liability exposure for the City of Benicia and State of California, as well as DoD. The greatest potential risk of allowing two different levels or standards for cleanup would be to future children living in the Arsenal. From phone conversations I’ve had with DTSC in the last year, I am aware of their obvious concern that residential is now proposed for the lower Arsenal.

Ms. Bonnie Silveria, current planning commissioner, former Arsenal employee, and employee of JR Schneider and Co. in the Arsenal, spoke up at the Planning Commission scoping hearing, referring to my comments and to long-held community concern about allowing residential development on or near contaminated sites, a “situation which we seek to avoid”, because, “we don’t want to ever have to go through that again.”(I quote Ms. Silveria from memory.) Ms. Silveria also served as a founding member of the Benicia Arsenal Restoration Advisory Board (RAB).

MY SCOPING COMMENTS, LETTER DATED APRIL 12, 2007, MISSING FROM DEIR, APPENDIX A, WITH MANY ISSUES LEFT UNADDRESSED. (MY SCOPING LETTER WAS ADDRESSED TO DAMON GOLUBICS, SENIOR PLANNER, CITY OF BENICIA, AND ADAM WEINSTEIN, SENIOR PLANNER, LSA ASSOCIATES, AND ALSO MAYOR MESSINA AND COUNCILMEMBERS)

Since discovering the omission of my scoping comments from the public record in the DEIR, I became increasingly alarmed, reading the document, to find that key concerns I requested to be discussed WERE NOT either mentioned or discussed in wider contexts. Since I outlined them verbally during the Planning Comm’s public scoping hearing, held April 12th, (when I read from the letter I’d written, which I gave a copy of to staff that evening, my comments should have been part of DEIR preparation. This letter was not published in Appendix A as part of the written record of letters received from the public on scoping. This is an unacceptable and serious oversight, especially since I read from my scoping letter at the PC hearing, which was recorded, such that I should expect to find my concerns carried into discussion in the DEIR, even if a hard copy of my letter was missing. I am especially concerned, *considering my commitment to the process throughout the Opticos design workshops, my many submissions and recommendations for the Plan and my participation in its review since August 2006.* I resubmit the April 12th scoping comments by attachment here (hard copy) to add to the one I submitted recently by email, within this review period, as was suggested I do by our planning director. When I first recognized the omission, I called Mr. Knox and was advised to re-submit my scoping comments “as part of my comments on the DEIR”; I was advised that the comments would then receive attention and “be responded to by LSA in their Response to Comments”. [Quotes are from memory]. This “mitigation” doesn’t comport with my understanding of the purpose of scoping comments or a scoping hearing, which should serve the process to develop the draft EIR and help determine its scope, e.g., the parameters of discussion and analysis and areas of specific public concern.

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Since many of my scoping comments were either not addressed or inadequately addressed in the DEIR, I must conclude that the DEIR is *en face* incomplete, if there is any meaning and value to the Planning Commission’s scoping hearing in which public comments were alleged to be recorded for purposes of defining the scope of the DEIR’s discussions.

For convenience, I will bullet the “key concerns and issues” listed in my scoping comments comprising my letter dated April 12th, below. They are:

- ...we should give highest priority to developing lasting protections for our cultural assets and promote their rehabilitation and reuse, with the caveat that there are existing guidelines and recommendations for preservation of the integrity and character of a National Register district.
- The EIR must identify the boundaries of the National Register districts and describe what is meant by “preservation of the integrity and character” of the districts. Reference should be made to content of two letters written to the City’s planning dept., in 2001, by Dr. Knox Mellon, the founder and then director of the State Office of Historic Preservation. In the letters, Dr. Mellon addressed a proposal for a housing development on the Jefferson Ridge, and its potentially devastating impacts on the “characer and integrity” of the “Officers’ Enclave”, or National Register Historic Subdistrict C. Dr. Mellon’s letters should be included in the EIR in the appendix, with other

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supporting material from the National Trust relevant to the present analysis of the proposal for development on the Jefferson Ridge, namely, construction of seven new buildings within 7.5 acres of privately held property on the Ridge, that are intended to accommodate commercial and/or residential uses.

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- The EIR must enumerate and discuss the relevance of all guidelines and recommendations existing to date (City of Benicia Arsenal Conservation Plan; Benicia General Plan; State Office of Historic Preservation guidelines; National Trust guidelines; Dr. Knox Mellon letters; Secretary of the Interior Standards) that would help ensure the protection of the integrity and character of the National Register historic districts, and how the two districts and their landscape settings— Subdistrict C “Officers’ Enclave” and Subdistrict D “Barrack’s Building”— can be enhanced and appreciated together.

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- The EIR must identify and describe each existing cultural resource and its current condition e.g., historic buildings and their surrounding landscape settings: thus, the character of remaining natural topography, accounting for changes that have occurred; existing trees on the Jefferson Ridge, to include historical photo record of tree plantings by the military; the history of uses of the “undeveloped area” located along Grant Street (the area now proposed for 22 single family houses), the current landscape character and condition; and the area around Tyler Street shops.

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- The EIR must account for all wildlife and biological resources in the Lower Arsenal and potential losses of habitat for each owing to planning vision proposed by LAMUSP and the various project alternatives.

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- The EIR must address cumulative losses of wildlife and biological resources, taking account of the proposed Seeno development whose twenty-five year time-frame for buildout is the same as given for the LAMUSP.

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- The EIR must address the problem of potential contamination as yet uncharacterized by the ongoing Arsenal F.U.D.S. investigation, a prolonged investigation for final cleanup of former Arsenal properties. This investigation is still in its first phases and is being led by the Army Corps of Engineers, with oversight by the Department of Toxic Substances Control (Cal-EPA).

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- The EIR must address the problem of port security and protection of humans from hazards associated to a refinery port operation, including petroleum coke train transport operation, trucking and pipelines.

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- The EIR must address the problem of allowing residential family housing in the Arsenal, considering the health and safety of children in a polluted environment. All sources of pollution must be catalogued and discussed for cumulative health impacts for sensitive receptors.

