



June 12, 2008

Mr. Charlie Knox
City of Benicia
Community Development Department
250 East L Street
Benicia, CA 94510

Re: Lower Arsenal Mixed Use Specific Plan EIR

Dear Charlie,

As you know SAHF is in contract to purchase the 8+/- acre parcel in the Lower Arsenal generally described as the "Jefferson Ridge." Further, as you are also aware SAHF has submitted a plan, referred to in the Specific Plan as "2-A" for the Jefferson Ridge.

With our contractual interest in the Jefferson Ridge property, SAHF submits the following comments on Section K; Cultural and Paleontological Resources.

p. 311: 1.2.4: Please eliminate the word "complete", it implies development can be delayed until funds are available to start restoration.

p. 311: 1.2.5: Same as above

p. 320 and following pages (2) (A) Jefferson Ridge/Officers Row Regulating Zone: All language refers to "Option 2" as being the proposed project. Such is not the case.

As you well know, SAHF prepared a plan identified as "Plan 2-A." Plan 2-A was added to the Specific Plan by Council action. Further SAHF had a detailed plan prepared by an architect and engineer. Plan 2-A has clearly less environmental impacts (less foot print, less square feet, less massing, and less grading...to name a few). Yet LSA has yet to comment on, or make reference to, plan 2-A.

How can it be possible to consider the document complete when it ignores a thought out, documented plan that has less environmental impacts than Option 2 which "...is considered the proposed project...?"

Page 321: Impact Clut-25: Again this section only addressed "Option 2". An analysis of Option 2-A would present a different picture with fewer impacts. Further 2-A supports many of the goals on pages 311 and 312 including 4.2.2, 4.2.3, 4.4.1, 4.4.2, 4.4.3, 4.4.4, 4.5.3, and 4.7.2.

Option 2-A was included by City Council for consideration. LSA simply has not done the analysis for consideration. How can the EIR be certified if it does not include consideration of an Option the City Council voted to be included?

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Finally, there is no analysis of the impact of the Specific Plan on the Housing Element of the General Plan. The Jefferson Ridge is clearly included as an area for meeting affordable housing needs of the City of Benicia in the Housing Element.

There are few remaining parcels available in the City of Benicia to meet future affordable housing needs. It does not appear the issue has been addressed.

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Sincerely,

Handwritten signature of Dennis McCray in blue ink, including the initials "BD" at the end.

Dennis McCray
Executive Director

COMMENTOR E3
Solano Affordable Housing Foundation
Dennis McCray, Executive Director
June 12, 2008

E3-1: The references to “1.2.4” and “1.2.5” in this comment refer to Land Use Actions in the Draft Specific Plan. The changes requested in the comment do not pertain to the adequacy of the environmental review but could be considered by the City prior to deciding whether to approve the Specific Plan.

The comment also suggests that “Option 2” as discussed on page 2-8 of the Draft Specific plan is not the “proposed project” analyzed in the Draft EIR. Option 2 for the Jefferson Ridge/Officers’ Row, which includes the rehabilitation of historic structures on Jefferson Ridge, in addition to the construction of new buildings in the area, is indeed part of the proposed project analyzed in the Draft EIR, as discussed on page 47 of the Draft EIR. Option 1 is analyzed as a project alternative in Chapter V, Alternatives (refer to pages 335 through 339).

E3-2: “Plan 2-A,” as referenced in this comment, appears to refer to a proposal by the Solano Affordable Housing Foundation for the development of senior apartment and market-rate housing on an 8-acre site in the Jefferson Ridge/Officers’ Row Zone. This alternative was analyzed as the “Senior Housing Alternative” in Chapter V, Alternatives, of the Draft EIR. Refer to responses to letter B5 for additional discussion of the environmental merits of this alternative. As noted on page 346 of the Draft EIR, the Option 1 alternative would better succeed in preserving the historic character of the Jefferson Ridge/Officers’ Row Zone, and is considered environmentally superior to the Senior Housing Alternative (notwithstanding the benefits of the Senior Housing Alternative to the area’s affordable housing supply).

E3-3: This comment is incorrect in suggesting that the Draft EIR did not include an analysis of the impact of the Draft Specific Plan on the Housing Element of the Benicia General Plan. The Housing Element, and its relationship to the Draft Specific Plan (inasmuch as significant environmental effects would result), was examined in Section IV.B, Population, Employment and Housing, of the Draft EIR. The Draft Specific Plan, which would allow for the development of a range of residential uses in the Plan Area, would not result in a conflict with the Housing Element of the General Plan such that significant environmental impacts would result.

Dana Dean
Amber Vierling *Of Counsel*
Venus Viloría Berdan *Associate*

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June 12, 2008

Planning Commission
City of Benicia
250 East L Street
Benicia, California 94510

RE: *Preliminary Comments regarding the Lower Arsenal Mixed Use Specific Plan
Environmental Impact Report Recirculation of Selected Sections ("SEIR")*

Dear Commissioners:

As you are aware, this firm represents Amports, Inc., the operator of the Port of Benicia. Our comments are submitted today on its behalf and in opposition to certification of the Environmental Impact Report dated July 2007, and as re-circulated, dated April 2008, for the Lower Arsenal Mixed Use Specific Plan ("LAMUSP"), as drafted. This is because there are flaws pertaining to the environmental review of the LAMUSP that must be addressed prior to the City's certification of the Environmental Impact Report ("EIR").

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As detailed below, there remain significant defects in the process employed by the City regarding the EIR and SEIR. Moreover substantive failures in the text of the documents and the subject matter covered in the documents compel further process and substantial edits before the City could reasonably consider certification of the EIR.

Defects Regarding Recirculation Remain Unaddressed

We appreciate staff recognition that the City failed to provide adequate notice that sections of the EIR were being recirculated, as is required by the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 *et seq.*, and staffs efforts to rectify same by sending notice of an extended time period for comments.

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However, in addition to giving adequate notice to interested parties, CEQA requires the lead agency inform the public of basis for the recirculation. Specifically, CEQA Guidelines §15088.5(g) requires that "the lead agency shall, in the revised EIR or by an attachment to the revised EIR, summarize the revisions made to the previously

Comment to Planning Commission
June 12, 2008

Re: LAMUSP EIR Recirculation
Page 2

circulated draft EIR.” In the document, entitled “Recirculation of Select Sections,” dated April 2008, there is no such summary of changes. While the document includes a short list of new information, noted on pages 2 and 3, other substantial changes to the text have been made. A careful read of the SEIR shows that several critical pieces of information, including various impacts have been deleted, without remark.

Moreover, while §15088.5(g) allows for the summary in the body of the SEIR, in this case a 94 page document, *the entire document cannot act as the summary of itself*. Nor should it be left to the general public to pick through the entire document to piece together a summary of changes for themselves. Simply put, the City’s failure to include the summary is not in accordance with law. Its omission prejudices all commenters, because it is too arduous and cumbersome to discern the changes from the 360 page Draft EIR to the 94 page recirculated supplement without guidance.¹

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Finally there is no explanation of the basis for the changes made. The City identifies “new information” in the areas of Hazards and Cultural Resources, but does not indicate how this information was obtained, how it satisfies the requirements for recirculation under CEQA,² or why the changes drafted were needed.

All of these issues are important because one of CEQA’s fundamental purposes is to insure that the public is informed as to the basis for a governing body’s determinations. As such, the document must be corrected and recirculated.

The SEIR Must Be Recirculated with new Land Use and Noise Sections

As noted in the SEIR recirculation is required where significant new information is introduced which would result in, among other things, a substantial increase in the a the severity of an impact. The City only recirculated 2 sections of the DEIR – 1.) Cultural and Paleontological Resources and 2.) Hazards and Hazardous Material. However, as noted in comments submitted previously, we have introduced overwhelming evidence into the record that the City must further analyze and disclose the potentially significant impacts pertaining to noise.

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More specifically, because the noise study included in the originally EIR only address minimal daytime impacts, we commissioned a study that included a more realistic

¹ Hereafter the 94 page document entitled, “Lower Arsenal Mixed Use Specific Plan Environmental Impact Report Recirculation of Select Sections” is referred to as the Supplemental EIR, or SEIR.

Comment to Planning Commission
June 12, 2008

Re: LAMUSP EIR Recirculation
Page 3

demonstration of potential noise. The study fairly led to a conclusion that impacts on potential residential receptors would be greater than previously considered. As a result greater mitigations were necessary in the areas of land use and noise. As such the noise section and land use section should be recirculated with incorporation of this new data.

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The Project Description Remains Misleading and Inaccurate.

As in the DEIR, the SIER in a precise and matter of a fact manner, continues to describe the project after buildout as including “741,865 square feet of new and mixed uses and [exactly] 22 residential units.”³ Given that the Specific Plan and its form based code are largely intended to allow for flexibility in use while maintaining consistency in form, it is hard to imagine how the drafters still seem to know already exactly what the amount of any given use will be. Furthermore, because a stated purpose is to allow for changes over time, a static account of buildout cannot be accurate. This is a big problem under CEQA because once again the reader is misled, in this case into believing that the sum total residential impact will be 22 units. In reality, the plan allows for ongoing conversions to residential including pure residential in the Jefferson Ridge and Grant Street zones, as well as Live/work of “residential character” throughout.

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The project description therefore continues to fail to meet CEQA standards because it is inaccurate and misleading. As a result the SEIR must be corrected and recirculated in order for the project to move forward under CEQA.

CULTURAL RESOURCES

The Recirculated Cultural Resources is Misleading and Mischaracterizes the requirements of the Specific Plan

As indicated herein, the new Cultural Resources section cuts a deep swath through already established impacts and mitigations without explanation. The writers now indicate the entire district is subject to less than significant impacts, apparently because the Land Use policy 1.5.4 *requires* that all buildings not previously identified as historic be evaluated for their significance. This misstates the plan.

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³ See e.g. DEIR at p.44.

The Recirculated Cultural Resources Section Fails to Explain Its Conclusions

The standard applied pursuant to CEQA requires that environmental review first determine if there is historical resource, then determine whether the project would cause a substantial adverse change in the significance of such historical resource. A substantial adverse change means “demolition, destruction, relocation, or alteration of the resource or its immediate surroundings resulting in the significance of the resource being materially impaired.”⁴

The recirculated section on Cultural and Paleontological Resources eliminates, without any explanation, several impacts that were previously considered significant. For example, each of the following impacts were eliminated from the recirculated section, without any explanation as to why such impacts are no longer potentially significant impacts.

- Impact CULT 2: Individual development projects may adversely affect historic architectural resources.
- Impact CULT 3: Architectural Standards for new buildings may conflict with the Secretary of Interior’s Guidelines for Rehabilitation.
- Impact CULT 4: Rehabilitation of the historic buildings could diminish their historical integrity and result in significant impacts to cultural resources.
- Impact CULT 8: The demolition of existing buildings as part of development of the Adams Street Zone could result in a significant impact to cultural resources.
- Impact CULT 10: The demolition of existing buildings as part of the development of the Grant Street Zone could result in a significant impact to cultural resources.
- Impact CULT 12: The demolition of buildings as part of development of the South of Grant Street Regulatory Zone could result in a significant impact to cultural resources.

⁴ CEQA Guidelines §15064.5(b)(1). The CEQA Guidelines are found in Title 14 of California Code of Regulations and is hereafter referred to as Guidelines and the section number.

The new section apparently is intended to protect the entire district. Even if it were effective, which it is not, impacts might still result from individual projects. The foregoing impacts remain as potentially significant and thus CEQA requires that disclosures must be made and mitigations or avoidance must be implemented.⁵ CEQA requires that the City cannot simply make conclusions without explanation. "A conclusory statement unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind not only fails to crystallize issues but affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.⁶ The City must explain why and how it simply eliminated the foregoing impacts.⁷

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The Newly Proposed Mitigations are Vague and Unenforceable

In addition to the confusion in regards to the elimination of several previously identified significant impacts, the new mitigations proposed in the re-circulated section are vague and unenforceable. As such, they do not reasonably ensure that the Project's impacts will actually be mitigated to less than significant levels. Potentially significant or significant impacts remain unmitigated, in violation of CEQA. CEQA requires much more specificity to adequately mitigate these impacts.⁸

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For example, CULT 7a Mitigation Measures requires that the "form, materials, and massing of new construction shall be designed to complement the architectural style." However, the EIR fails to adequately identify what the architectural style of the area is, but rather leaves it open for interpretation. Moreover, the word "complement" in the foregoing mitigation is unenforceable and vague as to what it means. Does it mean it should be the same architectural style as what currently exists, or does it mean it

⁶ *People v. County of Kern* (1974) 39 Cal. App. 3d 830, 841-42, quoting *Silva v. Lynn* (1973) 482 F.2d 1282, 1285.

⁷ The recirculated section added CULT -- 7 as a significant impact. However, the documents fail to describe whether or not impact CULT -7 *replaces* the eliminated CULT impacts 2, 3, 4, 8, 10, and 12. Moreover, it does not make sense that the mitigations for CULT - 7 actually replace the impacts for the previously identified significant impacts of the project because the mitigation for CULT - 7 is *different* than the mitigations for the now eliminated CULT mitigations for CULT impacts 2, 3, 4, 8, 10, and 12.

⁸ CEQA Guidelines §15126.4(a)(2).

should be similar to, but not exactly like, or does it just mean that it should blend with existing historical buildings?

The CULT - 7(a) mitigation further requires that new construction shall ... maintain sight lines and view corridors identified in the Conservation Plan. The relevant portions of the Conservation Plan should be incorporated into the EIR and attached or at least be summarized in the EIR. Moreover the view corridors must be described and summarized in this EIR. For example, where exactly will there be a line of sight to the water? How wide will it be? Will it be visible from the ground?

Mitigation CULT – 7(b) requires the following:

Historical photographs and/or maps, accompanied by text, shall be presented as part of an interpretative display describing the configuration of historical buildings in District D as well as their historical significance. This interpretive display shall be developed in consultation with the Benicia Historical Museum and the Benicia Historical Society.

The foregoing mitigation is entirely vague as to whether or not the interpretative display will be permanent and if so where it will be situated. The cost of the interpretative display should be discussed. For example, who will pay for it and how will it be maintained? Without a discussion of such basics as to funding, maintenance, general location and size, it is unclear as to how this mitigation measures will ever be more than a vague intention on paper.

HAZARDS

The SEIR includes Deferred Mitigations in Violation of CEQA

The CULT – 7(a) mitigation illegally defers mitigation when it states that *in the future* a architectural historian or preservation architect will review the designs for the South of Grant Street Zone “to ensure that the designs do not result in a ‘substantial adverse change’ to the historical resources of District D and the Benicia Arsenal Historic District.” Deferral of mitigation measures may be permissible, but only where there are sufficient guidelines and performance standards articulated in the EIR.⁹ Here, there is no threshold as to what is a “substantial adverse change.” And, the mitigation measure must identify and discuss performance standards as to the type of mitigation

⁹ Sundstrom, supra.

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Comment to Planning Commission
June 12, 2008

Re: LAMUSP EIR Recirculation
Page 7

measures required to ensure that potentially significant impacts are mitigated to less than significant levels in regards to historical resources.¹⁰

Additionally, this particular mitigation is confusing in that it states that the mitigation only applies to District D and to the South of Grant Street. However, it does not explain why this mitigation should not apply to other areas. Since other areas are historic, this mitigation should apply to those areas equally.

The SEIR Fails to Sufficiently Quantify and Disclose Information Pertaining to Hazards and Hazardous Materials

The newly identified significant impacts for hazards and hazardous materials are two-fold:

1. Impact HAZ-1: Site development would occur in areas with documented and/or partly characterized environmental releases associated with historical site uses.
2. Impact HAZ-2: Construction activities may unexpectedly encounter hazardous materials or hazardous waste in soil or groundwater.

