

>>> Luis Delgado <lfidarchitect@sbcglobal.net> 6/23/2008 10:29 AM >>>

Dear Mayor,

I'm not sure if you have seen this article about Seeno. Can you please forward to all of the Council City and city staff. I think it is worth reading.

Here is link >>> http://greenbelt.org/resources/press/clippings/clip_2008jan15seeno.html

I really feel that you and Council need to make sure that any conditions that are attached to this project are enforceable by LAW. If they are not, then I would recommend that all project conditions should be made as part of a "DEVELOPEMENT AGREEMENT". Remember that we owe them nothing. They are coming here to build in our City and they will be gone once they get what they want.

Sincerely,

Luis Delgado



Greenbelt Alliance in the News

http://www.contracostatimes.com/growth/ci_7975728

January 15, 2008

State fines developer Seeno \$3 million

Seeno Construction penalized for environmental violation in Antioch, its fourth in Bay Area since 1996

Simon Read

State officials have reached a \$3 million settlement agreement with the Albert D. Seeno Construction Co. concerning alleged environmental damage at a housing development in Antioch.

The state charged that Seeno didn't have proper permits to do grading work in the Mira Vista subdivision that destroyed ponds and several waterways during various stages of development. The violations were uncovered and investigated by the state Department of Fish & Game.

"This is a great win for us," said Liz Kanter, spokeswoman with the State Water Board. "Because this gentleman is a repeat offender, we decided to go after a larger fine. He did not want a criminal prosecution ... and wanted to settle."

Seeno construction companies have been cited for environmental violations four times since 1996. In the Mira Vista case, Seeno has agreed to pay \$500,000 to the Central Valley Regional Water Quality and Control Board, \$250,000 to the state Fish and Game Preservation Fund, \$250,000 to the Contra Costa County Fish and Wildlife Propagation Fund, \$250,000 to the state Department of Justice to pay for future environmental enforcement and \$250,000 to the Contra Costa County Treasurer.

In addition to monetary penalties, Seeno has agreed to grant a 60-acre parcel to the East Bay Regional Park District for endowment and preservation purposes, officials said. The company will also train its employees on environmental regulations, and it must conduct biological and wetland assessments of its properties.

"The Seeno company in no way admits any fault or liability in this case but settled this to avoid what can be a very expensive endeavor when you're involved in a legal dispute with the government," said Seeno spokesman Kiley Russell. "This is a business decision to get it behind the company and do what they're good at, which is building homes."

In October 2005, the Department of Fish & Game organized a multiagency inspection of the Mira Vista development.

"During the inspections, water board staff found that three unnamed creeks and four seasonal ponds had been filled in during home construction," Frances McChesney, the board's senior staff counsel, wrote in an e-mail.

Five years ago, Seeno's West Coast Home Builders pleaded guilty to violating the federal Endangered Species Act for the 2001 killing of red-legged frogs and deliberate destruction of a frog habitat at the construction site of the San Marco subdivision in Pittsburg.

"He was fined \$1 million and ordered to write a public apology," Kanter said. "Obviously, that wasn't a deterrent."

Christina Wong, East Bay field representative for **Greenbelt Alliance**, said developers can't be wholly trusted with environmental decisions.

"This is a reminder that we need to be skeptical about the claims developers make," she said. "It's clear that the people of Contra Costa County and their elected officials need to keep a close eye on developers like Albert Seeno, who has a track record of destroying the environment."

Wong said Greenbelt Alliance is working to preserve an open hillside in Pittsburg that Seeno is eyeing for a possible development.

Russell said the company should not be defined solely by its transgressions.

"If you look at the history of the projects," he said, "the incidents are quite small in number compared to the good work they're doing."



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June 3, 2008

Honorable Elizabeth Patterson,
Mayor of Benicia

Honorable Tom Campbell,
Vice Mayor of Benicia

Honorable Hughes, Ioakimedes and Schwartzman,
Council Members

RE: Benicia Business Park

Dear Mayor, Vice Mayor & Council Members:

We apologize for not being able to attend tonight's meeting in person, but both Phil and I had conflicts that could not be avoided.

Our Colliers office has been retained by Sierra Pacific Properties (real estate management affiliate of Discovery Builders) to attract high end bio-tech and research users to the campus environment that we envision for the Benicia Business Park.