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- The EIR must address the problem of traffic circulation hazards especially related to children’s safety.

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- The EIR must evaluate how best to ensure that historic tourism can be viable, given the potential that residential uses (80 units now proposed) on the Jefferson Ridge may be allowed “by permit”. 30
- The EIR must evaluate the significance of the loss of potential revenue from the lower Arsenal and for “urban decay”, taking into consideration proposals for similar “conference center” and “office buildings” within the Seeno [Benicia Business Park] development. The analysis must comment on the Seeno EIR’s analysis. 31
- 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 alternatives to the project, including the “no development” alternative, to explore and determine an “environmentally superior alternative” that would best address concerns and impacts of the “proposed project” as it is analysed in the EIR. 32
- The proposed project represents a highly ambitious planning vision for revitalization of the Arsenal. However, it does not adequately represent a most protective regard for the historical buildings and how [historic] landscape settings will be protected and how the districts will best be enhanced for the sake of developing our heritage districts for regional tourism. 33

FURTHER COMMENTS:

Lack of Compatibility of Commercial and Residential Uses on the Jefferson Ridge and the problem of Form-Based Code:

The Plan suggests that residential could be allowed “by permit”, as I’ve discussed in previous comments. In fact, the preferred vision for the Ridge, (e.g., the “proposed project” vision put forward by Opticos), calls for 9 new buildings and six or seven new roads on the Ridge. Opticos stated that according to the theory of “form-based code”, buildings suggested might serve a number of purposes over time, so that future buildings should be designed to allow for such changes in use: given that Form-Based Code now is adopted to supplant zoning by use, outward “appearances” of buildings trump their “uses” and uses will be mostly determined by the suitability of a buildings fundamental design for a particular use. Opticos preferred to consider commercial uses for new buildings proposed for the Ridge, but also admitted that the suggested buildings’ design layout, scale, etc., could accommodate the 80 condo units, *if residential, as specifically proposed by Solano Housing Authority, is allowed by special permit.* (I was told this by Stephan, of Opticos, following one of the council workshops on the Plan). There are many impacts and ramifications of the Opticos vision for the Ridge given that Form-Based Code does not address compatibility of uses and thus mitigations for buffering uses. There is no mitigation that could protect the viability of existing events business at the Jefferson Street Mansion, which holds its wedding and other events outdoors almost 9 months of the year, each weekend, except the City’s noise ordinance as a restriction that would affectively kill the Jefferson Street Mansion enterprise, which pays for the continuing maintenance and

upkeep of the historic building. Envisioning a commercial “campus” with nine new buildings that could someday be converted to residential presents the same problem ultimately, since housing could be accepted by permit at some later date, according to the Specific Plan and because the new code as designed can’t address the problem.

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Grant Street proposal for housing:

The proposed Grant Street project for 22 single family detached row houses would be situated on 1+ acres, land which, to my knowledge, has not been evaluated under the FUDS investigation to date. This proposal ignores the actual conditions in the lower Arsenal, obscures the character of the lower Arsenal historic districts and especially interrupts the “connectivity of character” between National Register Historic District C and D.

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Concern for the health and safety of children: As stated in my August 9th letter, nowhere in the document does the word “children” or “children’s health and safety” appear as a special category of concern.

Proposals for housing developments must be appraised in ever-wider contexts; but fundamental problem is putting children in harm’s way, as public policy. Hazards and environmental concerns recognized by the FUDS investigation most probably will not be fully characterized or remediated; but risks are also posed by involving Amports and Valero port operations’ facilities and activities, as well as traffic. There is not one mention of the word “children” in the entire DEIR with respect to protection for “sensitive receptors” from unwelcome exposure to soil contamination and other pollution and safety hazards.

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When the FUDS investigation’s scope of work was being considered and reviewed, neither the Army Corps nor DTSC, nor anyone from the City, anticipated that single family residential development would be proposed for the lower Arsenal.

This fact is not discussed in the DEIR as a complicating issue for development in the midst of an on-going military site “restoration project”. Sequential cleanup, one property at a time, is not possible if housing is allowed. Tourtelot is the precedent-setting case. Had that prospect been seriously entertained at the outset, *such housing development proposals would have triggered a higher level of concern and urgency by risk managers at both Army Corps and DTSC.* We learned through the Tourtelot investigation that the Army Corps (DoD) holds ultimate liability for any injury or loss of life, owing to unexploded ordnance or any remnant “OE” found on former defense sites. But since the Army Corps is not mandated nor funded to remediate former defense sites for residential use, to cleanup a former military site for residential purposes has to be considered at highest levels of management at DTSC, Cal-EPA and finally, the Governor’s office.

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General Plan Oversight Committee intention toward housing in the Arsenal was limited to work/live for artists studio space.

In writing the General Plan, the General Plan Oversight Committee intended by consensus to limit “residential” to what, at the time, was called “artists’ live/work” but, with confusion in the DEIR over terms applied to various types of residential, it must be clearly stated that what the artists’ quarters represent is “work/live” with workspace predominant. Andrew Allen, the owner of 199 Tyler St building and the Jackson Street building east of Polk Street zoned Planned Development, recognized this need and designed

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the artists' studios accordingly, allotting roughly 35% of studio space for living area, and 65% for work area. This intended limit of the type of residential deemed appropriate to the lower Arsenal in the vicinity of the port was changed by the City Council: the word "residential" was adopted as a component of mixed use in a general sense, leaving open to question the health and safety concerns arising from this broad use of the term. The Council at that time also did not take up the problem of "compatibility" of family residential with regard buffering from industrial uses, traffic, safety for children, cumulative daily exposure to pollutants associated to port and industrial activities, etc. as well as the threat residential posed to surrounding commercial and industrial businesses.