HAZ-1 acknowledges that the Plan Area has known and potential soil and groundwater contamination, but such contamination has yet to be “characterized.” This vague disclosure is inadequate for the purposes of CEQA.

CEQA must quantify and disclose potentially significant impacts.¹¹

CEQA requires that an EIR must not only identify the impacts, but must also provide “information about how adverse the impacts will be.”¹² The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding.¹³ The SEIR does not include substantial evidence to support the conclusion that hazardous impacts relating to construction activities are less than significant after mitigation. Given the scope and history of the Project, construction-related hazardous waste impacts are likely significant, and cannot be mitigated to less than significant levels, as the SEIR claims.

EIRs must be prepared with sufficient degree of analysis to provide decision makers with information needed to make informed decisions concerning project’s environmental consequences. It is unreasonable to characterize hazardous waste after

¹⁰ CEQA Guidelines §15126.4(a)(1)(B).

¹¹ CEQA Guidelines, §15126.4 (a)(2).

¹² *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.

¹³ *Kings County Farm*, 221 Cal.App.3d 692, 728; see also CEQA Guidelines, § 15151.

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the fact because there is no way for the decision makers to evaluate if the mitigations for such impacts are sufficient. Rather, the public and decision-makers remain unaware and uninformed of the severity of the potentially significant environmental effects.

Moreover the level of detail in an EIR should correlate with the type of action being evaluated. Here, the City is considering housing and work environments located near/on top of hazardous waste sites. Since the stakes are so high, the City should provide more disclosure and analysis of these important issues as to the character of the hazardous wastes be provided.

Only by characterizing the hazardous waste will the City be able to adequately describe how mitigation or avoidance will reduce the significant impacts to less than significant levels. One of the primary purposes of an EIR is to prevent CEQA lead agencies from approving projects if there are feasible mitigation measures or project alternatives available to reduce or avoid significant environmental impacts.¹⁴ The Supplemental EIR purports to mitigate for the significant impact posed by HAZ-1. However, since the significant impact has not been properly identified and quantified there is no way that we know if it can be adequately mitigated. Rather, it is a moving target. Moreover, it is unknown whether or not adequate mitigations exist and are feasible because we do not know the extent of the impact.

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The SEIR Fails to Provide a Sufficient Baseline

CEQA requires that the City disclose the baseline – the environmental setting as it exists when the EIR is being prepared.¹⁵ This is a description of the existing environment for which the project’s environmental impacts are measured. Without having properly characterized the waste, the City has not adequately describe the existing environmental baseline for the Project. Without a good faith effort at full disclosure, the Project description fails to lay an adequate basis for proper analysis of the Project.¹⁶ An EIR must contain a project description that is sufficient to allow an adequate evaluation of the project’s environmental impact.¹⁷ Here, without an

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¹⁴ PRC §§21002, 21002.1(a).

¹⁵ Guidelines §15125(a).

¹⁶ An EIR must be prepared with a sufficient degree of analysis to provide decision-makers with the information needed to make an intelligent judgment concerning a project’s environmental impacts. Guidelines §15151, *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal. App. 4th 342, 356.

¹⁷ *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal. App. 4th 20, 27. See also Guidelines 15126, 15165.

understanding of the baseline, we cannot know with sufficient detail what are the environmental impacts of *entire* the Project.

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The SEIR Should Further Discuss Cumulative Impacts of Hazards and Hazardous Material

An EIR must discuss a cumulative impact if the project's incremental effect combined with the effects of other projects is cumulatively considerable.¹⁸ The CEQA Guidelines define cumulative impacts as "two or more individual effects which, when considered together are considerable or which compound or increase other environmental impacts."¹⁹ Here, there are a myriad of different contaminants which are only partially disclosed in the SEIR. For at least those contaminants the SEIR should discuss the effect on human health of the combinations of contamination constituents. For example, what is the effect on human health for lead, alone and how does it differ when there is lead, arsenic and MTBE exposure? Such cumulative impacts must be described for the reasonably foreseeable exposure to contaminants for this Project.

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Purported Mitigations Are Vague and Unenforceable

The mitigation for HAZ-1 is vague and unenforceable. As written, it is unclear how the tests will be conducted to determine that there are acceptable health standards.²⁰ Questions must be clarified. For example, will the site specific tests take into account off gases, leaks and long term exposure or will the tests take cursory readings in an afternoon without repeat visits. How many tests will be conducted at each site and how deep will bore holes be drilled to determine the depth of contamination?

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Additionally, acceptable health standards should not be articulated as a range that only requires mitigation at the top end of the range. Rather, mitigation should be required at a given threshold. Otherwise, the actual mitigation only requires mitigation for that which exceeds the upper end of the range – in this case, U.S. EPA's risk management of a million or less. At a minimum the *criteria* for acceptable health standards should be summarized in the EIR.

¹⁸ Guidelines §15130(a).

¹⁹ Guidelines §15355.

²⁰ The mitigation requires that existing contamination shall be remediated ... to ensure that potential future occupants of the Plan Area are not exposed to site-related contamination that exceeds acceptable health standards. Acceptable health standards are defined as an incremental lifetime cancer risk within the U.S. EPA's risk management range of one in ten thousand to one in a million or less and a non-cancer health hazard index of less than one based on the results of site specific multimedia human health risk assessment(s).

Similarly the monitoring and compliance is vague and unenforceable. For example, the SEIR indicates that monitoring of the mitigation is satisfied if a mere Remedial Action Plan (or the equivalent) is filed and incorporated in the development plan. However, merely making plans does not actually mitigate potentially significant *physical* impacts to the environment. Such is the thrust of CEQA. Mere plans are not adequate mitigation.

HAZ – 2 states that mitigation will occur after contaminated groundwater is detected by odor or visual staining. Such investigation by potentially untrained earth moving equipment operators sequestered in their closed operation units is woefully inadequate. Moreover, not all of the hazardous substances that may be encountered are detectable by human scent and visual inspection, especially if such inspection is done from several feet away by an earth moving operator in an enclosed machine.

Mitigation 2a requires notification, further assessment and cessation of general construction²¹ work in the area until the recommendations have been implemented under the oversight of a SCEHS or other regulatory agency. It should be added that implementation of the best available science should be used in detection and remediation and it should quantify to what level the area has to be remediated. Additionally, it should define what is meant by area – first the extent of contamination must be determined and there should be a buffer area.

Hazard Mitigations Are Improperly Vague, Deferred, and Do Not Actually Mitigate Impacts

Here again, the SEIR defers mitigation to a future date without sufficient guidelines. For example, mitigation for HAZ-1 provides that, “If remediation, engineering controls, or administrative controls are required to ensure that human health risk does not exceed acceptable health standards, these actions shall be completed before the site is occupied.”²² Not only is the mitigation vague, the mitigation is deferred. This mitigation should state the performance standards as to how remediation and engineering controls shall be implemented.

Further, the SIER references administrative controls as mitigation. Administrative controls do not necessarily mitigate physical impacts for the purposes of CEQA. For example, just because a company is fined or other similar administrative control,

²¹ The term General Construction should be clarified to include demolition and grading.

²² SEIR, p. 63.

Comment to Planning Commission
June 12, 2008

Re: LAMUSP EIR Recirculation
Page 11

doesn't equate to a lessening impact on the environment. As such, the administrative control is not an adequate mitigation for the purposes of CEQA.

In this case despite the high concentration of mixed use and potential residential, the City failed to adequately disclose and analyze the presence of hazardous waste on the site. Hazardous waste in proximity to people living and working warrants further detail. Moreover, the subject Project property is known as a "Formerly Used Defense Sites" ("FUDS"). The Supplemental EIR reveals that lead, petroleum hydrocarbons, Methyl-Tertiary-Butyl Ether (MTBE), and trichloroethylene (TCE), diesel, and arsenic are present, among other hazardous substances.

Additionally, there are two landfill quarries within the Project area. However, at best the SEIR discloses that the records for the landfill have either not been maintained or were lost. Thus, there is no disclosure in the environmental review as to what type of hazardous waste is present at the old landfill sites. This information must be investigated, disclosed and analyzed prior to the Specific Plan approval. To not first obtain such information would be reckless and contrary to CEQA. This is because CEQA requires disclosure of all potentially significant impacts and certainly buried hazardous wastes in proximity to mixed use and residential are a potentially significant environmental impact.

The SEIR appears to rely on a risk assessment (SEIR, p. 51). However, that risk assessment is not included in the EIR. As such, it should not be relied upon for the purposes of CEQA. Moreover, the risk assessment is outdated – from 2005 as the *most recent* purported investigation. The assessment should be updated and the quality of its investigation must be revealed and circulated for public review prior to Project approval.

Somewhat mysteriously, the SEIR eliminates the discussion of contamination from the many contaminated areas outside of the site by way of groundwater or surface water flows, or by prevailing winds. This is problematic because there is no explanation as to why such potential contamination ceases to be an environmental issue worthy of disclosure and discussion, as it was merely months ago in the original DEIR.²³ Similarly the SEIR concludes without analysis that, [i]f releases of hazardous materials have occurred from [various] sites, there is some potential for the releases to migrate and affect soil, groundwater, air and/or any surface water within the project site." The SEIR fails to adequately assess the severity of the risk and quantify it, as required by CEQA.

²³ SEIR, p. 54.

The SEIR improperly designates the construction period impacts as less than significant. Apparently it does so because demolition and removal will be done in accordance with existing laws and regulations. However, just because there are laws and regulations that address handling of hazardous wastes in no way provides that there is not a potentially significant impact in such handling. On the contrary, considering the suspected quantity and variety of hazardous wastes the construction period impacts are potentially significant, requiring further disclosure and mitigation to bring such impacts to less than significant levels. If some of the regulations governing demolition and removal of hazardous wastes serve as mitigation, then they should be listed in the EIR. For example, if the regulations require that work pertaining to hazardous wastes that may become airborne on windy days not be handled on windy days, or that contaminated sites be watered down to eliminate airborne dispersal, then such information should be included in the EIR.

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Cumulative Impacts for Hazards Requires More Analysis

There are cumulative impacts that may result from the mixture of hazardous wastes, yet the SEIR fails to address this issue. Moreover, human exposure to more than one hazardous waste may be cumulatively more significant and such likelihood should be discussed in this EIR.

Critical Information Is Missing

The SEIR provides that the U.S. Army Corps of Engineers has performed a “[re]medial investigations and some clean-ups.”²⁴ Such information should be attached and incorporated into this report in the interest of full disclosure, including but not limited to the entire 1999 Records Research Report and 2004 Preliminary Assessment, and other site documents such as those listed in footnotes 25-29 on page 46 of the SEIR. This is because this information is relied upon in the EIR’s analysis and conclusions.²⁵

12

In part, this information is so important because the SEIR reveals that this area was “the main industrial and manufacturing area for the Arsenal.”²⁶ Thus, the characterization and clean up activities of the USACE are important factors for the

²⁴ SEIR, p. 45.

²⁵ *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 442.

²⁶ SEIR, p. 45, emphasis added.

Comment to Planning Commission
June 12, 2008

Re: LAMUSP EIR Recirculation
Page 13

public and body to consider in determining the sufficiency of the SEIR analyses and mitigations.

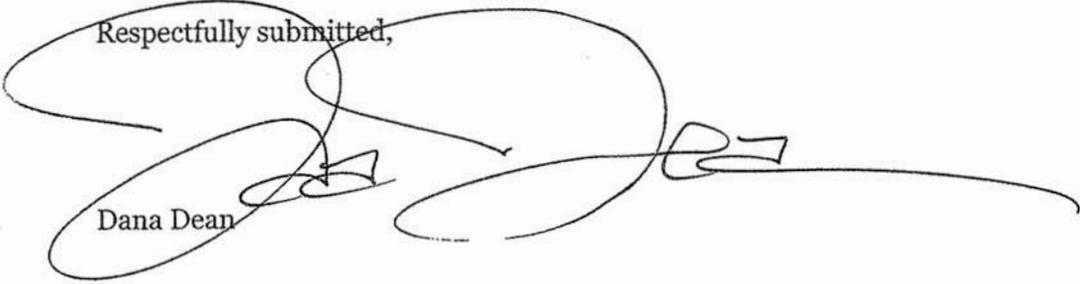
CONCLUSION

Unfortunately, the foregoing flaws in the SEIR – both procedural and substantive require further notification, circulation, disclosures, analysis and mitigations. As such, the SEIR is insufficient for environmental review as currently drafted. We respectfully request that the City correct and recirculate the document in order to comply with CEQA prior to considering adoption of this Project.

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cont.

Respectfully submitted,

Dana Dean



COMMENTOR E4
Law Offices of Dana Dean
Dana Dean
June 12, 2008

- E4-1: This introductory comment is addressed in subsequent responses.
- E4-2: A summary of the significant changes made to the Draft EIR, including all deletions and additions to impacts and mitigation measures, is included as Chapter II, Summary, of the recirculated document released in April 2008. Deletions and additions to impacts and mitigation measures are shown clearly using underlining (for added text) and the ~~strikeout~~ feature (for new text). Chapter II is approximately 30 pages in length; the changes made to impacts and mitigation measures in the two recirculated sections (Sections IV.E and IV.K) comprise approximately 12 pages. The EIR authors and City staff disagree that this summary is “too arduous and cumbersome to discern the changes” made to the recirculated sections. Chapter I, Introduction, of the recirculated document includes a general description of why certain sections of the Draft EIR were recirculated, the purpose of recirculation, and instructions on commenting on the recirculated materials. These introductory materials, Chapter II, and the recirculated sections themselves fulfill the substantive and procedural requirements of *CEQA Guidelines* Section 15088.5 (Recirculation of an EIR Prior to Certification).
- E4-3: No “significant new information” was added to the Land Use and Planning Policy and Noise sections of the Draft EIR in response to letters submitted on the Draft EIR, including letters submitted by the commentor. Refer to responses to Letter B8 (the letter submitted by the commentor on March 10, 2008) regarding noise impacts on residential receptors. The noise study submitted as an attachment to Letter B8 does not change the conclusions of the Draft EIR in regard to the significance of noise impacts on residential uses in the Plan Area, or recommended mitigation to reduce these impacts to a less-than-significant level.
- E4-4: Refer to Master Response #4, particularly the text about the “maximum development envelope.” The maximum development envelope assumed for the purposes of the Draft EIR (including preexisting development in the Plan Area) includes 51,574 square feet of residential uses (including work/live, condominium, apartment, and home occupation) in mixed-use settings, in addition to 22 strictly residential units. If residential uses are proposed in the Plan Area that exceed the assumptions for residential development in the Draft EIR, additional CEQA review would be required prior to approval of these residential uses. Therefore, the Project Description in the Draft EIR adequately characterizes development anticipated under the Draft Specific Plan, and is adequate for the purposes of CEQA.