Over the years, we have recruited well in excess of 10 million square feet of users into Solano County. We have successfully recruited some of Benicia's top firms from both a job creation and tax base perspective starting with Bio-Rad's first Benicia facility in 1990.

Benicia has the ideal demographics and schools needed to attract these research firms. Unfortunately, Benicia and most of Solano have run out of land suitable for business campus recruitment. Ironically, now that we are out of land, the users want in.

It is important that this project be approved tonight so development can commence. We currently represent several larger campus users that will be forced to consider the communities of Davis and/or Dixon if a time line for completion of this project is not ascertained now.

For the long term health and viability of this community, you must approve the Benicia Business Park.

Sincerely,

COLLIERS INTERNATIONAL

Handwritten signature of S. Brooks Pedder in black ink.

S. Brooks Pedder, SIOR
Co-Managing Partner

Handwritten signature of Philip A. Garrett in black ink.

Philip A. Garrett, SIOR
Co-Managing Partner

SBP:PAG/bar

>>> Charlie Knox 6/3/2008 2:32 PM >>>

Attached per the Mayor's request

>>> "Louis Parsons" <LParsons@discoverybuilders.com> 6/3/2008 2:26 PM >>>

Charlie-

As requested, here is a select list of some projects we have built-

Regards,

Louis Parsons

Vice President - Forward Planning

Discovery Builders, Inc.

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Concord, CA 94520

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Cellular (925) 250-7101

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LParsons@discoverybuilders.com

Discovery Builders Select Project List

- Peppermill Hotel – Reno
- Wendover Hotel - Wendover
- Montego Bay Hotel - Wendover
- Metroplex Offices – Concord
- Concord Gateway – Concord
- Shaw Environmental Offices – Concord
- Sierra Pacific Offices – Concord
- Century Plaza Retail – Pittsburg



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FAX TRANSMISSION COVER SHEET

June 3, 2008

TO: Honorable Mayor Elizabeth Patterson and
Members of the City Council
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Jim Erickson, City Manager **FAX: (707) 747-8120**
City of Benicia

Heather McLaughlin, City Attorney **FAX: (707) 746-1196**
City of Benicia

Charlie Knox **FAX: (707) 747-8121**
Community Development Director
City of Benicia

FROM: Kristina D. Lawson

RE: June 3, 2008 City Council Meeting, Agenda Item VIII.B - Response to June
2, Letter from Dana Dean

COMMENTS: Please see attached letter dated June 3, 2008

**Total Number of Pages (including this
page) 15**

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June 3, 2008

VIA FACSIMILE AND EMAIL

Mayor Elizabeth Patterson
and Members of the City Council
City of Benicia
250 East L Street
Benicia, CA 94510

Re: June 3, 2008 City Council Meeting, Agenda Item VIII.B. - Response to June
2 Letter From Dana Dean

Dear Honorable Mayor Patterson and Members of the City Council:

This firm represents West Coast Home Builders, Inc. and Discovery Builders, Inc. ("Applicant") in connection with its proposed Benicia Business Park project (the "Project"). Yesterday we received a copy of an 11-page letter to the City Council from the Law Offices of Dana Dean. The submittal of this letter just one day before the final Council hearing on the Project, which has been underway for years, is unfortunate and could have easily been avoided. Because we must assume that Ms. Dean's client intends to authorize her to file a lawsuit challenging the approval of the Project, however, we cannot ignore her letter.

As indicated in the first paragraph of Ms. Dean's letter, her client is an unincorporated association that opposes approval of the Project. As Ms. Dean is well aware, the Draft Benicia Business Park Environmental Impact Report Addendum ("Addendum") was prepared and circulated to the public in April. While Ms. Dean had over one month to comment on the Addendum, she instead waited until one day prior to the third scheduled public hearing for the Project to submit her comments. The dilatory submittal makes clear that Ms. Dean and her client have no interest whatsoever in the substance of the environmental review of the Project, but instead seek only to delay or prevent the long-planned for development of the Project site. We have reviewed and analyzed the claims made by Ms. Dean, and, as set forth in more detail below, we find no legal merit to her baseless and unsupported contentions that the City's processing of the Project fails to comply with the California Environmental Quality Act ("CEQA"; Pub. Resources Code, §§ 21000 et seq; 14 Cal. Code Regs., §§ 15000 et seq.), or any other applicable law.