It was understood that the artists' community (work/live studios) were a special case, since artists were like light industrial users involved with chemicals, solvents, etc and that further, the studios occupied land covered in asphalt, considered a barrier to exposure pathways. However, fumes had been identified by artists in the 940 Tyler building owned by Gordon Potter. This observation was investigated, and it turned out that there was a trichloroethylene plume (TCE—used for degreasing machinery parts) extending from the building beneath the asphalt leading to the Strait. (As I've discussed elsewhere). It was not determined whether this was the source of fumes coming from somewhere beneath the building. But the TCE problem was looked into further, and it was said by the Army Corps that natural bio-remediation, after all these years, was in effect dissolving and diluting the plume. I offer this as an example of the kind of discussion that went on with regard potential risks to those living and working in the lower Arsenal.

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The DEIR needs to demonstrate greater protection for the identity, integrity and character of the National Register Historic Districts than is offered by the Proposed Plan.

The environmental impacts these significant and invaluable cultural resources could suffer if maximum development of the Ridge is approved (Opticos Preferred Project) is unmitigatable: There is nothing that could bring back the 19th century feel of serenity found along Jefferson Street Ridge still today, *if maximum development of the Jefferson Ridge is pursued*. Imposing new roads ringing around the Lieutenant's Quarters and Commanding Officer's Residence is unacceptable intrusion and distinctly degrading of the landscape setting let alone, the increase in traffic, pollution, noise and general ugliness that inviting so many cars on the Ridge would represent. The LAMUSP's Proposed Project simply does not demonstrate understanding of what is meant by "preserving the character and integrity of the National Register Historic Districts". The DEIR does not reference the letters by Dr. Knox Mellon, the founding and former Director of the State Office of Historic Preservation for over 30 years, with regard to new construction in a National Register district and its affects on existing historic buildings and the surrounding landscape setting,. He actually visited Benicia and wrote letters about the preferred ratio of historic buildings to new construction—3:1—that would be best protective of the original integrity of the District and its historic appearance. What Opticos has envisioned for the Ridge swamps this ratio and doesn't even acknowledge the Mellon letters (in the public record since 2001's controversial gambit to build 18 faux mansions on the Ridge). The National Register Districts C & D, serving as senior and junior officers' quarters and administration headquarters and offices, were given national and state status by the National Trust for Historic Preservation, for their distinctly valuable features and resources that remain today intact, as presented in the 1993 Arsenal Conservation Plan, which show "sub-districts C & D" within the lower Arsenal of the City designated "Arsenal Historic District" to distinguish them without confusion. The LAMUSP.

39

Diagram for OPTION I, Figure V-I, page 337. DEIR, shows error: two new paved roads west of the Lieutenant's Quarters of 1860, (Jefferson Street Mansion) are represented in light grey. When we submitted ideas for a "no development" Option 1 and a "limited development" Option 1.5 for the Ridge, we did not consider new roads to be an asset to "enhance the National Register District C". We sought, in Option 1, to avoid construction of ANY new roads. Option 1.5 considered a new configuration of a road for access from Adams St, west of the Officers' Duplex. We even recommended eliminating the road directly west of the Lieutenant's Quarters, coming up from Adams St at sharp right angle. Our aim was to REDUCE traffic on the Ridge and therefore *reduce and keep to minimum, traffic noise from immediate surroundings, air pollution, and safety hazards for visitors*. Traffic impacts must be reduced by controlling circulation and leading vehicles to arking at the Clocktower parking area, as designed by Opticos. Traffic and pollution and noise from excess vehicle trips and the aesthetic devaluation of the historic "flagpole assembly area" documented in Solano County archives, in a print from 1878 that appears also in the Bruegmann book, should give sense to anyone considering "road building" in a Civil War era National Register district such as we are privileged to have as a City and community asset.

40

Traffic and circulation impacts:

Parking is seemingly left to the problem of individual developers of new construction. It is an absolute hideous thought to imagine the number of cars that developing 7 new roads on the Jefferson Ridge would bring, if all 9 new buildings were devoted to housing, for 80 units, and if 22 Grant Street row houses, accommodating twice that number of cars (residents and visitors) are accounted for. Nobody uses garages for cars anymore, or rarely. Most garages provided become "rooms", whether for storage or workshop. It's unrealistic to think that the Clocktower parking area can accommodate the number of cars of visitors plus excess for residential. Also, street parking is dangerous on Adams Street, where many trucks speed by on their way to the Port area and Bayshore Rd. The DEIR does not engage this discussion, and doesn't reference the SEENO BENICIA BUSINESS PARK DEVELOPMENT as a major factor in creating traffic nightmare for East Military and East Second Street. Traffic backup and general burden at the East Second and E. Military intersection has not been analysed by the Seeno DEIR. THIS IS A MAJOR FLAW that carries over to the Arsenal Specific Plan concept for traffic flow and also residential development and routine daily traffic on the East Side, trying to go north or west. (to freeway, to Safeway, to Raley's, to Semple School, etc etc.)

41

SEENO development impacts are not part of analysis of the LAMUSP DEIR. CUMULATIVE IMPACTS have not been analyzed.

It's obvious that if two large size commercial "campus like" developments are maximally built out, there will be the prospect that vacancies will occur because at some point in time, the market would not support such extensive development. I believe we have no accurate market research at this time that can give us a better idea of the "worst case scenario": if there is significant and chronic downturn in the economy, with energy prices and food prices continually rising, as some expert analysts warn of in the coming years, within the 25+-year development vision of the LAMUSP and within the 25 year time-frame of the Seeno phased office park and commercial development. We are crazy not to consider the possibility of "urban decay" in this context of incredible, yet nationally discussed potential for radical changes to our environment and economy owing to the twin crises we face: global oil shortages and global warming. The DEIR is a particularly rosy document, with blithe acceptance of the market research provided by the LAMUSP as basis

42

for analysis of impacts; but falsely optimistic assumptions are as suspect as catastrophically pessimistic ones when trying to objectively build scenarios that can contribute to analysis of impacts and coordination and comprehensive development for Benicia, considering the SEENO proposed project and the Opticos proposed project. To reduce cumulative impacts: both SEENO and the ARSENAL development plans should be REDUCED. In the case of the Arsenal, 102 units of housing should be eliminated from consideration and commercial “campus” should be composed of restored Commandant’s and Clocktower, with the possibility of ONE new building to serve private and public commercial interests compatible with heritage tourism, current and future commercial uses on the Ridge that would contribute to and enhance that prospect, and preservation of the 19th c character of National Register District C.