- E4-5: The EIR authors and City staff disagree with the statement that the recirculated Cultural Resources section “eliminates, without any explanation, several impacts that were previously considered significant.” This explanation was added to pages 82 and 83 of the recirculated section, under “Less-than-Significant Impacts.” In regard to each of the bullet points listed in the comment:
- Impact CULT-2: Policies and actions in the Draft Specific Plan would effectively preclude the demolition of historic buildings because the Draft Specific Plan mandates consistency with the Arsenal Historic Conservation Plan for alterations or additions to historic buildings – and the Historic Conservation Plan requires the preservation of the historic integrity of the Arsenal, including the Plan Area, and explicitly forbids the demolition of historic buildings (see pages 82 and 83 of the recirculated document).
 - Impact CULT-3: Historic Preservation Action 4.1.2 of the Draft Specific Plan explicitly requires rehabilitation projects to be conducted in accordance with the Secretary of the Interior’s Standards for the Treatment of Historic Properties. Therefore, Impact CULT-3 was removed. See page 83.
 - Impact CULT-4: See explanation for Impact CULT-3, above.
 - Impact CULT-8: See explanation of CULT-2, above. Policies and actions in the Draft Specific Plan effectively preclude the demolition of historic buildings, which would adversely affect the Adams Street Zone.
 - Impact CULT-10: See explanation of CULT-2, above. Policies and actions in the Draft Specific Plan effectively preclude the demolition of historic buildings, which would adversely affect the Grant Street Zone.
 - Impact CULT-12: See explanation of CULT-2, above. Policies and actions in the Draft Specific Plan effectively preclude the demolition of historic buildings, which would adversely affect the South of Grant Street Zone.
- E4-6: Refer to Master Response #3 and Response to Comment E6-5. Mitigation Measures CULT-7 and CULT-7b provide adequate performance standards to ensure that the associated impacts would be mitigated to a less-than-significant level. The performance standards in Mitigation Measure CULT-7a include the various policies and design approaches in the Draft Specific Plan that guide the form, materials, and massing of new construction to ensure that new development is compatible with the historic fabric of Historic District D. More specific performance standards, including those that dictate a specific building design, would be overly-prescriptive and would preclude the type of creative, innovative, and historically-respectful architecture that is envisioned in the Draft Specific Plan. The interpretive display required as part of Mitigation Measure CULT-7b would be developed in consultation with the Benicia Historical Museum and Benicia Historical Society under the auspices of the Community Development Department. These organization/agencies would provide adequate oversight to ensure the interpretive display meets the intent of the mitigation measure. Funding would be determined on a case-by-case basis, and would likely derive from sponsors of individual development projects.

A map of sight lines identified in the Historic Conservation Plan and Draft Specific Plan is included in the Draft EIR as Figure III-6 on page 57.

E4-7: Refer to Master Response #3 regarding inappropriately deferred mitigation and Response to Comment E4-6 regarding performance standards for Mitigation Measure CULT-7a. A separate set of mitigation measures (Mitigation Measures CULT-2a and CULT-2b) would apply to Historic District C, the only other historic district in the Plan Area.

E4-8: This comment suggests that hazardous materials in the Plan Area need to be characterized on a parcel-by-parcel basis in order to “adequately describe how mitigation or avoidance will reduce the significant impacts to less than significant levels.” Evaluating parcel-specific contamination would likely be an intensive, multi-year, and very costly effort that would require permission of every land owner in the Plan Area. Such an undertaking would likely not be feasible given existing budgetary constraints, and more importantly, is not necessary to devise a mitigation measure that establishes adequate performance standards to ensure that sites which may contain contamination are successfully remediated prior to redevelopment. Mitigation Measure HAZ-1 accomplishes this objective by establishing the following guidelines/standards for mitigation:

- The parties responsible for mitigation may include the U.S. Army Corps of Engineers, former and current property owners in the Plan Area, future Plan Area developers, and/or the City.
- The acceptable health standard for clean-up is an incremental lifetime cancer risk within the U.S. Environmental Protection Agency’s range of one in 10,000 to one in 1 million or less and a non-cancer health hazard index of less than one. Groundwater health standards are required to meet California Environmental Protection Agency standards for designated beneficial uses of groundwater.
- Oversight will be provided by the appropriate agency (Department of Toxic Substances Control, Regional Water Quality Control Board, or Solano County Environmental Health Services).
- Soil and groundwater data will be collected, and these data will be used to develop a human health risk assessment. The human health risk assessment will be used to determine whether additional actions are required prior to development of specific sites in the Plan Area.
- Prior to issuance of a building permit for a specific development, the City will confirm that a finding of No Further Action has been made by the regulatory oversight agency in regard to site contamination and clean-up, or that other activities/controls are in place to ensure acceptable human health risk prior to site disturbance.

This mitigation was developed in consultation with the U.S. Army Corps of Engineers and the Department of Toxic Substances Control and is supported by a detailed discussion of existing and historic hazardous materials concerns in the

Plan Area (refer to pages 40 through 57 of recirculated Section IV.E, Hazards and Hazardous Materials). This information measure constitutes substantial evidence in support of the adequacy of Mitigation Measure HAZ-1.

- E4-9: Refer to pages 40 through 57 of recirculated Section IV.E, Hazards and Hazardous Materials, for a detailed discussion of existing and historic hazardous materials concerns in the Plan Area. This information provides an adequate “baseline” to allow decision makers and the public to understand the potential program-level impacts of the Draft Specific Plan as they relate to soils and groundwater contamination.
- E4-10: The cumulative affect on human physiology of multiple chemicals would be taken into account in the human health risk assessment that is mandated in Mitigation Measure HAZ-1 prior to redevelopment of individual properties. The human health performance standard listed in Mitigation Measure HAZ-1 is an incremental lifetime cancer risk within the U.S. Environmental Protection Agency’s range of one in 10,000 to one in 1 million or less and a non-cancer health hazard index of less than one. This health risk standard would take into account the effect on human health of more than one toxic chemical.
- E4-11: Mitigation Measure HAZ-1, which was developed in consultation with the U.S. Army Corps of Engineers and the Department of Toxic Substances Control is not “vague and unenforceable” in that it establishes the performance standards discussed in Response to Comment E4-8. An acceptable health standard – an incremental lifetime cancer risk within the U.S. Environmental Protection Agency’s range of one in 10,000 to one in 1 million or less and a non-cancer health hazard index of less than one – is established and represents a standard that is highly protective of human health. Mitigation for contamination that occurs under this threshold, as suggested in the comment, would therefore not be warranted. Any administrative or engineering controls would be established to ensure the health risk would not exceed the standard stated above.

Mitigation Measure HAZ-2 was retained in Section IV.E as a supplemental mitigation measure to Mitigation Measure HAZ-1 in the unlikely event that specific development sites contain hazardous materials that were not identified as part of Mitigation Measure HAZ-1. In the event that hazardous materials are uncovered during the construction period, evaluation and remediation actions would be initiated in accordance with the oversight of an applicable regulatory agency. Evaluation and remediation would likely resemble that outlined in Mitigation Measure HAZ-1, but would be customized to reflect hazardous materials concerns on a specific development parcel.

Refer to Response to Comment E4-9 regarding “baseline” information about contamination in the Plan Area. Groundwater contamination that could affect the Plan Area that derives from outside the boundaries of the Plan Area is discussed on page 51 of recirculated Section IV.E. Contamination that has been transported from

outside the site by surface water, winds, or groundwater would be evaluated as part of the risk assessment required as part of Mitigation Measure HAZ-1.

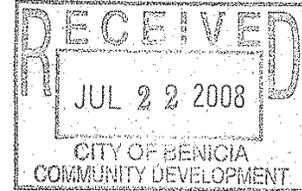
Refer to Response to Comment E4-10 regarding the cumulative effects of multiple chemicals.

E4-12: The documents referenced in the comment are available for review at the Benicia Community Development Department.



OLSON REALTY, INC.
920 FIRST STREET, SUITE 101
BENICIA, CALIFORNIA 94510

(707) 745-3602



July 21, 2008

Mr. Damon Golubics,
Community Development Dept.
City of Benicia
250 East L Street
Benicia, CA 94510

Re: Comments to Recirculated Sections of Lower Arsenal Mixed Use Specific Plan EIR

Damon:

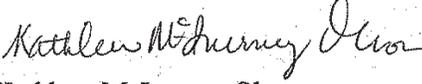
Our comments are:

1. Is there any finding in the EIR that precludes residential development in the Lower Arsenal?
2. Is there any finding in the EIR that precludes residential development on our site at 1025 Grant Street?

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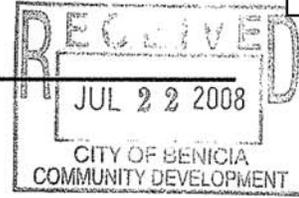
Thank you for your attention and consideration

Sincerely,


Kathleen McInerney Olson

COMMENTOR E5
Olson Realty, Inc.
Kathleen McInerney Olson
June 21, 2008

E5-1: This comment asks whether the Draft EIR “precludes” residential development in the Plan Area, including at a property located at 1025 Grant Street. An EIR simply discloses the environmental impacts of a project so that governing bodies can make an informed decision about project approval – and does not mandate certain development outcomes. The Draft EIR for the Lower Arsenal Mixed Use Specific Plan evaluates the environmental effects of potential residential and other types of development throughout the Plan Area, as considered in the Draft Specific Plan. The decision to permit the development of residential uses on certain sites in the Plan Area will rest with the Planning Commission and City Council.



Memorandum

To: Damon Golubics, Principal Planner
From: Donald Dean, MCP
RE: **Comments on the Revised and Recirculated Lower Arsenal Mixed Use Specific Plan EIR**
Date: July 21, 2008

Thank you for the opportunity to provide comments on the revised and recirculated sections of the Draft Environmental Impact Report (EIR) for the Lower Arsenal Mixed Use Specific Plan (Plan). These comments focus on the recirculated Cultural and Paleontological Resources section, revised April 2008. My comments of September 3, 2007 on the Draft EIR and the comment letter from the State Office of Historic Preservation (SHPO) (September 10, 2007) are incorporated by reference.

Summary

The revised sections of the EIR suffer from many of the same shortcomings as the original EIR sections:

- The EIR fails to provide a comprehensive archaeological survey of the plan area.
- The EIR fails to provide a comprehensive survey of historic structures in the plan area.
- The EIR fails to provide sufficient analysis of potential impacts to the Arsenal Historic District as a whole.
- Recommended mitigation measures require future study and future actions that are deferred mitigation measures and would not provide effective mitigation.
- The EIR fails to respond to requests from the State Office of Historic Preservation on a number of issues listed above.

A more detailed discussion of each of the foregoing points is provided below.

No Archaeological Survey

SHPO stated in its letter of September 10, 2008 that Mitigation Measure CULT-1a did not mitigate impacts because it defers the identification of archaeological resources to the point when implementation of projects would occur. SHPO requested that a field survey of pre-historic and historic archaeological resources be conducted for the entire Arsenal area. The letter stated, "This survey is necessary to establish a baseline of existing resources to allow for effective planning BEFORE [caps in original] any ground disturbances such as specific projects as construction or demolitions, streets, roads,

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parking lots or other developments are planned. Resource avoidance remains the first and most desirable option."

To date, no archaeological survey has been conducted, and Mitigation Measure CULT-1a has not been revised. Therefore, one can only conclude that the EIR analysis is still deficient.

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No Survey of Historic Structures

No update of potential historic structures in the Arsenal was performed as part of the EIR. As noted above with archaeological resources, a survey is necessary to establish a baseline of existing resources to allow for effective planning before specific projects are implemented. Resource avoidance remains the first and most desirable option when dealing with historic resources.

Until a structure has reached 50 years of age, it is not considered eligible for a historic designation. Many of the buildings in the Arsenal may have passed the 50-year mark without having been considered for historic status. In fact, page 314 of the revised EIR notes that a number of utilitarian buildings within the Arsenal Historic District were not considered significant resources in 1993 when the Arsenal Conservation Plan was completed and may now be eligible for the California or National Register as significant properties in their own right or as contributors to the Benicia Arsenal Historic District.

The EIR states that policies in the plan, such as Land Use Policy 1.5.4, would prevent the demolition of unrecognized historic properties, because they require that all buildings not previously identified as historic resources should be evaluated for their historic significance. However, it appears evaluation would only occur if the properties were being considered for demolition. This precludes effective planning. The Plan may have proposed buildings or policies that could have adverse impacts on unrecognized historic structures, which will go unevaluated in this EIR.

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The CEQA Guidelines (Section 15064.5b1) state that a significant effect would result from the "... physical demolition, relocation, or alteration of a historical resource or alteration of the resource *or its immediate surroundings such that the significance of the resource would be materially impaired*" (emphasis added). Therefore, the plan may retain the recognized historic structures, yet unknowingly modify the surrounding environment to an extent that it could materially affect either individual historic properties or the district as a whole.

The Specific Plan should be based on an up-to-date review of the historic resources in the Arsenal; a review that includes all potentially historic structures, regardless of their past status. Then the Specific Plan can be modified if Plan policies are found to have impacts on previously unrecognized historic properties.

No Analysis of Plan Impact on District as a Whole

The September SHPO letter states that "the [Draft EIR] document does not address the impacts of the Specific Plan to the National Register district as a whole. The Benicia Arsenal District is the historical resource. What will the impacts of the Specific Plan be to the National Register district as a whole, to its eligibility, to the integrity of the district? This is an issue the document has failed to address." Even though the Cultural Resources section has been revised, it still fails to address this issue.

Page 314 of the revised Cultural Resources section describes the Arsenal Historic District setting and states that the construction of modern buildings and industrial facilities has significantly affected the integrity of the entire district and prevents the historic district from being treated as a geographically cohesive property. This assumption is the foundation for the conclusion that implementation of the Draft Specific Plan would not adversely affect the integrity of the Historic District as a whole. The discussion makes a number of factual errors that leads to a erroneous conclusion.

The discussion quotes a 1976 letter from Dr. Knox Mellon of the State Office of Historic Preservation stating that because the Arsenal has been converted to an industrial park, it has suffered a severe loss of overall integrity. The quote creates the false impression that Dr. Knox Mellon was referring to loss of integrity in the Lower Arsenal, which is the subject of the Specific Plan. This letter is quoted out of context. Clearly Dr. Mellon was referring to something other than the lower Arsenal. It seems he was referring to the original 2,200 acres of the Arsenal before the industrial park was constructed, not National Register Districts C and D, which are within the Specific Plan area. In fact, the National Register recognized the historic integrity of the lower Arsenal when it listed Historic Districts C and D in the National Register in 1975, a year before Dr. Mellon wrote his letter in 1976.¹ (The National Register would not have allowed the Arsenal federal historic status if the integrity of the Arsenal had been compromised.)

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The section goes on to say that construction of modern buildings and industrial facilities, within or adjacent to the Historic District, such as the Port, prevents the historic district from being treated as geographically cohesive historic property. While it may be true that Interstate 780 divides the upper Arsenal (Districts A and B) from the lower Arsenal (Districts C and D), the lower Arsenal has retained its historic integrity. In fact, no substantial new construction has occurred within Historic Districts C or D to disturb that integrity. The plan area contains 10 landmark buildings and six contributing buildings.² One look at a map of the lower Arsenal or an aerial photograph would illustrate that the Historic Districts C and D retain their historic integrity. (My September 2007 comments requested that a map of Historic District C and D be added to the EIR, but it was not provided.)

¹ Federal recognition of four distinct historic districts occurred in 1975 (Arsenal Historic Conservation Plan, page 6)

² Page 305, Revised Cultural Resources section, April 2008

The Specific Plan envisions 216,800 square feet of new mixed-use development within the Plan boundaries.³ This would be a 41 percent increase over the existing mixed-use development. There is no evaluation in the revised EIR section to determine what effect these additional structures may have on the existing historic district. The analysis attempts to skirt the issue by asserting that the district has lost its integrity, and therefore, the implementation of the plan cannot adversely affect of the Arsenal Historic District as a whole. This does not address whether the Plan's proposed development would have an impact on the district itself. The EIR analysis and its mitigation measures represent a piecemeal approach to assessing the district, when a comprehensive approach is required.

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Deferred Mitigation Measures Are Not Effective Mitigation

The recommended mitigation measures require future study and future actions that represent deferred mitigation and would not be effective. For example, three new structures, each three and one-half stories tall, are envisioned around the new "Officers' Square." Impact CULT-2 states that "The scale and massing of the proposed buildings to the north and south of Officers' Square is out of proportion with the existing Commandant's House and Lieutenants' House on the east and west sides of the Square, respectively, although the designs presented in the Draft Specific Plan are conceptual, and a final design of these buildings has not been approved." Mitigation Measure CULT-2 requires the proposed new buildings to be reviewed to ensure that the design does not have an adverse effect on the Officers' Row and the District as a whole. Although the document acknowledges the potential impact to the area, CULT-2 does not make any recommendations on how to modify the proposed Officers' Square buildings to make them consistent with the district. It defers mitigation to a future date when project review would take place.

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Adoption of the proposed Specific Plan would create an inherent inconsistency by adopting a plan that is recognized to have impacts on the historic district, without explaining how the impacts will be reduced or avoided. An effective mitigation would be to revise the Plan and reduce the number and/or size of the structures to ensure that proposed structures are consistent with the district, rather than defer action to some future date.

The same issue applies to Impact CULT-7, which states that construction of new buildings south of Grant Street could have an impact on National Register District D if the number of non-contributing modern buildings increases within or adjacent to the district. Again the Mitigation Measure, CULT-7, makes no recommendation to avoid the impact, but relies on future review of plans to mitigate the potential impact,.

³ Combined Notice of Availability of Select Topical Sections of the Lower Arsenal Mixed Use Specific Plan Draft Environmental Impact Report (DEIR) and Notice of Public Hearing on the Draft EIR, April 22, 2008.

SHPO Issues Not Addressed

The State Office of Historic Preservation asked for a number of revisions in the EIR, specifically that Mitigation Measure CULT 1a be modified and the EIR analyses include an evaluation of the Plan's impact of the district as a whole. Although the text of the EIR was modified, neither of these requests was adequately responded to, as discussed above.

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COMMENTOR E6
Donald Dean, MCP
July 21, 2008

- E6-1: These introductory comments are addressed in subsequent responses.
- E6-2: Refer to Response to Comment A3-3.
- E6-3: This comment suggests that a comprehensive survey of historic structures that had not reached 50 years of age when the Arsenal Historic Conservation Plan was prepared is required to ensure that impacts to potential historic buildings (and surroundings) are reduced to a less-than-significant level. While such a comprehensive survey could be useful in promoting “effective planning,” as noted in the comment, it is not required to reduce impacts to potential historic resources to a less-than-significant level. Recirculated Section IV.K, Cultural and Paleontological Resources and the Draft Specific Plan itself, include several provisions to reduce impacts to buildings that have not yet been evaluated for historic status, and historic districts in the Plan Area. These include: 1) Land Use Action 1.5.4 of the Draft Specific Plan, which requires that all buildings not identified as historical resources in the Arsenal Historic Conservation Plan be evaluated for historic significance; 2) Historic Preservation Action 4.1.1, which requires the National Register listing of the Arsenal Historic District to be maintained (and, along with other policies and actions, precludes the demolition of significant historic structures, including those that have not yet been evaluated); and 3) Mitigation Measures CULT-2, CULT-3, CULT-4, CULT-5, and CULT-7, which require all new development to be designed and implemented in a way that protects the integrity of all historic resources, including the settings of Historic Districts C and D. As noted in Master Response #1, the Draft Specific Plan would not substantially adversely affect the historic integrity of the District as a whole. These measures would ensure that specific development projects would not “unknowingly modify the surrounding environment” such that individual historic properties or the historic integrity of the District as a whole would be compromised.
- E6-4: The Draft EIR’s conclusion that the Draft Specific Plan would not adversely affect the integrity of the Benicia Arsenal Historic District as a whole is not based solely on the premise that the construction of modern buildings has adversely affected the integrity of the District. As discussed in Master Response #1, this conclusion is also based on the facts that: 1) the District is a non-contiguous resource, with the two northern Historic Districts (A and B) separated from the two southern Historic Districts (C and D) by the Interstate 780 (I-780) corridor; 2) impacts to Historic Districts A and B would be less than significant due to the presence of the visually-intrusive I-780 corridor; and 3) impacts to Historic Districts C and D would be reduced to a less-than-significant level through mitigation measures recommended

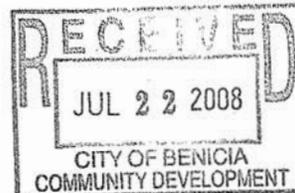
in the Draft EIR and the Draft Specific Plan itself, which is highly protective of historic resources. Refer to Master Response #1 for additional detail.

The comment that Historic Districts C and D retain historic integrity is accurate. Thus recirculated Section IV.K identifies as significant potential impacts to these historic districts resulting from new buildings and roads. Implementation of Mitigation Measures CULT-2 and CULT-7 would reduce these potential impacts to a less-than-significant level.

- E6-5: Refer to Master Response #3. The mitigation measures referenced in the comment (Mitigation Measures CULT-2a and -2b and Mitigation Measures CULT-7a and -7b) provide adequate performance standards to ensure that the associated impacts would be mitigated to a less-than-significant level. For instance, the performance standards in Mitigation Measure CULT-2 include the various policies and design approaches in the Draft Specific Plan that guide the form, materials, and massing of new construction to ensure that new development is compatible with the historic fabric of the area. More specific performance standards, including those that dictate a specific building design, would be overly-prescriptive and would preclude the type of creative, innovative, and historically-respectful architecture that is envisioned in the Draft Specific Plan.
- E6-6: This concluding comment was addressed in Response to Comments A3-3, E6-4, and Master Response #1.



Making San Francisco Bay Better



July 21, 2008

Damon Golubics, Principal Planner
City of Benicia
250 East L Street
Benicia, California, 94510

SUBJECT: Draft Environmental Impact Report for the Lower Arsenal Mixed Use
Specific Area Plan, SCH #2007062021; BCDC Seaport Plan-Port of Benicia;
BCDC Inquiry File No. SL.AR.7218.1

Dear Mr. Golubics:

Thank you for the opportunity to comment on the Draft Environmental Impact Report for the Lower Arsenal Mixed Use Specific Plan dated April 2008 and received in our office April 29, 2008. The San Francisco Bay Conservation and Development Commission (BCDC) has not reviewed the document, but the following staff comments are based on the San Francisco Bay Plan (Bay Plan) as amended through February 2008, the McAteer-Petris Act, the San Francisco Bay Area Seaport Plan (Seaport Plan) and the staff's review of the Draft Environmental Impact Report.

Jurisdiction. BCDC jurisdiction includes Bay waters up to the shoreline, and the land area between the shoreline and the line 100 feet upland and parallel to the shoreline, which is defined as the Commission's 100-foot "shoreline band" jurisdiction. The shoreline is located at the mean high tide line, except in marsh areas, where the shoreline is located at five feet above mean sea level. An essential part of BCDC's regulatory framework is the Commission's Bay Plan. The Bay Plan includes findings and policies that direct the Commission's review of proposed projects and priority land use designations. The Commission also has land use authority over priority use areas designated in the Bay Plan Maps. Certain lands are designated in the Bay Plan for airport, port, wildlife refuge and waterfront park priority uses.

Seaport Plan. A portion of the Lower Arsenal Mixed Use Plan Area appears to be within the Port of Benicia Priority Use Area and thus any developments in priority use areas must be consistent with those designations and the Bay Plan and Seaport Plan policies that delimit what constitutes allowable uses. The Port Priority Use Area overlaps with the Lower Arsenal Mixed Use Plan Area on the easterly edge. Please consult page 48 of the Seaport Plan for a complete description of the boundary. The Seaport Plan can be found on our website (www.bcdc.ca.gov) under the "Laws, Regulations and Plans" section.

The Bay Plan policies state, in part, "port priority use areas should be protected for marine terminals and directly-related ancillary activities such as container freight stations, transit sheds and other temporary storage, ship repairing, support transportation uses including trucking and railroad yards, freight forwarders, government offices related to the port activity, chandlers and marine services. Other uses, especially public access and public and commercial recreational development should be permissible uses provided they do not significantly impair the efficient utilization of the port area." The Draft EIR does not appear to discuss whether future development would be consistent with the Seaport Plan. The EIR should also discuss whether future development in this area would impact existing port operations.

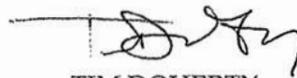
Mr. Damon Golubics
July 21, 2008
Page Two

Other relevant findings and policies for any future projects associated with the Lower Arsenal Specific Plan may include but are not limited to the following issues, sea level rise and safety of fills.

Sea Level Rise and Safety of Fills. It appears that some areas within the Lower Arsenal Plan Mixed Use Specific Area may be vulnerable to projected sea level rise. BCDC's assessment of the regions vulnerability to sea level rise is based on a projected 16 inch sea level rise at mid century (2050) and 55 inch sea level rise at the end of the century (2100). A portion of the Plan Area is vulnerable to both of these scenarios as is much of the Benicia Port Priority Use Area. Bay Plan findings and policies anticipate the need for planning associated with safety of fills and sea level rise. The safety of fills findings state, in part, "...structures on fill or near the shoreline should be above the highest expected water level during the expected life of the project... Bay water levels are likely to increase in the future because of a relative rise in sea level... Relative rise in sea level is the sum of: (1) a rise in global sea level and (2) land elevation change (lifting and subsidence) around the Bay." Bay Plan policies on safety of fills state, in part, "local governments and special districts with responsibilities for flood protection should assure that their requirements and criteria reflect future relative sea level rise and should assure that new structures and uses attracting people are not approved in flood prone areas or in areas that will become flood prone in the future, and that structures and uses that are approvable will be built at stable elevations to assure long-term protection from flood hazards." Projects in BCDC jurisdiction that involve bay fill must be consistent with the Bay Plan policies on the safety of fill and sea level rise. Although, no bay fill is proposed as part of this project, potential impacts of sea level rise on the port and surrounding areas could reduce the Port's ability to handle cargo in the future if the area were not protected from rising sea level. The EIR should discuss the potential for inundation and its impacts on the plan proposals. Furthermore, it appears that there are portions of the Plan Area that contain hazardous materials and wastes. Future remediation efforts should be made to fully remediate the site so as to avoid impacting significant bay resources in the event the site is inundated in the future.

Please contact me by phone at (415) 352-3667 or email timd@bcdca.gov or Linda Scourtis at (415) 352-3644, lindas@bcdca.gov, to discuss the Port Priority Use Area boundary and proposed uses within the Lower Arsenal Mixed Use Plan Area.

Sincerely,



TIM DOHERTY
Coastal Program Analyst

TM/gg
cc: State Clearing House

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cont.

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COMMENTOR E7

San Francisco Bay Conservation and Development Commission

Tim Doherty, Coastal Program Analyst

July 21, 2008

- E7-1: This comment, which notes that the jurisdiction of the San Francisco Bay Conservation and Development Commission (BCDC) extends 100 feet upland and parallel to the shoreline, is noted. This comment also notes that the subsequent comments are based on a review of the Draft EIR released in July 2007 (and not the recirculated sections released in April 2008). No additional response is required.
- E7-2: This consistency of the Draft Specific Plan with BCDC plans (including the Seaport Plan) is discussed on page 82 of the Draft EIR. Page 82 notes that: “Implementation of the Draft Specific Plan would not conflict with applicable provisions of the Bay Plan, Special Area Plan, or Seaport Plan.” Refer to Section IV.A, Land Use and Planning Policy, of the Draft EIR for additional information.
- E7-3: The potential for sea level rise to affect the Plan Area is discussed on pages 135 and 137 of the Draft EIR. This analysis assumed a 1 meter rise in sea levels by 2100. Based on this assumption, and taking into account storm surge effects, the 100-year tide level would increase from 6.5 feet National Geodetic Vertical Datum (NGVD) to 9.8 feet NGVD. The Plan Area, which ranges in elevation from approximately 25 feet above mean sea level (amsl, which is roughly equivalent to NGVD) to 110 feet above mean sea level, would not be inundated under this scenario. The lowest point in the Plan Area would be still more than 30 feet clear of the 100-year tide level. Inundation could occur under extreme sea level rise scenarios and would have to be dealt with on a region-wide basis. Mitigation Measure HAZ-1 in recirculated Section IV.E, Hazards and Hazardous Materials, would ensure that individual development sites that are contaminated are remediated (to acceptable levels of contamination, as defined by the overseeing regulatory agency) prior to being developed. This mitigation measure would reduce the potential for contamination of the Bay due to sea level rise that – under certain scenarios – could affect the Project site.

Dana Dean
Amber Vierling Of Counsel
Venus Vilorja Berdan Associate

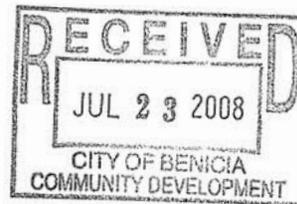
Law Offices of
DANA DEAN



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Benicia, California 94510
p 707.747-5206 • f 707.747-5209

July 22, 2008

Damon Golubics
Principal Planner
City of Benicia
250 East L Street
Benicia California 94510
Via Facsimile and U.S. Mail



Re: *Comments on the Lower Arsenal Mixed Use Specific Plan
Draft and Supplemental Environmental Impact Reports*

Dear Mr. Golubics:

Please recall that this firm represents Amports, Inc., operator of the Port of Benicia. I previously submitted comments on behalf of Amports opposing the City's approval and associated actions in favor of the Lower Arsenal Mixed Use Specific Plan, as currently drafted (hereinafter the "Project"). I submit the comments herewith because, though a Supplemental Environmental Impact Report ("SEIR") has been circulated, potentially significant noise impacts and substantial information related to them remain unaddressed in the documents thus far produced by the City, including the SEIR. In sum, among other legal deficiencies, the potentially significant noise impacts persist unresolved, because the Project contemplates and allows for inappropriate residential uses within an active industrial park, in close proximity to an active industrial Port, and without offering sufficient mitigations to those impacts.

In advance of the City's determination to recirculate certain portions of the DEIR, I submitted expert witness evidence, entitled "Environmental Noise Report for Port of Benicia and the Lower Arsenal Mixed Use Specific Plan" by (hereafter, referred to as the "Goldberg Report.")¹ The report provides substantial evidence of potentially significant environmental impacts in relation to noise and land use. Such impacts remain. Moreover, even if they could be, the impacts are not mitigated or avoided in the under the current proposal. Accordingly, to comply with CEQA the City should have (and still must) conduct further environmental review and articulate mitigations or avoidance of such impacts.²

In addition to the failure to sufficiently mitigate noise, the DEIR and SEIR are inadequate because they continue to fail to disclose relevant information, as required by

¹ The Goldberg Report, authored by the firm, Rosen Goldberg Der and Lewitz, Inc., dated November 2, 2007 was previously submitted with and is a part of the Record for this Project.

² Alternatively, the City may make a statement of overriding considerations in favor of the Project despite such significant environmental impacts.

the California Environmental Quality Act. ("CEQA")³ For example, the DEIR fails to disclose, analyze, and offer mitigate the nighttime and single event noises that commonly result from existing port and other industrial activity. Nighttime, daytime and single event noises all pose potentially significant impacts and, therefore, require sufficient disclosure, analysis and mitigation. CEQA is designed so as to disclose and mitigate or avoid such impacts *before* the Project is approved. However, in this case the City's response is at best to conclude, without sufficient disclosure or cogent reasoning, that a noise problem simply does not exist. As is plain from the Record before you today that is incorrect.