42
cont.

Problem of analyzing cumulative pollution impacts from the Port and Refinery to sensitive receptors and of ludicrous and dangerous ‘evacuation plan’:

I have spoken in my August 9th letter about the dangers that would obtain in the case of port area fire or earthquake when seismic shifting could cause liquefaction in the Polk, Tyler and Jackson Street areas, as the DEIR accounts for. The evacuation plan is in conflict with analysis of potential seismic impacts in a crucial area of the lower Arsenal. I refer you to my August 9th letter.

43

I have also learned much lately about the impact of ammonia in the presence of nitrogen oxides—both tailpipe emissions and ubiquitous where there is traffic. These chemicals form their own particulate matter, in fact of a very small kind—PM2.5. Health studies have determined that PM2.5 is carried straight into lung tissue and cannot be expelled. This means that there is cumulative air pollution impacts from diesel emissions from ship traffic in port and tailpipe emissions in the lower Arsenal from Amports car import enterprise that can accommodate upwards of 42,000 cars “parked” on Amports’ lots in Benicia, a big one being where ship offloading and car-trucking occurs—right across from the artists’ work/live studios. Amports admits that the artists’ community acts as a kind of buffer for other uses north of the port. But putting residential housing on Grant Street poses a significant danger to children and older adults who may be prone to asthma distress or similar respiratory problems. I will not recount here all of the information I’ve already presented in so many city hearings on the subject.

44

The analysis of air impacts in the DEIR is the same one provided by LSA for the Seeno Office Park project DEIR: the analysis is again fatally flawed, with ridiculous assumptions that can easily be refuted by calling Eric Stevenson, manager of the air monitoring division at the Bay Area Air Quality Management District or Doug Comeau, manager at Valero Benicia Refinery, or Communities for a Better Environment (non-profit), or the Bay Area or Solano County American Lung Association, or Dana Dean or Bob Craft who can vouch for all the work done by the Good Neighbor Steering Committee in 2003 to demonstrate that local ambient air quality is NOT quantifiable in a particular neighborhood, except where an air-monitoring program exists and where it is located. Currently, we are in the process of setting up an air-monitoring program to be fully operational within a week or two, with data available from new equipment located at the end of Tenys Drive, off west of East Second, in open space, across from the City’s corporation yard. Although this monitoring system will employ several types of monitors and “read” chemicals that are associated to refinery operations and the burning of hydrocarbons, including diesel, it must be assumed that it is unlikely that monitoring at this location will tell us anything about the port area/lower Arsenal ambient air conditions for people working and living there, unless there was a big fire, or other toxic release with off site plume that reaches detection levels at the Tenys Drive monitoring station. We of the Good Neighbor Steering Committee, in agreement with Valero, look forward to increasing our monitoring options and

45

extending monitoring to other vulnerable neighborhoods, including the Arsenal area south of I-780.

| **45
cont.**

All of my comments from the August 9th letter are hereby incorporated, and those of Dana Dean (Attorney for Amports), Bob Berman, Belinda Smith, Don Dean and Bob Craft and any other comments written by those who have given so much time to consideration of the Arsenal Plan and the liveability of Benicia.

| **46**

Thank you for considering my comments, and for the effort to respond to them.

Sincerely,

Marilyn Bardet

MARILYN BARDET

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My Experience as CEQA “local expert”
relevant to evaluating the DEIR for the Lower Arsenal Mixed Use Specific Plan

My highly active involvement as a community member, 1995 - the present, continuously following four major environmental cleanup projects in Benicia from 1995 to the present—Braitto Landfill/Rose Drive Project, IT Class I Hazardous Facility Closure, Tourtelot Project (former Arsenal leased property), and the Benicia Arsenal F.U.D.S. Restoration Project (10 year, on-going)—accords my varied experience under CEQA as that of a local expert e.g., with legal standing for this DEIR review.

Over twelve years—which represent for me a period of unexpected education and apprenticeship under various project managers for Cal-EPA’s Department of Toxic Substances Control (DTSC) and Army Corps of Engineers, and also with Jody Sparks, an independent environmental consultant, hired by the City of Benicia, and CEO of Toxics Assessment Group—I gained considerable understanding of site investigation protocols and hazardous waste cleanups for residential properties and former military properties, under auspices of DTSC and the Army Corps. I know about the problems of assessing “safety” of properties suspected of contamination and military wastes and munitions, with regard to existing standards for cleanup of former military land for reuse, and for those formerly used defense properties slated for residential end-use. I am familiar with, and have commented on various kinds of investigation documents: preparation for scope of work/site characterization, remedial investigation field studies and data analysis, preliminary endangerment assessments, health risk assessments, feasibility studies, remedial action plans and environmental impact reports.

As a result of my community oversight work on both the Tourtelot and Arsenal FUDS investigations, and because of my interest in history generally, I have spent considerable time reviewing the history and military record of the Benicia Arsenal since its earliest founding in 1847, and its expansion by President Lincoln, in 1862, as well as its enormous growth in activity during especially WWII. I therefore have great respect for the Arsenal’s 117 years as significant contributor to national, state and city history. The distinction given by the National Trust for Historic Preservation (as well as the State Office of Historic Preservation) through designation of two historic “National Register Districts” within the lower Arsenal certainly helped convince me of the importance of the whole District’s protection, for both economic and cultural reasons.

My own civic interest in the Arsenal began in 1995, when actively trying to save the Arsenal Historic District from mammoth industrial development of six petroleum coke domes on contiguous properties owned by the Port, and again, in 2001, from inappropriate residential development proposed within National Register Historic District C. I am therefore convinced of the *value* of our historical assets to the community and City. This value is especially represented by the National Trust’s designation of “districts” conferred upon mid-19th century buildings and landscape settings that became set apart within the City-designated Arsenal Historic District, which comprises almost the entire area of the lower Arsenal, up to the boundaries with port and refinery facilities. The National Register Districts C & D still retain the character and atmosphere—the *integrity* of physical buildings in settings that have been relatively

undisturbed—reminiscent of the Civil War era in this military officers’ enclave, the former administrative center of Benicia Arsenal. I understand the economic and social/cultural value to the City and community of the entire lower Arsenal Historic District as a working complex in a compact area put to multiple and varied new uses since the Arsenal closed: port-related industrial, light industrial, commercial, professional services, retail, artists’ work/live studios, fine craft production, cultural education. I am also highly familiar and conversant on the problematic subject of “compatibility of uses in a mixed use historic district”.

I’ve known the Arsenal for over 20 years, as a stakeholder/artist-tenant in six different buildings in the lower Arsenal area, and as a community activist, as founder and member of the Arsenal Restoration Advisory Board (RAB, 1999 - to 2005, presently not meeting) which has served as a citizen advisory group on the “Benicia Arsenal Formerly Used Defense Site Restoration Project”, (“Arsenal FUDS Project”) led by the Army Corps of Engineers, with oversight from Cal-EPA’s Department of Toxic Substances Control (DTSC).

I’m familiar with aspects of the physical condition of the Arsenal and problems of site characterization (especially complicated in the case of formerly used military properties slated for residential end use), a question that usually boils down in the public imagination to “is the property safe?” and, a better question “What are the risks and uncertainties from any remaining *x*?”—a question with only relative answers possible in the case of military cleanups, unless a proposed cleanup design is absolutely the most conservative kind.

I was also actively engaged in the investigation and cleanup of the Tourtelot property, the former leased property of the Benicia Arsenal now being developed with 400 homes as “Waters End”. I was instrumental with other community members in urging DTSC to take over lead agency responsibility for the Project. I attended all public meetings, workshops, official hearings and attended most meetings of the citizen advisory group I helped to form that followed the extensive planning, field investigation, ordnance detection protocols and removals, and removal of contaminated soils and final restoration work, throughout seven years, the project having been initiated in 1996, when live ordnance was first identified on the property. During that time, I also independently hosted, in Benicia, an educational national conference/workshop on problems of UXO cleanup (Unexploded Ordnance) for RAB members from all over the country dealing with similar problems of ordnance detection and removal on closing military bases. (The conference was sponsored and led by the non-profit Center for Public Environmental Oversight.) I also participated, from 1995 - 2001, in the Braito Landfill investigation, the cleanup of remaining toxic waste contamination underlying homes, yards, parts of hills and even under the street of Rose Drive. My unexpected, rather long involvement on three different cleanup projects (as well as participating in citizen oversight of the closing of the IT Class I hazardous waste dump in Benicia) has amounted to a virtual “hands on” apprenticeship, through significant conversation and contact with 5 project managers of various field teams as well as with high level political leadership at Cal-EPA’s Department of Toxic Substances Control, and also with field teams and leadership from the Army Corps of Engineers, Sacramento office. Thus, I am thoroughly acquainted with the rigors and wages of environmental investigations in Benicia, and also, with the development of precedent-setting standards for military site cleanup for residential use, standards first established by the state, intrinsic to the final scope and design of the Tourtelot project. On behalf of other concerned community members, I have read and commented on documents involving planning and scope of work, research and field investigation and sampling data, preliminary endangerment assessments, health risk assessments, feasibility studies and final remedial action plans as well as project EIRs. I am also a founding member, since 2000, of the Good

Neighbor Steering Committee which is a community watchdog group concerned about local air quality and safety of the Valero Benicia Refinery. All of these experiences have lent me a sober“reality check” in reading and evaluating the Arsenal Specific Plan and the DEIR now under review.

COMMENTOR C4

Marilyn Bardet

September 6, 2007

- C4-1: This comment, which states the commentor's opinion of the adequacy of the Draft EIR, is noted. The commentor's previous involvement in past environmental cleanup projects in the City is also noted.
- C4-2: Responses to the specific points expressed by the commentor are provided below. Refer to Master Response #5 concerning recirculation of the Draft EIR.
- C4-3: This comment, which provides background information on the FUDS investigation and associated investigation and cleanup of the Tourtelot site, is noted. Additional background information about the FUDS investigation and Tourtelot site was added to recirculated Section IV.E, Hazards and Hazardous Materials (see Appendix A).
- C4-4: Refer to Master Response #4 regarding additional environmental review that would be required for specific development projects. All individual development projects (requiring a discretionary permit from the City) will be required to undergo project-level environmental review.
- C4-5: Substantial revisions were made to Section IV.E, Hazards and Hazardous Materials, which was recirculated in April 2008. Refer to Master Response #2. The revisions to this section were based in part on consultation with the Department of Toxic Substances Control (DTSC), including Christine Parent, and the U.S. Army Corps of Engineers. The City met with both DTSC and the U.S. Army Corps of Engineers (Corps) to discuss their concerns regarding potential contamination within the Plan Area, and ways to investigate and remediate this contamination to allow for redevelopment with a range of land uses, including residential uses. Mitigation Measure HAZ-1 was drafted in consultation with these agencies and would ensure that potential health and safety impacts associated with future development (including residential uses) within the Plan Area would be reduced to a less-than-significant level.
- C4-6: Refer to Response to Comment C4-5 and Master Response #2 regarding consultation with the U.S. Army Corps of Engineers and DTSC that was conducted in revising Section IV.E of the Draft EIR. Refer also to recirculated Section IV.E (see Appendix A) which supplements the discussions of these agencies provided in the Draft EIR.
- C4-7: Refer to recirculated Section IV.E, Hazards and Hazardous Materials for a supplemental discussion of the potential for unexploded ordnance to occur within the Plan Area. Due to past redevelopment activities, unexploded ordnance is not expected to be a significant hazard within the Plan Area. However, implementation

of Mitigation Measures HAZ-1 and HAZ-2 would ensure that potential impacts associated with previously undiscovered hazardous materials – including unexploded ordnance – would be reduced to a less-than-significant level. In addition, calculating the costs of implementing the Draft Specific Plan and drawing conclusions regarding its feasibility are outside of the scope of the Draft EIR.