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FURTHER RE-CIRCULATION IS REQUIRED BECAUSE THERE IS NEW
SIGNIFICANT INFORMATION REGARDING A SUBSTANTIAL INCREASE IN THE
SEVERITY OF ENVIRONMENTAL IMPACTS IN THE AREAS OF NOISE AND LAND
USE

The Goldberg report presented *significant new information* and provided *uncontroverted substantial evidence* that the Project may have significant environmental effects pertaining to noise, *inter alia*. Accordingly, this portion of the EIR must be re-circulated after sufficient analysis of the noise impacts are performed under CEQA.

Specifically, the report reviewed the potential of nighttime noise impacts on the proposed Project, which the DEIR failed to do. The Goldberg Report concluded that noise levels would likely exceed interior and exterior noise standards for a variety of locations covered by the specific plan. Such expert analysis is significantly more detailed and revealed a wider range of impacts than disclosed by the DEIR.

Thus, the DEIR must be re-circulated to inform the decision makers and the public of the same. Further environmental analysis is critical in this situation because the experts who have reviewed this subject conclude that feasible mitigation measures may not exist to mitigate the significant environmental impacts pertaining to noise and attendant land use issues.

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As stated in previous comment letters, our primary concern with the Specific Plan is its failure to properly analyze, disclose and mitigate potentially significant impacts that stem from the proposed Project that will situate people (including without limitation, children and the elderly) in very close proximity to an active, established industrial park and port.

New information triggers an Supplemental EIR ("SEIR") if it (1) was not known and could not have been known at the time the EIR was certified as complete, (2) the information shows new or substantially more severe significant impacts, or demonstrates the feasibility of important mitigation measures or alternatives previously

³ Public Resources Code §21000 *et seq.*

found infeasible, or discloses important new mitigation measures or alternatives and (3) new information is of substantial importance to the project.⁴

The situation at hand is similar to cases in which courts required that an SEIR be prepared and circulated. In one case, the discovery of an encroachment into wetlands by resurvey of site prior to final certification of the EIR required an SEIR because it was characterized as a change in the circumstances of a project.⁵ Similarly, in this situation, noise occurring at night was quantified by a new study and shown to be a potentially significant environmental impact. The night time noise was not disclosed, much less analyzed in the original LSA noise report. On the contrary, the DEIR analyzed only noise monitoring on the project site on May 16, 2007 between the hours of 11:30 a.m. and 4:15 p.m.⁶ There is *no analysis of the actual night time noise measured.*

In this case, the new information that there is a potentially significant impact from nighttime noise (and daytime noise) that exceed acceptable levels provides evidence of a substantial increase in the severity of an environmental impact. The new information plainly leads to a conclusion that the impacts are substantially worse than previously identified. Moreover, there is no mitigation that reduces such level to insignificance. Accordingly, CEQA requires that an SEIR (or a focused EIR) be re-circulated with the requisite disclosure and analysis.

FAILURE TO RECIRCULATE INFORMATION OF POTENTIALLY SIGNIFICANT NOISE IMPACTS DENIES THE PUBLIC OF A MEANINGFUL OPPORTUNITY TO COMMENT

New information is not significant unless the circumstances have changed in a way that "deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement."⁷ The purpose of requiring recirculation is to encourage meaningful public comment.⁸

In this case, the City failed to re-circulate on noise after the addition of the substantial new information provided in the Goldberg Report. This violates CEQA because failure to circulate the new information and analysis of it deprives the public of a meaningful opportunity to comment on substantial adverse projects impacts – (a) noise in violation of General Plan standards and (b) significant intermittent nighttime noise exceeding the thresholds of significance in the DEIR.

The lack of disclosure of what potentially significant impacts result from locating a residential area next to an industrial port thwart the public's and decision makers'

⁴ PRC §21166(c); Guidelines §15162(a)(3).

⁵ *Mira Monte HOA v. Ventura* (1985) 165 Cal.App.3d 357.

⁶ DEIR, p. 252.

⁷ Guidelines, §15088.5 (a).

⁸ *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal. App. 3d 1043.

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understanding of: 1.) what mitigation measures would be required to bring such impacts to less than significant levels; and 2.) alternatives that could bring the potentially significant impacts to less than significant levels. For example, can the noise impacts be mitigated by sound barrier architectural designs? By removing residential and other noise sensitive uses to further from the Port? By erecting sound walls in appropriate places? If so, how would those mitigations impact other areas of concern such as aesthetics, cultural resources, etc.? These issues need to be addressed in order for the environmental review to be deemed sufficient.

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THE DEIR ALLOWS FOR A PROJECT THAT CREATES UNMITIGATED POTENTIALLY SIGNIFICANT NOISE AND LAND USE IMPACTS IN VIOLATION OF CEQA

Noise is included in CEQA's definition of the "environment," along with air, land, water, flora, fauna and more.⁹ The DEIR acknowledges that this is so and has devoted a chapter comprised of 17 pages of text and tables to a discussion on noise in relation to the proposed Project.¹⁰ However, the DEIR falls short of the CEQA mandated mitigation or avoidance of potentially significant noise impacts. This is because *CEQA requires that potentially significant and significant impacts be mitigated to less than significant levels*. In this case, the DEIR acknowledges that potentially significant impacts exist, but erroneously concludes that they can be mitigated to less than significant levels. The single mitigation purporting to reduce the level of impact to less than significant is insufficient because it merely requires further *study of the problem*, but not a physical cure to the problem, as is further discussed below. As such, the noise impact remains unmitigated.

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The DEIR admits that the, "[n]oise sensitive development within the Specific Plan area would need to incorporate necessary noise attenuation measures to reduce such nighttime noise levels to meet the City's nighttime interior noise level standards." The DEIR identifies that noise from the Port, among other locations, in the vicinity of the proposed residential area *may have potentially significant impacts*. Specifically, the DEIR identifies "Impact - NOI-3" as "significant" - "Implementation of the proposed Specific Plan would expose sensitive land uses to significant operational noise impacts."

THE PURPORTED NOISE MITIGATION IS INSUFFICIENT AND DEFERS DETERMINATION AND DISCLOSURE OF POTENTIAL IMPACTS

The only applicable Mitigation Measure to ambient Noise on the Project simply requires acoustical *studies* that "shall describe how the City's exterior and interior performance standards ... for proposed noise sensitive land uses which may be affected by stationary noise sources will be achieved."¹¹ There is no further requirement for implementation of

⁹ PRC §21060.5.

¹⁰ DEIR, pp. 249 -266.

¹¹ DEIR, page 265. The other Noise Mitigation Measure, NOI-3b, is not applicable because it only addresses future acoustical studies for all proposed projects within the Plan Area, but it does not mitigate for noise emitted by the Port on those proposed projects.

standards or methods derived from these studies. Just “performing acoustical studies” does not mitigate in *any way* the potentially significant effect on the environment from noise. Additionally, requiring acoustical studies at some unknown time in the future

use impacts of environmental are without the City may as to how or on r, there is no re analysis is not sources and they rmance standards n significant sufficient, it would es raised in the

Further, Mitigation Measure LU-1, though it purports to address the established industrial uses on residential, does not save the flawed analysis. Rather, Mitigation Measure LU-1 defers mitigation to the future by providing sufficient performance standards. It simply provides that the City must require acoustical or air quality analysis, but provides no information as to what the City will base its decision to require such analysis.¹² Moreover, there is no indication of what is to become of the analyses once accomplished. *Mitigation*. The City can hire the very best analysts to determine noise levels. The City can create 1,000 pages of analysis, but analysis without action or performance standards for action will not mitigate such impacts in the environment to less than the levels, as required by CEQA. In order for this type of mitigation to be successful, it must have to include specific criteria for each analysis and remedies for issues identified in the analyses.

WITH

INDUSTRIAL USES OF PROPERTY ARE HIGHLY INCOMPATIBLE WITH RESIDENTIAL USES

uses adjacent to

The DEIR further acknowledges the reasons why locating residential uses adjacent to industrial property is problematic. For example, the DEIR states:

of any sound or vibration that may produce physiological or psychological damage and/or interfere with communication, work, rest, recreation or sleep.¹⁴

Noise is usually defined as unwanted sound. Noise consists of any sound or vibration that may produce physiological or psychological damage and/or interfere with communication, work, rest, recreation or sleep. (Emphasis added).

) is based on A-weighted dBA hourly and daily Leq and the nighttime exterior noise threshold of 50 dBA hourly Leq for measuring noise level effect. This

The DEIR describes that the CNEL (community noise equivalent level) is based on A-weighted decibels (dBA).¹⁵ The DEIR contains a fixed standard of 55 dBA Leq and the nighttime exterior noise threshold of 50 dBA hourly Leq for measuring noise level effect. This when ambient noise is considered to create a significant environmental impact.

mitigation factor applied to noise during relaxation hours.) and 7:00 a.m.

¹² DEIR, p. 258.

¹³ DEIR, page 85.

¹⁴ DEIR, p. 249.

¹⁵ CNEL is the time-varying noise over a 24-hour period, with a 5 dBA weighting factor applied to noise occurring from 7:00 p.m. to 10:00 p.m. (defined as evening hours) and 10 dBA weighting factor applied to noise occurring between 10:00 p.m. and 7:00 a.m. (defined as sleeping hours).

definition is critical, because once "significant effects" have been identified in the EIR, an agency must explore implementing feasible mitigation measures or alternatives to avoid or reduce the effect.¹⁶ Noises above the 55 dBA daytime and 50 dBA nighttime thresholds would be significant impacts if they were not mitigated.¹⁷ As is detailed in the DEIR and, more particularly, in the Goldberg Report, there are times when noise exceed thresholds.

Moreover, these standards are expected to be exceeded at nighttime in a somewhat unpredictable fashion. This is because the port operation is tide dependent. Here, the record plainly shows that, very often, noisy activities will occur late at night or early in the morning. Additionally, these activities do not occur at the same time or in a regular pattern. So for example it could not be said that one would always hear 100's of cars rolling off a ship every night at 1:00 or 2:00 a.m., the same every night. Rather, as we have often stated, the times will always vary with the tides.

This is noteworthy because in measuring the effect of industrial noise on sensitive residential receptors, *predictability* should be an important consideration, in part because annoyance is one of the facts considered in analyzing the effects of noise, as is sleep disruption.

THERE ARE INADEQUATE PERFORMANCE STANDARDS FOR THE MITIGATION MEASURES PROPOSED

Under CEQA Guidelines §15126.4(a)(1)(B), "...measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way." In the case of the subject mitigation measure there are *no* performance standards associated with it, such as how it will be determined if physical mitigations are required and what actual mitigation measures will be required to attenuate the noise impacts.

It is crucial for performance standards to be legally adequate here because the noise experts concluded that the noise reductions required to meet the City's General Plan are at the *upper end of the feasibility range for normal residential construction – 23 dBA for outdoor and 38 dBA for indoor*. The public cannot be left to guess at what protective steps will be taken. Because expert evidence brings into question whether mitigation for the Project is even feasible, further analysis is necessary.

THE CITY MUST PROVIDE ADEQUATE NOISE DISCLOSURE, ANALYSIS, AND MITIGATION IN RELATION TO POTENTIALLY SIGNIFICANT IMPACTS FROM NOISE

"The purpose of requiring public review [of an EIR] is to ... demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the

¹⁶ PRC §5 21081, 21002.1.

¹⁷ DEIR, page 264.

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Comment to Benicia Planning Commission
Re: LAMUSP DEIR and SEIR

Tentative Hearing Date: August 14, 2008
Page 7

ecological implications of its action."¹⁸ The Legislature has declared in CEQA that "it is the policy of the state [to] take all action necessary to provide the people of this state with . . . freedom from excessive noise."¹⁹ The Legislature has further declared that it is the state's policy to "require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors . . ."²⁰ Thus, through CEQA, the public has a statutorily protected interest in quieter noise environments.

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CEQA analysis is directed toward identifying any substantial adverse changes in physical conditions.²¹ An impact is considered "significant" for purposes of CEQA if it will effect a "substantial, or potentially substantial, adverse change in the environment."²²

THE GOLDBERG REPORT REVEALS THAT THE DEIR FAILS TO PROVIDE AND DISCLOSE SUFFICIENT INFORMATION

The DEIR summarizes the noise measurements taken by an LSA noise technician. Notably, the City's Noise technician conducted only *short term* ambient noise monitoring on the project site on May 16, 2007 between the hours of 11:30 a.m. and 4:15 p.m.²³ The table ("Table IV.I-3: Short Term Ambient Noise Monitoring Results, dBA") represents averages over 20 minute periods *on a single day*. The information provided in the DEIR is too cursory – only one day, and only during day light hours. This is particularly true given the ample record of prior comments indicating noises vary substantially depending on changing levels and type of activity in the area. The study should have included more than one day, even if only to take into account an anomalous day. Additionally, it must include noises during nighttime hours because such analysis is highly relevant to the potentially significant impacts of noise and the impacts upon sleep.

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A more accurate Noise Report was prepared by *experts* in noise collection and analysis. This report fills in gaps of LSA's Noise Study, and it demonstrates that the current mitigation and Project plans are woefully lacking of real life consideration related to living in an industrial zone.

The Goldberg Report analyzed noise at the Project site over *multiple days and nights from multiple locations*.²⁴ The noise data and analysis in the Goldberg Report is not only a superior chronicle of the potentially significant project impacts, it also provides new

¹⁸ *Schoen v. Department of Forestry & Fire Protection* (1997) 58 Cal. App. 4th 556, 573-574.

¹⁹ PRC § 21001(b).

²⁰ PRC §21001 (g).

²¹ PRC §§21060.5, 21100 (d).

²² PRC §21068; Guidelines §15002. Guidelines refer to CEQA Guidelines in Title 14 of California Code of Regulations.

²³ DEIR, p. 252.

²⁴ The Goldberg Report pages 5-7 explains that both long term (1 to 8 days) and short-term (45 minutes to 7 hours) noise measurements were made at seven locations at the Port of Benicia and Lower Arsenal Specific Plan Area.

significant information that cannot be ignored. This is not a situation where there is a disagreement among experts. The only noise experts have provided new significant information in contrast to the noise analysis by LSA who are not experts in noise, but rather "technicians." A careful review shows that the two environmental analyses are not "close enough" to be reconciled and *the City cannot ignore* the potentially significant impacts raised by the Goldberg report. In any case, both reports provide substantial evidence of potentially significant impacts that remain unmitigated. In particular, the Goldberg Report evidences significant impacts in all of the plan zones that are not resolved by the purported mitigations proffered.

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THE DEIR FAILS TO INCLUDE ACCURATE NOISE ANALYSIS FROM THE PORT ACTIVITY

Additionally, the LSA Report acknowledges that typical Port noise sources include "loading and unloading operations of ships, trains and trucks..." However, the LSA results omit operations of ships noise sources. Table IV.I-3 lists the Noise Sources, but the sources of noise do not show any noise monitored by the LSA technician that includes ship noise. This is a fatal flaw in LSA's noise analysis because routinely ships enter, idle at, and leave the port and contribute to the noise in their vicinity, which includes the Project area. Evidence of such activity has been a part of the Record since the beginning of the proceedings and was specifically detailed in oral and written comments related to the scoping session for the Project.

The LSA Noise Study fails to quantify noise resulting from the operations of ships in the Port. Interestingly, this failure contradicts LSA's own analysis which acknowledges that operation of ships is a common Port activity. Such error is especially egregious in this case, because the environmental review further acknowledges that noise can interfere with such basic residential functions as *sleep*. Per CEQA, the level of detail required in addressing particular impacts should be in proportion to their severity and probability of occurrence.²⁵ As clearly articulated in the scoping sessions and throughout the Administrative Record, ships will be in Port at odd and unpredictable hours (sometimes two or three at a time.) Ship noise, therefore, matters to the larger analysis.