- C4-8: Refer to recirculated Section IV.E, Hazards and Hazardous Materials and Master Response #2. Impact and Mitigation Measure HAZ-1 have been added to the Draft EIR to address potential impacts associated with development that would occur in areas with documented and/or partly characterized environmental releases. Impact HAZ-1 and Mitigation Measures HAZ-1a and HAZ-1b from the originally circulated Draft EIR (July 2007) have been revised as part of the recirculation as Impact HAZ-2 and Mitigation Measures HAZ-2a and HAZ-2b. Also refer to Response to Comment E2-3 concerning Mitigation Measures HAZ-2a and HAZ-2b.
- C4-9: Refer to Response to Comment C4-8 concerning Mitigation Measures HAZ-1a and HAZ-1b. Refer to Response to Comment E2-9 concerning DTSC and U.S. Army Corps of Engineers comment and input on the Draft EIR and recirculated Section IV.E, Hazards and Hazardous Materials. A brief discussion of the FUDS program is provided in recirculated Section IV.E, Hazards and Hazardous Materials, as it applies to the Plan Area.
- C4-10: This comment, which provides background information on the FUDS investigation and cleanup of the Tourtelot site as they relate to residential development constraints, is noted. This comment does not pertain to the adequacy of the Draft EIR and no further response is required.
- C4-11: This comment, which questions the feasibility of the Draft Specific Plan in light of past military use of the site, is noted. Refer to Response to Comments C4-5, C4-8, and E2-3. Mitigation Measure HAZ-1 was specifically designed to address the fact that certain site investigations of the Plan Area are not yet complete.
- C4-12: Refer to Master Response #4 concerning the maximum level of development evaluated in the Draft EIR, and the requirement for project-specific environmental review. No specific development projects are part of the Draft Specific Plan or analyzed in the Draft EIR.
- C4-13: This comment, which questions the feasibility of implementing the Draft Specific Plan, is noted. This comment does not pertain to the adequacy of the Draft EIR and no further response is required. Refer also to Responses to Comments E2-5 through E2-7.
- C4-14: A brief discussion of the FUDS program is provided in recirculated Section IV.E, Hazards and Hazardous Materials, as it applies to the Plan Area. Additional background information is not necessary to understand the impacts of the Draft Specific Plan as they relate to hazardous materials, or appropriate mitigation, and would be contrary to *CEQA Guidelines* section 15125, which states that: “The

description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.” Mitigation Measure HAZ-1 was developed in consultation with both DTSC and the U.S. Army Corps of Engineers and represents agreed-upon standards for clean-up of potentially contaminated sites in the Plan Area. Refer to Response to Comments E2-3 and E2-9 concerning the development of residential uses on the site, with respect to the presence of hazardous materials contamination. It is the responsibility of the owners of properties containing hazardous materials to properly restrict access and ensure that their property does not pose a public nuisance.

- C4-15: This comment, which questions the feasibility of implementing the Draft Specific Plan, is noted. This comment does not pertain to the adequacy of the Draft EIR and no further response is required. Refer also to Response to Comments E2-5 through E2-7.
- C4-16: Implementation of Mitigation Measures HAZ-1a and -1b and HAZ-2a and -2b would ensure that potential impacts associated with documented, partly characterized, or undiscovered environmental releases would be reduced to a less-than-significant level. These measures would allow for infrastructure work in the Lower Arsenal, in addition to residential development. Also refer to Response to Comment E2-3.
- C4-17: Refer to Response to Comment E2-5 and E2-6 concerning financial responsibility for hazardous materials investigation and remediation. Also refer to Response to Comment E2-7 concerning economic concerns, which are outside of the scope of the Draft EIR.
- C4-18: Refer to Response to Comment B9-3 regarding land use incompatibility issues associated with the development of residential uses on Jefferson Ridge. Refer to Response to Comment B5-7 regarding the substantial adverse impacts associated with development of the Senior Housing alternative to the historic integrity of Jefferson Ridge. Refer to Master Response #2 regarding the mitigation measure developed in consultation with DTSC.
- C4-19: This comment, which notes the accidental omission of the commentor’s April 12, 2007 comment letter on the scope of the Draft EIR, is noted. The points in that letter, which are reproduced by the commentor and are enumerated as Comments C4-20 through C4-33, are responded to below. None of the comments provided in the scoping letter require an expansion of the *scope* of the EIR. All verbal comments provided at the Planning Commission hearing on the scope of the Draft EIR were taken into account during preparation of the Draft EIR.
- C4-20: This comment, which pertains to the merits of the proposed project in relation to historical resources, is noted. This comment does not pertain to the adequacy of the Draft EIR and no further response is required.
- C4-21: Refer to recirculated Section IV.K, Cultural and Paleontological Resources for a discussion of the National Register District boundaries (which references the map

provided on page 1-5 of the Draft Specific Plan and page 7 of the AHCP). The 2001 letter from Dr. Knox Mellon is included in this Response to Comments Document as an attachment to Letter C1.

- C4-22: The Draft EIR includes a discussion of the regulatory context for the proposed project, including the goals, policies, and objectives of the City's General Plan and the AHCP. Other documents pertaining to historic resources are incorporated by reference. A list of relevant goals and actions of the Draft Specific Plan are also provided in each topical section the Draft EIR, as appropriate. The letters referenced by the commentor from Dr. Knox Mellon address a previously proposed development project not included as part of the Draft Specific Plan. Refer to Response to Comment C1-17 concerning the applicability of the Secretary of the Interior's Standards to implementation of the Draft Specific Plan.
- C4-23: This comment is noted. Existing conditions in the Plan Area as they relate to historic resources are discussed in Section IV.K, Cultural and Paleontological Resources, of the Draft EIR. This was done through background research, including a literature review, a records search at the Northwest Information Center; and a field review. The level of research and detail suggested by the commentor is not necessary to establish the existing conditions in the Plan Area or to evaluate potential impacts to cultural resources.
- C4-24: Section IV.F, Biological Resources, of the Draft EIR evaluates potential impacts to biological resources that would occur with implementation of the Draft Specific Plan. The Draft EIR includes an inventory of the natural communities on the site, such as grasslands, seasonal wetlands, trees, and buildings and the special-status species that may use these habitats. The Draft EIR does not include an exhaustive inventory of all wildlife species that could use the site, nor is such a list required to adequately evaluate the impacts of the Draft Specific Plan on biological resources. The species list along with the assessment of the suitability of habitats onsite to support special-status species provides the required information regarding existing conditions and forms the basis for the determination of impacts to biological resources. The Plan Area is situated within an urban and commercial area and has limited value for plants and animals due to past and current land uses. Given the limited habitat values on the site, no significant insight would be gained from an exhaustive multi-year survey of this site. The assessments based on existing conditions are adequate. Redevelopment of the project area may result in the loss of habitat for some of the common species that currently occur on the site; however, the majority of common species that live in close association with humans will likely continue to find suitable habitat onsite after redevelopment.
- C4-25: Chapter VI, CEQA-Required Assessment Conclusions, addresses potential cumulative biological resource impacts that would occur with implementation of the Draft Specific Plan (and takes into account the Benicia Business Park Project and other projects anticipated as part of General Plan buildout). The analysis concluded that because the habitat value in the Plan Area is of generally marginal quality, and because impacts to this habitat would be reduced to a less-than-

significant level with implementation of recommended mitigation measures, the impact of the Draft Specific Plan would not be considered cumulatively significant.

- C4-26: This comment is noted. Refer to Master Response #2 and recirculated Section IV.E, Hazards and Hazardous Materials. The recirculated section discusses the FUDS project as it applies to the Plan Area and includes a mitigation measure (Mitigation Measure HAZ-1) to reduce potential impacts associated with documented and/or partly characterized environmental releases.
- C4-27: The adjacent Port and Valero Refinery must comply with strict regulations with regard to the potential release of hazardous materials and must maintain plans which detail evacuation and containment protocol to be employed in the event of an accidental release at one of these facilities. Both of these facilities also maintain security fencing and monitoring to protect their operations. Adoption of the Draft Specific Plan would not result in security breaches at the Port such that environmental impacts would result.
- C4-28: The Draft EIR discusses the existing air pollutants in the vicinity of the project site, as summarized in Table IV.H-4. The analysis indicates that the Draft Specific Plan would not contribute to any localized air quality impacts or long term impacts and would not expose sensitive receptors, including children, to significant sources of air pollution emissions.
- C4-29: Potential hazards related to traffic circulation were analyzed in the Draft EIR. All changes to the circulation system that would be implemented by the Draft Specific Plan would be built to modern engineering and ADA standards, such as 10-, 11-, and 12-foot roadway lane width standards, 5-foot bicycle lane width standards, and 8-foot wide on-street parking standards. All sidewalks and off-street pedestrian connections throughout the Plan Area would be built to modern engineering and ADA standards. In general, the Draft Specific Plan would not result in the development of design features dangerous to motorists, bicyclists, or pedestrians (and would improve pedestrian and bicyclist safety in the area).
- C4-30: This comment, which pertains to the merits of the proposed project, is noted. Although the Draft Specific Plan seeks to attract heritage tourism activities to the Plan Area, evaluation of the viability of this element of the proposed project is outside of the scope of the Draft EIR. The Draft EIR is limited to evaluating the potential adverse physical impacts associated with development of the proposed project.
- C4-31: The Final EIR for the Benicia Business Park indicates that the business park project would not result in urban decay in Benicia (including the Plan Area) or other cities in the area. Evaluation of the potential loss of revenue or urban decay impacts within the Plan Area associated with development of a separately proposed future project is outside the scope of the Draft EIR.
- C4-32: Chapter III, Project Description, of the Draft EIR provides a full description of the proposed project and refers to the Draft Specific Plan as necessary for further

detail. Chapter IV, Setting, Impacts and Mitigation Measures, provides a full description of the environmental impacts that would occur with implementation of the Draft Specific Plan, and recommends mitigation measures to reduce those impacts to a less-than-significant level. Chapter VI, CEQA-Required Assessment Conclusions, provides an evaluation of cumulative impacts and irreversible changes in the environment that would result from implementation of the Draft Specific Plan. No potential significant cumulative impacts were identified. Chapter V, Alternatives, of the Draft EIR evaluates three alternatives to the proposed project, in addition to the No Project alternative, and compares the impacts that would occur under those alternatives with those that would occur with implementation of the Draft Specific Plan. The Draft EIR identified the Option 1 alternative as the environmentally superior alternative because the following impacts identified under the Draft Specific Plan would be reduced when compared to the Draft Specific Plan: impacts to seasonal wetlands, protected trees, special-status plant species, burrowing owl and other bird and bat habitat; roadway congestion; and impacts to archaeological resources. However, the Draft EIR also found that the Draft Specific Plan is, overall, an environmentally sound project and that all impacts would be reduced to a less-than-significant level with implementation of recommended mitigation measures. The analysis of environmental impacts provided in the Draft EIR will be used by City decision-makers when considering whether to approve the Draft Specific Plan or one of the project alternatives.