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THE DEIR FAILS TO PROPERLY DISCLOSE AND ANALYZE NIGHT TIME NOISE IMPACTS.

In addition to its failure to quantify and analyze the effect of ship noise from the Port at all, the LSA Report also failed to include the *nighttime* noise that may effect the Project's proposed residential uses, among other deficiencies. In contrast, the Goldberg Report actually quantifies the nighttime noise for the Project area. As detailed by the experts, the noise levels in the plan area exceeds General Plan, standards.

Here, state and federal standards are informative. For example the U.S. Environmental Protection Agency (EPA) was authorized by the 1972 Noise Control Act to publish data

²⁵ Guidelines §15143.

on the effects of noise and establish levels of sound "requisite to protect the public welfare with an adequate margin of safety." That data is summarized in the DEIR (Table IV.I-5) stating that hearing loss occurring at equal to or greater than $L_{eq}(24hr)70dB$; and annoyance occurring at or greater than $L_{dn}55$ dB for outdoor activities and at or greater than $L_{dn}45$ dB for indoor activities. Similarly the California Code of Regulations, Title 24, Part 2 (the Building Code) codifies standards in California, which require that noise from exterior noise sources not exceed 45dBA CNEL in any habitable room with all doors and windows closed.

Thus it is fair to expect industrial noises within the area to be perceived as loud and annoying. This is then exacerbated by the facts previously stated regarding the unpredictable nature of such noises. All of this foreshadows a very serious incompatibility issues for the Project, as proposed.

THERE ARE SIGNIFICANT CUMULATIVE NOISE IMPACTS

The Goldberg Report shows a significantly greater impact from noise from the Port, alone. Additionally, other sources of noise, such as the traffic on Military East/Grant Street or the soldering/metal sanding work from the metal shop and traffic on Polk Street exist.²⁶ Noise from single event occurrences is relevant to a cumulative CEQA review. High volume noises that occur infrequently, such as metal sanding or the front end loader noise are highly relevant in CEQA analysis. For example, the DEIR must include analysis of the cumulative effect of residents being repeatedly awakened by multiple single-event sounds that can be calculated, given sufficient data, such as the front loader or other single event noises. However, the current DEIR and SEIR fail to do so.

INTERVENING BUILDINGS WILL NOT SAVE RESIDENTS FROM NOISE IMPACTS

Notably, the Goldberg Report does not analyze noise by modeling noise attenuation by buildings. This is because the geography of the site makes such noise attenuation inapplicable. The Project site is effectively an amphitheater. There is not sufficient noise attenuation from buildings located or planned in the Specific Plan area *because the geographic layout of the Specific Plan area is largely an amphitheater shape, facing the Port*. As such, it would be inappropriate to discount noise based on attenuation from buildings, since there is a reasonable likelihood that the noise emanating from downhill sources, such as the Port won't be attenuated from buildings, built or planned. This is because the noise receptors primarily will rise above any buildings that would be useful to otherwise attenuate noise. This is especially true given the need to prevent other impacts to such areas as views and cultural resources that will require limited size and height of buildings in the area.

²⁶ DEIR p. 252.

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Comment to Benicia Planning Commission
Re: LAMUSP DEIR and SEIR

Tentative Hearing Date: August 14, 2008
Page 10

THE CITY MUST PROVIDE A GOOD FAITH REASONED ANALYSIS IN RESPONSE TO COMMENTS

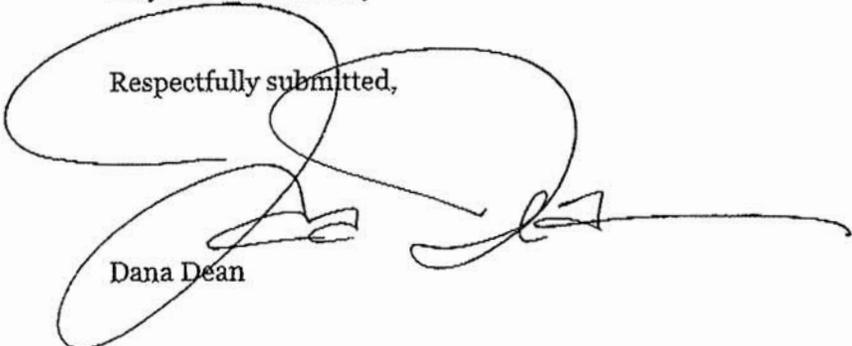
It is not enough for the EIR simply to contain information submitted by the public and experts. Problems raised by the public and responsible experts require a good faith reasoned analysis in response.²⁷ The requirement of a detailed analysis in response ensures that stubborn problems or serious criticism are not "swept under the rug."²⁸ In this case, the City must provide a reasoned analysis. In so doing, it must quantify foreseeable noise in the Project area, and then provide for sufficient mitigation.²⁹ Such information will necessarily constitute new significant information in regards to feasible mitigation measures or alternatives.³⁰

11

CONCLUSION

In sum, as detailed herein and in the Administrative Record, the environmental review in the DEIR and SEIR is inadequate as to potentially significant noise impacts and related land use impacts – in disclosure, analysis and mitigation or avoidance thereof. Thus, further review is still necessary for CEQA compliance and to ensure the public is fully informed of Project realities.

Respectfully submitted,


Dana Dean

²⁷ *Cleary v. County of Stanislaus* (1981) 118 Cal. App. 3d 348, 357.

²⁸ *Ibid.*

²⁹ *Santa Clarita Organization for Planning the Environment v. County of Los Angeles*, (2003) 106 Cal. App. 4th 715, 723; and PRC §21092.5 (a).

³⁰ Guidelines §15088.5(a).

COMMENTOR E8
Law Offices of Dana Dean
Dana Dean
July 22, 2008

- E8-1: Refer to Response to Comment B8-20 for a discussion of the noise study (prepared by Rosen Goldberg Der and Lewitz) that is referenced in the comment. As noted in Response to Comment B8-20, no exceedances of the City's transportation noise source standards for new residential land uses were documented within the Plan Area in the noise study. Refer to Response to Comment B1-8 regarding the feasibility of mitigating, to a less-than-significant level, noise impacts associated with nighttime activities at the Port of Benicia (this response concludes that it would be feasible to achieve interior noise standards simply by meeting standard residential building code requirements). No significant new information was introduced on the basis of the noise study that indicates the mitigation measures included in the Draft EIR to address noise impacts on sensitive receptors are inadequate, or otherwise require recirculation of Section IV.I, Noise, or other sections of the Draft EIR pursuant to *CEQA Guidelines* section 15088.5.
- E8-2: The comment that the Draft EIR failed to include an analysis of nighttime noise impacts on land uses occupied by sensitive receptors, which could be developed as part of the Draft Specific Plan is incorrect. Nighttime noise issues are discussed on pages 262 through 265 of the draft EIR. Also, refer to Response to Comment B1-8 for additional detail. This comment appears to suggest that that disagreement among experts should require recirculation of the noise section of the draft EIR. However, *CEQA Guidelines* section 15151 states that: "Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." The points of disagreement concerning the noise analysis have been summarized in various places in this Response to Comments Document, most notably in Response to Comments B1-8 and B8-20. The noise analysis in the Draft EIR is adequate in that it summarizes opposing viewpoints and provides reasonable, feasible mitigation measures to reduce the adverse effects of noise on sensitive uses in the Plan Area to a less-than-significant level.
- E8-3: Refer to Response to Comment B8-1. No significant new information was introduced on the basis of the noise study that indicates the mitigation measures included in the Draft EIR to address noise impacts on sensitive receptors are inadequate, or otherwise require recirculation of Section IV.I, Noise, or other sections of the Draft EIR pursuant to *CEQA Guidelines* section 15088.5. New project alternatives are not required to reduce the less-than-significant impacts associated with noise (post-mitigation).

- E8-4: Refer to Master Response #3 for a discussion about whether or not inappropriate deferral of mitigation measures is proposed. In the case of the proposed mitigation measures in Section IV.I, the mitigation measures are adequate (and do not inappropriately defer mitigation) because they provide specific performance criteria that can be used to determine the successful implementation of each mitigation measure. For instance, the performance criteria specified in Mitigation Measure NOI-3a include: 1) comparison of noise levels to noise standards established by the City and 2) adherence to the requirements of Title 24, Part 2, of the California Administrative Code, Noise Insulation Standards, for multiple-family attached residential units, hotels and motels. This mitigation measure assumes that the acoustical provisions specified in the studies will be incorporated into building plans, consistent with noise-related policies in the Draft Specific Plan.
- E8-5: Refer to Response to Comment B1-8 regarding the feasibility of mitigating, to a less-than-significant level, noise impacts associated with nighttime activities. The noise standards in the City of Benicia General Plan (which would be used to determine whether an individual development project would be exposed to unacceptable noise levels) are based on time-averaged noise levels, and not on single-event noises, even during the night. Land Use Action 1.1.10 in the Draft Specific Plan would address nuisance issues associated with single-event noises during the night by requiring notification of future owners that Port-related uses occur 24 hours a day, and may result in high noise levels during nighttime hours.
- E8-6: Refer to Response to Comment E8-4.
- E8-7: This comment, which summarizes several provisions of CEQA and CEQA case law, is noted. No additional response is required.
- E8-8: The EIR authors and City staff disagree with the comment that “the Goldberg Report is. . . a superior chronicle of the potentially significant project impacts.” However, no new noise-related impacts are identified, even taking into account the noise levels measured and reported as part of the noise study. As stated in Response to Comment B8-20, no exceedances of the City’s transportation noise source standards for new residential land uses were documented within the Plan Area in the noise study. In other words, even the noise measurement data in the noise study do not suggest that the Draft Specific Plan would result in new noise impacts beyond those already identified in the Draft EIR.
- E8-9: The short-term ambient noise monitoring conducted as part of the noise analysis in the Draft EIR captured extremely high noise-generating uses that are expected to equal or exceed noise levels generated by ship activity, including machinery in a road construction storage yard, truck activity in the Port area, and soldering/metal sanding work. Therefore, the ambient noise levels reported in the Draft EIR (which take into account noise from numerous sources being generated simultaneously) are believed to be representative of daily noise levels in the Plan Area. Based on these reported noise levels (and the noise levels reported in the noise study), no

significant unavoidable noise impacts would result from development of noise-sensitive uses in the Plan Area (based on the City's noise standards).

- E8-10: This comment suggests that buildings in the Plan Area would not attenuate noise from the Port because the Plan Area occupied an amphitheater-shaped land form and noise "will rise above any buildings that would be useful to otherwise attenuate noise." This conclusion could apply to buildings within and around Jefferson Ridge that would have a clear view of Port activities. However, such land uses would be located at a distance from the Port that noise attenuation would reduce noise levels from Port activities to a less-than-significant level. Within individual development zones, building attenuation is expected to play a role in changing patterns of noise distribution, and would be taken into account by acoustical professionals in site-specific acoustical analyses.
- E8-11: This Response to Comments Document summarizes the viewpoints expressed in Letter E8 regarding the noise analysis, and although it does not reach similar conclusions, it meets the disclosure requirements of CEQA. In summary, the new information introduced in the comment letter and referenced noise study would not require recirculation based on *CEQA Guidelines* section 15088.5.

July 22, 2008

Damon Golubics, Senior Planner
City of Benicia, Community Development Department
250 East "L" Street
Benicia, CA 94510

Dear Mr. Golubics:

**RE: LOWER ARSENAL MIXED USE SPECIFIC PLAN DRAFT
ENVIRONMENTAL IMPACT REPORT RECIRCULATED SECTION (2)
CULTURAL AND PALEONTOLOGICAL RESOURCES**

This letter provides comments on the Recirculated Section (2) Cultural and Paleontological Resources of the Arsenal Mixed Use Specific Plan (Specific Plan) Draft Environmental Impact Report (DEIR). The comments are generally organized according to the order they appear in that document.

1

The discussion of "5. Impacts and Mitigation Measures b. (1) Less-than Significant Impacts" relies on a quote from a letter from Dr. Knox Mellon which states "Because Benicia Arsenal has been converted as an industrial park, it has suffered a severe loss of overall integrity of setting. Many buildings have been demolished while others have been extensively altered for conversion to modern industrial purposes." The letter is dated August 17, 1976.

This quote is used as a basis for further discussion for concluding that subdistricts C and D have suffered a loss of integrity, and therefore any impacts of the project would result in less than significant impacts with mitigation.

The use of this quote and subsequent discussion as a basis for concluding loss of integrity is without merit. Since the letter from Dr. Knox Mellon is not included it is difficult to determine in what context the statement was made. Especially since the process for listing on the National Register requires documentation of integrity and nomination to the National Register from the State Historic Preservation Officer. It is also suspect since the District composed of subdistricts A, B, C, and D (NPS #76000534) was listed on the National Register of Historic Places on November 7, 1976 two months after the date of the above quoted letter.

2

Further, the letter dated September 7, 2007 from Milford Wayne Donaldson, State Historic Preservation Officer in response to the Draft Environmental Impact report states, "The proposed project does focus on cultural resource impacts that deal with architecture and building types, new buildings which may conflict with the Secretary of Interior's Guidelines for Rehabilitation. But, the document does not address the impacts of the Specific Plan to the National Register district as a whole. The Benicia Arsenal District is the historical resource. What will the impacts of the Specific Plan be to the National Register District as a whole, to its eligibility, to the integrity of the district? This is an

issue the document has failed to address (emphasis added).” Why would the State be concerned about the integrity of the District if the integrity has been significantly affected? What documentation was used to conclude that the integrity of the District had been affected and therefore any impact could be reduced to less than significant levels? Was an evaluation conducted by a qualified historian? If so was there concurrence by the State Office of Historic Preservation (SHPO) on the findings of the evaluation?

2
cont.

It is my assertion that the conclusion that the impact of the proposed project can be mitigated to a less than significant level is faulty and that mitigation measures themselves would result in a significant unavoidable impact due to a severe loss of integrity and potential delisting on the National Register.

The recirculated Section (2) Cultural Resources description of the cultural setting on page 82 is inadequate. National Register Districts C and D are as significant for the spatial relationships between and around the buildings as they are for the architecture of these buildings. This setting has no discussion of the features that make up the historical appearance and character of these districts. Such a discussion should include not only the buildings, but the landscaping, the spatial relationships, the traffic circulation pattern, and other historic defining features. Without such a description, it is not possible to determine whether the Specific Plan’s impacts on these historic districts are adequately addressed.

3

Mitigation Measure CULT-2 and 7 is an inappropriate deferral of mitigation. It fails to meet a purpose of a Program EIR which is to allow the City to consider broad policy alternatives and programwide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts.

CULT- 2 and 7 does not substantiate that the Specific Plan’s architectural standards are in accordance with the Secretary of Interior’s Standards. The discussion states “The Draft Specific Plan’s architectural standards seek to emulate the architectural styles and features that are typical for San Francisco Bay Area historic military and industrial areas and share proportion, size, and scale with existing buildings, in accordance with the Secretary of Interior’s Standards.” There is no discussion in the Specific Plan that states that architectural standards are in accordance with the Secretary of Interior’s Standards.

4

In what way was it determined that the architectural standards as detailed in the form-based code meet the Secretary of Interior’s Standards for Rehabilitation?

Were the architectural standards evaluated by an architectural historian or other qualified expert for compliance with the Secretary of Interior’s Standards? If so why isn’t the evaluation included in the DEIR for review and comment?

If the architectural standards, were not evaluated for consistency with the Secretary of Interior’s Standard for Rehabilitation how can a conclusion be drawn that the architectural standards as detailed in the form-based code do not pose a significant environmental impact to the Arsenal Historic Districts C and D?

The Secretary of Interior’s Standards for Rehabilitation, which is the applicable guideline for infill development, do not encourage new construction to emulate (to strive to equal or excel). The Secretary of Interior’s Standards for Rehabilitation state “New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.”

4
cont.

Further in a letter dated May 31, 2001, from the State Office of Historic Preservation on a prior development proposal, former State Historic Preservation Officer Dr. Knox Mellon stated, “Ideally, new construction within a historic district will retain the same scale, massing and general style of other properties within the district. In this way, the new construction does not disrupt the historic character of the district and the setting of historic properties within the district but rather blends with those properties in a non-distracting manner.”

Reliance on Historic Preservation Action 4.6.2 as mitigation for demolition is not adequate. Federal regulations substantiate that surveying structures in a historic district on a project-by-project basis is inferior to surveying structures as a group. 36 Code of Federal Regulation (CFR) 67 states “*Historic District* means a geographically definable area, urban or rural, that possesses a significant concentration, linkage or continuity of sites, buildings, structures or objects united historically or aesthetically by plan or physical development.” The National Park Service further states that Historic Districts are resources whose concentration or continuity possesses greater historical significance than many of their individual component buildings and structures. These usually are documented as a group rather than individually. Why wasn’t consideration given to surveying buildings and structures in the Lower Arsenal prior to implementation of the Specific Plan thereby providing early identification of historic buildings and structures that may be contributing or potentially contributing? ? How does the mitigation measures assist with the City’s responsibilities as a Certified Local Government to maintain a system for the survey and inventory of historic properties if they are carried out ad hoc?

5

Impact CULT-2 & 7 does not adequately describe the project’s impacts on National Register District C, and provides no discussion of the projects impacts on National Register District D. Including an adequate description of the cultural setting and including relevant guidance from the Secretary of Interior’s Standards would have aided the evaluation of the project’s impact on this setting.

6

The Secretary of Interior’s Standards for the setting of districts and neighborhoods recommend identifying retaining and preserving building and landscape features which are important in defining the historic character of the setting. Such features can include roads and streets, furnishings such as lights or benches, vegetation, gardens and yards, adjacent open space such as fields, parks, commons or woodlands, and important views or visual relationships. These features help to retain the historic relationship between

7

buildings and landscape features of the setting. For example, preserving the relationship between a town common and its adjacent historic houses, municipal buildings, historic roads and landscape features.

The Secretary of Interior’s Standards do not recommend removing or radically changing those features of the setting which are important in defining the historic character. Altering landscape features within the setting by widening existing streets, changing landscape materials or constructing inappropriately located new streets or parking destroy the relationship between the buildings and the landscape. Removing or relocating historic buildings or landscape features can destroy the historic relationship within the setting.

The Specific Plan concentrates a substantial amount of new development on the Jefferson Ridge and proposes a significant expansion of roads in this area. The features that make up the historical character of these districts should be described in more detail, especially for District C, given the four fold increase in development proposed by the Specific Plan on Jefferson Ridge.

The Mitigation Measure CULT 2 & 7. There is no substantiation that the Specific Plan’s architectural standards comply with Secretary of Interior’s Standards. There is no substantiation that the mitigation measure will reduce the impact to a less than significant level. CEQA Guidelines (15126.4.b.2) state that in some cases documentation of historical resource by way of historic narrative, photographs or architectural drawings, as mitigation for the effects of demolition of the resource, will not mitigate the effects to a point where clearly no significant effect on the environment would occur. Assuming the open space on Jefferson Ridge is the resource, demolition of that resource will occur due to development. How does creation of photo and written documentation of open space mitigate the impact of building on this open space to a less than significant level?

Other mitigation measures for this impact should be discussed, such as eliminating some of all of the 184,575 square feet of new development on Jefferson Ridge, removing the proposed “Madison Street,” and removal of all new north/south streets on Jefferson Ridge. Mitigation measures for District D should also be evaluated.

Sincerely,

Belinda Smith. AICP

7
cont.

COMMENTOR E9
Belinda Smith, AICP
July 22, 2008

E9-1: This introductory comment is noted.

E9-2: The quote from Dr. Knox Mellon, dated August 17, 1976, was in reference to the existing impacts to the integrity of setting for the proposed Benicia Arsenal District that prevented the resource from being nominated to the National Register of Historic Places as a contiguous historic district. Refer to Response to Comments A3-1 through A3-8 for responses to the specific points raised in Milford Wayne Donaldson's September 10, 2007 letter.

Also, refer to Master Response #1 regarding the potential impacts of the Draft Specific Plan on the integrity of the Benicia Arsenal Historic District. The analysis in the Draft EIR concludes that impacts to the district as a whole would not be significant for several reasons, only one of which is the conclusion of Dr. Mellon regarding the "severe loss of overall integrity of setting" of the district. The 1976 letter from Knox Mellon was not used to support a conclusion that the integrity of Historic Districts C and D has been substantially compromised. The statement in the comment regarding a loss of integrity in Districts C and D is not found anywhere in the Draft EIR.

For the purpose of the Draft EIR, Districts C and D are assumed to have historic integrity, and impacts associated with landscape changes and new development that would result from Draft Specific Plan implementation are considered significant. Mitigation Measures CULT-2a, CULT-2b, CULT-7a, and CULT-7b would reduce the significant impacts of the project on the setting of Historic Districts C and D to a less-than-significant level. These measures, in addition to policies and actions in the Draft Specific Plan (which are highly protective of historic resources) would protect Districts C and D from being de-listed.

E9-3: The City concurs that landscape elements, including open space, contribute to the historical significance and National Register eligibility of the Benicia Arsenal Historic District. For purposes of the environmental analysis of the Draft Specific Plan, previous inventories of the Arsenal Historic District's significant buildings and landscape elements, consisting of the Arsenal Historic Conservation Plan and the National Register of Historic Places nomination form, were used to identify existing conditions for historical built-environment resources in the Plan Area. In accordance with *CEQA Guidelines* section 15148, these materials were incorporated into the Draft EIR by reference. These materials are readily available in Benicia, including at the Community Development Department. These referenced materials, along with descriptions of the districts on pages 71 through

73 of the Draft EIR, provide sufficient background information to determine whether impacts to the districts have been adequately addressed.

- E9-4: Refer to Master Response #3 regarding whether or not inappropriate deferral of mitigation measures is being proposed. Mitigation Measures CULT-2a, -2b, -7a, and -7b include adequate performance standards to ensure that future development would not substantially adversely affect the settings of Districts C or D.

The Secretary of the Interior's Standards for the Treatment of Historic Properties do not focus on guidance for new construction. The Secretary of the Interior's Standards and guidelines emphasize cases where preservation, rehabilitation, and restoration of existing historic buildings will occur, or in cases where a vanished or non-surviving portion of an historic building is re-created based on documentation or physical evidence. The Draft Specific Plan would incorporate design policies and guidelines of the Arsenal Historic Conservation Plan, which are consistent with the Secretary of the Interior's Standards. If new buildings are designed in accordance with the mitigation measures recommended in the Draft EIR, they would not have a substantial adverse effect on surrounding historic resources, including the integrity of Districts C and D. The policies and actions in the Draft Specific Plan promote architecture that would be consistent with the scale, massing, and general style of historic properties in the area. Therefore, the architectural guidelines in the Draft Specific Plan would promote the historic integrity of the Plan Area.

- E9-5: The City agrees that "[r]eliance on Historic Preservation Action 4.6.2 as mitigation for demolition is not adequate." However, Action 4.1.1 and others in the Draft Specific Plan (which require maintenance of the National Register listing of the District, and mandate the protections of historic features in the Plan Area) would effectively preclude the demolition of individual buildings that are historic (and contribute to the District).

As noted in Response to Comment A9-3, previous historical resource inventories were utilized to identify the contributing buildings, structures, and elements within the Plan Area. In addition, the City would adhere to the requirements of the Certified Local Government program. Draft Specific Plan Policy 1.5.4 requires buildings not identified as historical resources by previous inventories to be evaluated for their historical significance. This evaluation could be undertaken on a comprehensive basis, if desired by the City.

- E9-6: Project-specific plans have not been developed for either District C or District D. Once such plans are developed, they would be reviewed by a qualified architectural historian or preservation architect who would provide recommendations for avoiding or mitigating impacts to historical resources. These recommendations would be incorporated in the final design of new construction within District C and District D.

As noted in Response to Comment E9-4, the Secretary of the Interior's Standards provide guidance for preserving, rehabilitating, restoring, or reconstructing

historical buildings, and do not provide specific guidance for evaluating new infill development within the Plan Area.

E9-7: Refer to Response to Comment E9-3 regarding the inclusion of adequate setting information in the Draft EIR, and the incorporation of certain background materials into the Draft EIR by reference.

The project-specific design and impact reviews required by Mitigation Measures CULT-2a, CULT-2b, and CULT-7a and CULT-7b, would avoid impacts that would result in de-listing of the District from the National Register (Historic Preservation Action 4.1.1). The documentation aspects of these measures are secondary and subservient to the measures that require project-specific review of all individual development proposals in District C and District D. 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.



ARNOLD SCHWARZENEGGER
GOVERNOR

STATE OF CALIFORNIA
GOVERNOR'S OFFICE of PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNIT



CYNTHIA BRYANT
DIRECTOR

July 24, 2008



Damon Golubics
City of Benicia
250 East L Street
Benicia, CA 94510

Subject: Lower Arsenal Mixed Use Specific Plan Program
SCH#: 2007062021

Dear Damon Golubics:

The enclosed comment (s) on your Draft EIR was (were) received by the State Clearinghouse after the end of the state review period, which closed on June 11, 2008. We are forwarding these comments to you because they provide information or raise issues that should be addressed in your final environmental document.

The California Environmental Quality Act does not require Lead Agencies to respond to late comments. However, we encourage you to incorporate these additional comments into your final environmental document and to consider them prior to taking final action on the proposed project.

Please contact the State Clearinghouse at (916) 445-0613 if you have any questions concerning the environmental review process. If you have a question regarding the above-named project, please refer to the ten-digit State Clearinghouse number (2007062021) when contacting this office.

Sincerely,

Terry Roberts
Senior Planner, State Clearinghouse

Enclosures
cc: Resources Agency

COMMENTOR E10

**Governor's Office of Planning and Research
Terry Roberts, Director, State Clearinghouse
July 24, 2007**

E10-1: This comment indicates that the State Clearinghouse received a letter from the San Francisco Bay Conservation and Development Commission (BCDC) after the formal end of the review period for the recirculated sections of the Draft EIR. This letter is included in the RTC Document, and is responded to in its entirety (see Letter E7).



**BENICIA PLANNING COMMISSION
CITY COUNCIL CHAMBERS**

REGULAR MEETING MINUTES

Thursday, June 12, 2008

7:00 P.M.

I. OPENING OF MEETING

- A. Pledge of Allegiance**
- B. Roll Call of Commissioners**

Present: Commissioners Richard Bortolazzo, Rick Ernst, Dan Healy, Rod Sherry, Lee Syracuse, and Chair Fred Railsback

Absent: Commissioner Brad Thomas (excused)
Commissioner Richard Bortolazzo (excused)

Staff Present: Damon Golubics, Principal Planner
Kat Wellman, Contract Attorney
Terry Baldwin, Senior Administrative Clerk

- C. Reference to Fundamental Rights of Public** - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

II. AGENDA CHANGES AND DISCUSSION

No agenda changes.

III. OPPORTUNITY FOR PUBLIC COMMENT

- A. WRITTEN**

None

- B. PUBLIC COMMENT**

None

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IV. CONSENT CALENDAR

On motion of Commissioner Sherry, seconded by Commissioner Ernst, the Consent Calendar was approved by the following vote:

- Ayes: Commissioners Rick Ernst, Dan Healy, Rod Sherry, Lee Syracuse, and Chair Fred Railsback
- Noes: none
- Absent: Commissioners Thomas, Bortolazzo
- Abstain: none

- A. **Approval of Agenda**
- B. **Planning Commission Minutes of May 8, 2008**

V. REGULAR AGENDA ITEMS

- A. **LOWER ARSENAL MIXED USE SPECIFIC PLAN – DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) – PUBLIC COMMENT ON RECIRCULATED SECTIONS:**
(1) HAZARD AND HAZARDOUS MATERIALS AND (2) CULTURAL AND PALEONTOLOGICAL RESOURCES

PROJECT LOCATION:

The project site is located in the City of Benicia in Solano County. The project site consists of approximately 50 acres east of Downtown Benicia, and is a portion of Benicia’s former Arsenal known as the Lower Arsenal. The site is generally bounded by lands adjoining I-780 on the north, lands adjoining I-680 on the east, Port of Benicia land and the Carquinez Strait on the south, and residential neighborhoods extending into downtown Benicia on the west.

BRIEF DESCRIPTION OF PROJECT:

The proposed project includes implementation of a Specific Plan for the Lower Arsenal site, which is designated for mixed uses in the Benicia General Plan. The Specific Plan covers four distinct zones, each of which exhibits a unique physical character. The Specific Plan would implement a form-based code to shape future development on the project site, with primary emphasis on the physical form and character of new development. After build-out of the Specific Plan, the area would contain approximately 741,865 square feet of mixed uses, 22 residential units, and 6.39 acres of open space. The Specific Plan area currently contains approximately 525,000 square feet of mixed uses.

The Draft Specific Plan is available for public review on the City’s website (<http://www.ci.benicia.ca.us/downtown-arsenalimprovements.php>) or at the City’s Community Development Department.

Recommendation: The City of Benicia is requesting that reviewers limit their comments to the recirculated materials, consistent with CEQA Guidelines section 15088.5(f)(2). Comments on the DEIR should focus on the sufficiency of the DEIR in discussing possible impacts on the environment, ways in which adverse effects might be minimized, and alternatives to the project. Comments may be made at the public hearing

DRAFT

described above, or in writing. There is no fee for commenting, and all comments received will be considered by the City prior to finalizing the EIR and making a decision on the project.

Principal Planner Damon Golubics gave a brief overview of the project and then introduced Adam Weinstein from LSA Associates.

Mr. Weinstein explained the new impacts to the project that have been added to the DEIR. The DEIR is being recirculated and the new items identified to have impact on the project include (1) hazard and hazardous materials and (2) cultural and paleontological resources.

Chair Railsback asked for questions on the process from commissioners to which there were none.

Damon Golubics mentioned that new correspondence was received by the Department and copies were provided for the Commissioners.

Commissioners discussed the monitoring process, inspections and remediation and related costs. Adam Weinstein explained that the project will be monitored by an independent monitor and cost to be worked out between the City and developer.

The public hearing was opened.

Kitty Griffin commented on the contents of two new sections of the DEIR. She expressed concerns regarding the significant and unavoidable impact this project will have.

1

Belinda Smith stated that she is concerned about statements in the cultural section being adequate. She will submit all of her comments in writing.

2

Don Dean spoke regarding the project and agreed with Belinda Smith's comments.

3

Dana Dean stated that she feels this is a first draft of many to come. She expressed concern with some of the language in new sections.

4

Marilyn Bardet stated that she will be submitting another letter addressing her concerns to the DEIR. She has concerns that LSA has not properly been informed by Staff.

5

Commission Comments:

Chair Railsback stated that this meeting was for public comment and that no action would be taken by the Commission.

6

Commissioners discussed the EIR process. Adam Weinstein gave an overview of the project and the EIR process. Staff will confirm that the new commissioners have all documents pertaining to this project.

7

Damon Golubics stated that August 14, 2008 is the deadline for the Final EIR Response to Comments for final consideration and recommendation to send project to City Council.