- C4-33: This comment, which pertains to the merits of the proposed project, is noted. Recirculated Section IV.K, Cultural and Paleontological Resources, of the Draft EIR evaluates potential impacts to cultural resources that would occur with implementation of the Draft Specific Plan. All potential impacts to historic resources would be reduced to a less-than-significant level with implementation of the recommended mitigation measures.
- C4-34: This comment, which pertains to the merits of the proposed project, is noted. Refer to Response to Comment B9-3 regarding land use incompatibility issues associated with the development of residential uses on Jefferson Ridge.
- C4-35: Refer to Master Response #4. The Draft EIR evaluates potential impacts associated with implementation of the Draft Specific Plan. The Draft EIR does not evaluate specific development projects proposed within the Plan Area. The separately proposed Grant Street project would be required to undergo additional environmental review and would be subject to compliance with the policies and actions of the Draft Specific Plan (if the Draft Specific Plan is approved).
- C4-36: Environmental impacts associated with human health risks are evaluated in the Draft EIR based on the assumption that sensitive receptors would be exposed to pollutants. Sensitive receptors include not only children, but also the elderly and hospital patients. Thus health risks to children are not evaluated separately. Section IV.H, Air Quality, of the Draft EIR evaluates potential impacts to sensitive receptors associated with air pollution and identifies those impacts as significant. Page 246 of the Draft EIR notes that the Draft Specific Plan would locate sensitive receptors (including children) near major sources of toxic air contaminants and

would have the potential to expose sensitive receptors or the general public to substantial levels of toxic air contaminants related to activities associated with the Port. However, specific development projects are not evaluated as part of the Draft EIR and implementation of Mitigation Measure AIR-2 would ensure that potential impacts to future residents and sensitive receptors within the Plan Area would be reduced to a less-than-significant level. Mitigation Measure HAZ-1, which was developed in consultation with DTSC and the U.S. Army Corps of Engineers, is also crafted to ensure that sensitive receptors would not be exposed to unsafe levels of contamination.

- C4-37: Mitigation Measure HAZ-1, which was crafted in consultation with DTSC and the U.S. Army Corps of Engineers, was designed to reduce risks associated with documented and/or partly characterized environmental releases in the Plan Area, and to allow for development of residential uses.
- C4-38: This comment, which pertains to the merits of locating live/work uses in the Plan Area, is noted. This comment does not pertain to the adequacy of the Draft EIR and no further response is required.
- C4-39: Refer to Master Response #1 and recirculated Section IV.K, Cultural and Paleontological Resources, which identifies impacts from the construction of new buildings and roads as significantly affecting the setting of Historic District C (the location of the Jefferson Ridge). However, this impact would be reduced to a less-than-significant level with implementation of Mitigation Measure CULT-2a and -2b. CEQA requires the consideration of historical resources during the planning process and, if feasible, the mitigation of project impacts to such resources. The mitigation measures provided in the Draft EIR would protect historical resources and reduce potential impacts to less than significant levels. The project-specific design and impact reviews required by Mitigation Measures CULT-2a and CULT-2b would avoid impacts that would result in de-listing of District C from the National Register (see also Historic Preservation Action 4.1.1). On a program level, development of Jefferson Ridge in accordance with the conceptual plans, policies, and actions outlined in the Draft Specific Plan would preserve the overall geometry and key landscape elements of the area. Various Draft Specific Plan actions (e.g., Action 3.2.1) would add additional protections to the historic architecture and landscape elements of Jefferson Ridge. Therefore, additional mitigation measures are not warranted. Also refer to Response to Comments C4-21 and C4-22 regarding communications from Dr. Knox Mellon on past development projects.
- C4-40: The Draft Specific Plan was evaluated in the Draft EIR as proposed (and Figure V-1 was excerpted directly from the Draft Specific Plan). The construction of new roads in and of itself would not result in substantial adverse impacts to the integrity of Historic District C. However, at a project level, proper design of these roads (and other new features on Jefferson Ridge) would be required. Proper design would be ensured with implementation of Mitigation Measure CULT-2a.
- C4-41: Refer to Response to Comment C2-23 regarding parking. As stated in the "Cumulative Conditions Traffic Volumes" section of the Section IV.G,

Transportation and Circulation, “[i]ncluded in the Solano/Napa County travel demand model are all approved projects that can reasonably be expected to be in place by the year 2030, including the Benicia Business Park project.” As such, the Cumulative and Cumulative Plus Project Conditions analyzed for the Draft EIR include additional traffic volumes associated with the Benicia Business Park project. Furthermore, unacceptable operating conditions were identified at the East 2nd Street/Military East intersection, and Mitigation Measure TRANS-5 was developed to reduce the projected traffic congestion to a less-than-significant level.

- C4-42: A project would have a significant urban decay impact if it would directly or indirectly result in physical deterioration to properties or structures that is so prevalent, substantial, and lasting a significant period of time that it impairs the proper utilization of the properties and structures and the health, safety and welfare of the surrounding community. The Draft Specific Plan, which would restore historic buildings and landscapes, encourage compatible development (including mixed uses), and enhance connectivity and circulation, would not result in urban decay. The Plan Area, which is in close proximity to Downtown Benicia, is well-positioned to benefit in the context of global energy shortages and required reductions in greenhouse gas emissions due to global climate change (which may encourage people to live within walking distance of goods and services, and to reduce their commutes). In addition, the Final EIR for the Benicia Business Park concluded that that project would not result in urban decay effects in Benicia or surrounding cities. The comment that suggests reduced development in the Plan Area does not pertain to the adequacy of the Draft EIR and is noted.
- C4-43: As discussed on page 61 of recirculated section IV.E, Hazards and Hazardous Materials, the Draft Specific Plan would not conflict with an emergency evacuation plan. Primary and secondary streets in the Plan Area (including the proposed pedestrian network) would provide adequate emergency access, even in the event of an earthquake.
- C4-44: This comment is noted. The Draft EIR includes a discussion of the potential for particulate matter (PM) impacts on the project site on page 246. Implementation of Mitigation Measure AIR-2 would reduce any potential impacts associated with PM pollution from the Port to a less-than-significant level.
- C4-45: Air quality contaminants are regional pollutants and disperse under normal meteorological conditions within an air basin. The California Air Resources Board (ARB) and Bay Area Air Quality Management District (BAAQMD) establish monitoring locations that characterize the air quality in an air basin. Air quality monitoring data shown in IV.H-4 are thus representative of air quality conditions on the project site (and provide an adequate basis for identifying the impacts of air pollution on the Draft Specific Plan).
- C4-46: This comment, which makes reference to comment letters submitted separately by organizations and other individuals, is noted.

C4-47: This comment, which describes the commentor's experience as it relates to environmental review of the Draft Specific Plan, is noted.