VI. COMMUNICATIONS FROM STAFF

Damon Golubics mentioned that the July 10, 2008 meeting will be dedicated to the Valero Improvement Project. Commissioners should have received the original EIR and the new addendum.

VII. COMMUNICATIONS FROM COMMISSIONERS

The Commission requested a discussion item in July or August regarding the Seeno/Benicia Business Park project, specifically the traffic study required for City Council review on October 7, 2008.

VIII. ADJOURNMENT

Chair Railsback adjourned the meeting at 8:08pm

City of Benicia Planning Commission Minutes - June 12, 2008

- E11-1: This comment suggests disagreement with the conclusion in recirculated Section IV,K, Cultural and Paleontological Resources, that the Draft Specific Plan would not result in a significant adverse impact to the integrity of the Benicia Arsenal Historic District. Refer to Master Response #1. This comment also notes that Mitigation Measures CULT-2a, -2b, -7a, and -7b do not adequately mitigate impacts to Historic Districts C and D. Refer to Response to Comment E9-7.
- E11-2: The comments raised are addressed in responses to Letter E9.
- E11-3: The comments raised are addressed in responses to Letter E6.
- E11-4: The comments raised are addressed in responses to Letters E4 and E8. Refer also to Master Response #3 (regarding inappropriate deferral of mitigation measures) and Master Response #6 (regarding potential incompatibilities between the Port and land uses that would be developed as part of the Draft Specific Plan).
- E11-5: The comments raised are addressed in responses to Letter E2.
- E11-6: Chair Railsback pointed out several errors in the Draft EIR and recirculated sections that require revision. These revisions are made as follows:

Page 130 of the Draft EIR is revised as follows:

Mitigation Measure GEO-3b (All Zones): Designs of all open space and park areas shall be reviewed and approved by the City of Benicia ~~Community Development Department~~ Planning and Building Department. The designs of all open space and park areas shall incorporate low water-need plantings to minimize the potential for damage to pavements, utilities, and structures from expansive soils. The use of similar landscaping shall be encouraged at private development parcels by providing information to new tenants regarding the relationship between irrigation and subsequent property damage. A document which describes the potential for damage from expansive soils from over-irrigation and includes solutions such as drought-tolerant plant material and drip irrigation systems shall be prepared by the applicant and provided to all occupants of the Plan Area. (LTS)

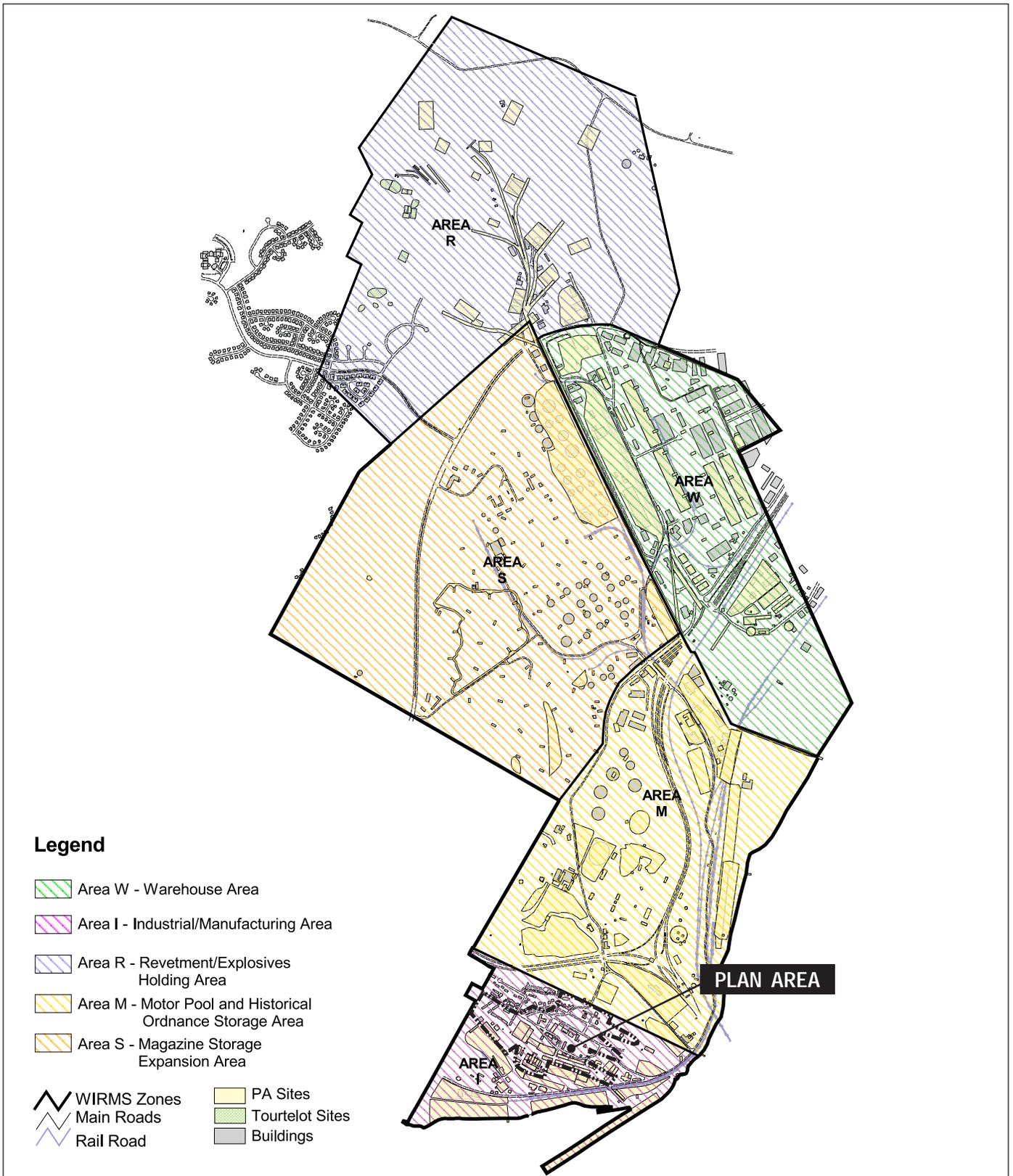
Page 180 of the Draft EIR is revised as follows:

Mitigation Measure BIO-2b (Jefferson Street/Officers' Row Zone): Applicants for individual development projects on the site of any delineated wetlands shall obtain the appropriate federal and State permits authorizing the fill of jurisdictional wetlands and other waters, including waters of the State. The

applicant shall provide proof to the City of Benicia Planning and Building Department of compliance with the terms and conditions of the permits prior to issuance of the grading permit. All work in jurisdictional areas shall be in compliance with the terms and conditions of the federal and State permits.

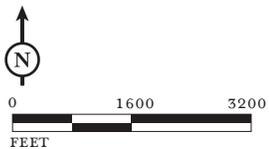
Figures IV.E-1, IV.E-2, and IV.E-3 were mistakenly labeled as Figures V.E-1, V.E-2, and V.E-3, respectively, in recirculated Section IV.E, Hazards and Hazardous Materials. These figures are revised as follows:

E11-7: Commissioner Healy expressed concern that the mitigation measures in the Draft EIR would be onerous for developers to implement and questioned the use of the Draft EIR in evaluating specific development proposals in the Plan Area. Refer to Master Response #4, particularly the last paragraph of the response.

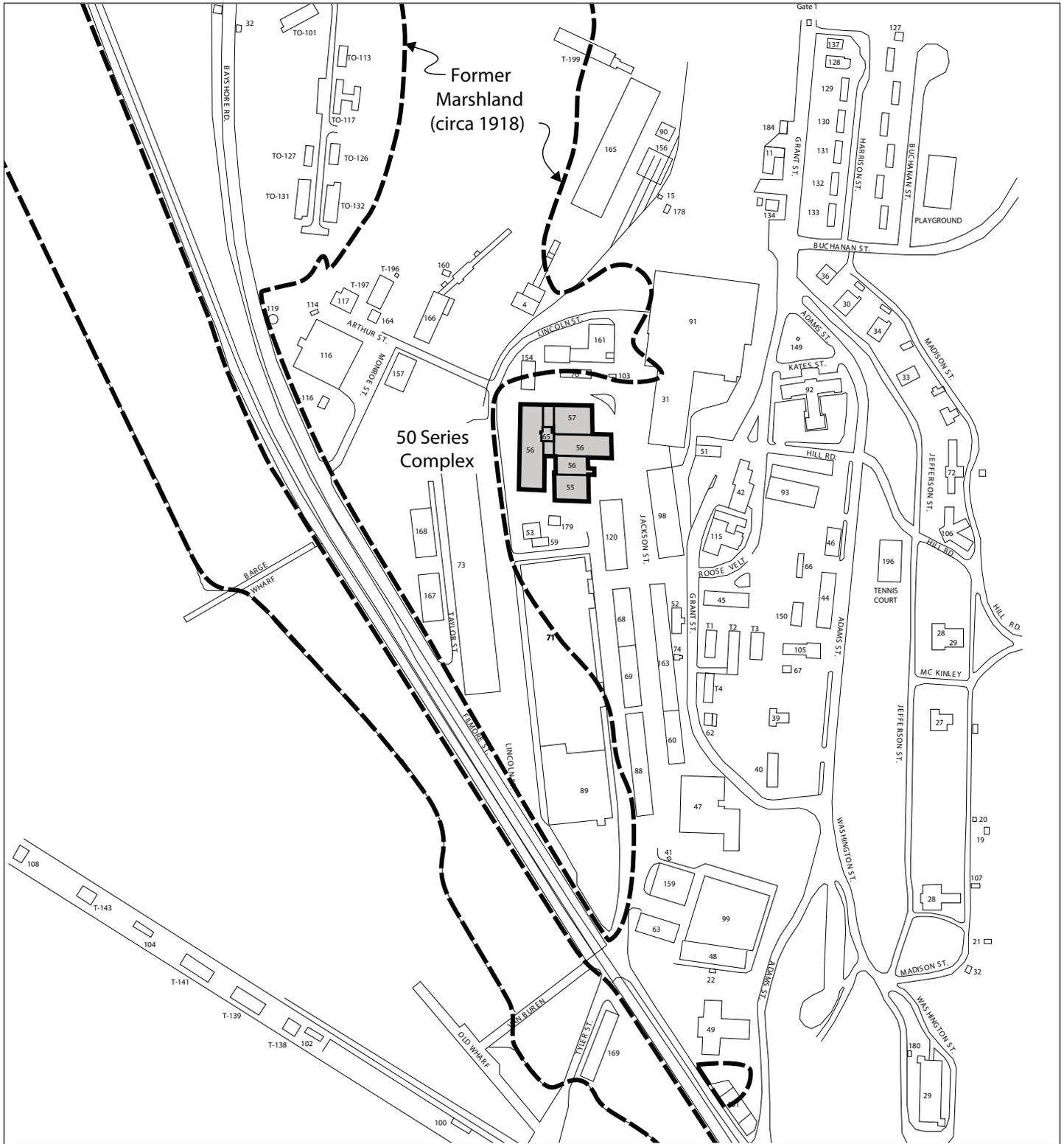


LSA

FIGURE IV.E-1



Lower Arsenal Mixed Use Specific Plan EIR
Preliminary Assessment (PA) Study Areas



LSA

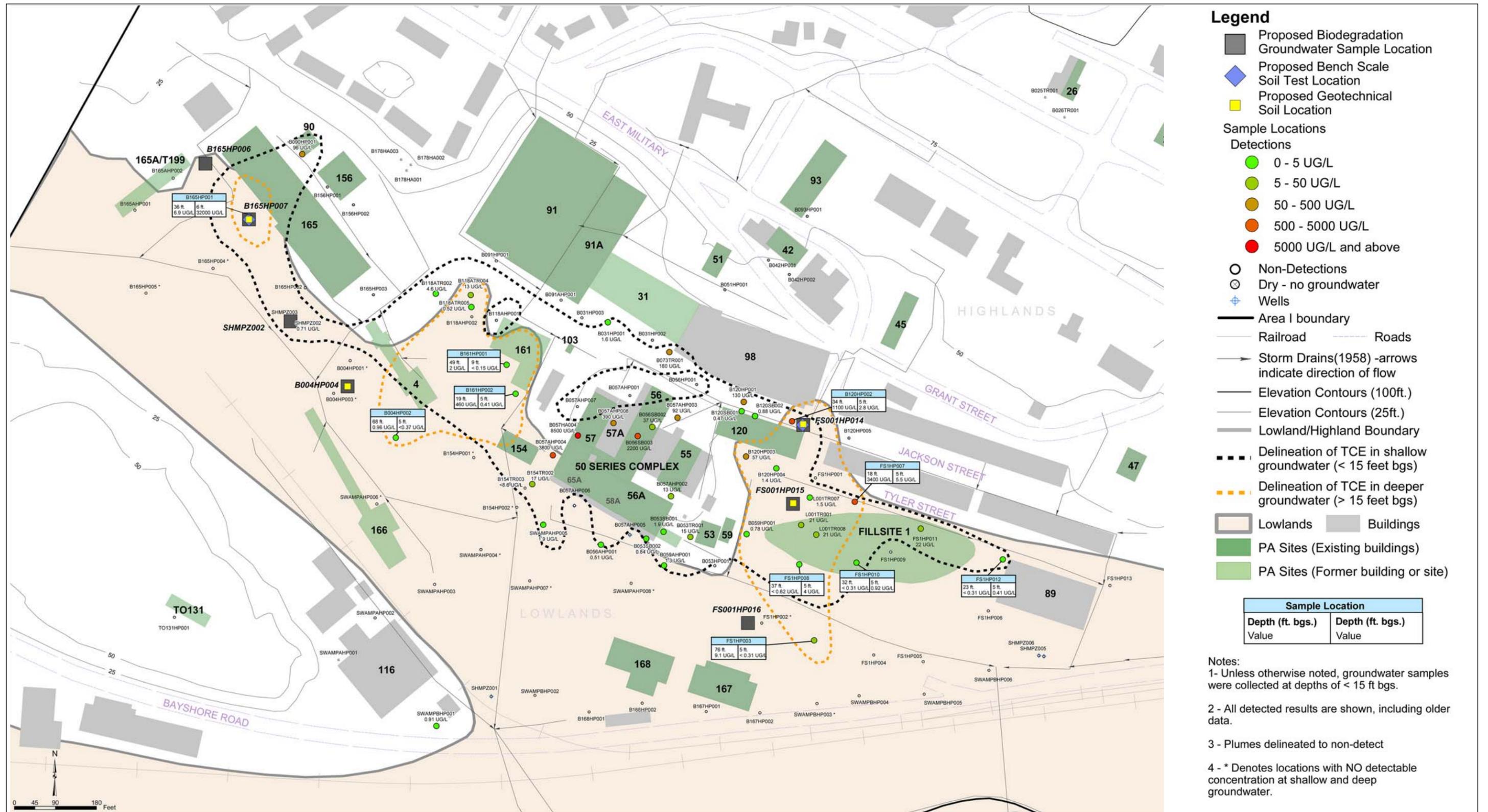
FIGURE IV.E-2


 NOT TO SCALE

Lower Arsenal Mixed Use Specific Plan EIR
 50 Series Complex

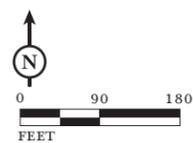
SOURCE: FORSGREN ASSOCIATES/BROWN AND CALDWELL, 2004

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LSA

FIGURE IV.E-3



Lower Arsenal Mixed Use Specific Plan EIR
Trichloroethene Detected in Groundwater
and Proposed Treatability Locations

SOURCE: BROWN AND CALDWELL, 2005

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