1. **MS. DEAN'S COMMENTS SHOULD BE REJECTED AS A MATTER OF LAW BECAUSE THEY ARE MADE SOLELY FOR THE PURPOSE OF DELAYING OR PREVENTING DEVELOPMENT**

The California Supreme Court has cautioned that "rules regulating the protection of the environment must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 576; see also 14 Cal. Code Regs., § 15003(j).) As set forth above, Ms. Dean intentionally submitted her comments late in the process and solely for the purpose of interjecting surprise and overreaction into the environmental review and entitlement process. Such tactics are not designed to promote informed decision making and must not be tolerated.

2. **THE CITY PROPERLY PREPARED THE ADDENDUM TO EVALUATE PROPOSED CHANGES TO THE PROJECT BECAUSE NONE OF THE CONDITIONS DESCRIBED IN SECTION 15162 OF THE CEQA GUIDELINES HAS OCCURRED – THE FAIR ARGUMENT TEST IS NOT THE PROPER STANDARD**

A. **The Project's CEQA Compliance**

The application for entitlements for the Project was formally deemed complete by the City of Benicia on April 27, 2005. Subsequently, the City, as lead agency, authorized preparation of a draft environmental impact report ("DEIR") to describe and analyze the potentially significant environmental effects of the proposed project and discuss ways of mitigating or avoiding those effects.

On January 11, 2007, a Notice of Completion of the DEIR was filed with the Office of Planning and Research, and a Notice of Availability of the DEIR was posted at City Hall and was mailed to property owners within three hundred feet of the location of the proposed project. Thereafter, the DEIR was circulated for public review and comment from January 11, 2007 to March 12, 2007. The City's Planning Commission held a hearing on February 9, 2007 to receive comments on the DEIR. In accordance with section III.D.9.c of the City's CEQA Environmental Review Guidelines (which has subsequently been repealed), the City Council also held a public hearing on May 1, 2007 to determine "whether to accept the Draft EIR after determining it is in conformance with the CEQA Guidelines and that there has been an adequate response to potential environmental impacts." The City Council continued the May 1, 2007 hearing to August 7, 2007, at which time it determined that the DEIR for the Project conformed to the City's CEQA Guidelines and adequately responded to potential environmental impacts.

In December 2007, a Final Environmental Impact Report ("FEIR") consisting of the DEIR, July 2007 Response to Comments, November 2007 Response to Comments,

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and the December 2007 FEIR, and incorporating all written comments received and all oral comments made at the May 1 and August 2007 public hearings was prepared and released to the public and to all public agencies that have jurisdiction by law with respect to the project.

On February 19, 2008, the City Council adopted Resolution No. 08-13, certifying the FEIR for the Project. Specifically, the City Council certified that (1) the FEIR was completed in compliance with CEQA, the CEQA Guidelines, and the City's CEQA Environmental Review Guidelines, (2) that the FEIR identified and adequately evaluated all potentially significant environmental impacts and identified and recommended all appropriate mitigation measures to address identified environmental impacts, (3) that the FEIR adequately addressed all agency, organization, and public comment received regarding the DEIR, and (4) that the FEIR reflected the City's independent judgment and analysis.

While the City Council certified the FEIR and determined that it was prepared in compliance with CEQA, it also determined that the proposed project evaluated in the FEIR conflicted with certain provisions of the City's General Plan, and that these conflicts must be resolved before the proposed project could be approved. To resolve these conflicts, the City Council directed:

...that the Hillside/Upland preservation alternative be evaluated in an Initial Study that conforms to law; analyzes, in particular, the following issues: Leadership Energy and Environmental Design (LEED), AB 32, I-780 traffic, sustainability, and urban decay; and considers appropriate mitigations for the environmental impacts.

On March 20, 2008, in accordance with the direction provided by the City Council, the Applicant delivered to the City a mitigated vesting tentative map, mitigated master sewer plan, mitigated phasing plan, mitigated preliminary drainage plan, mitigated preliminary sewer and water plan, master plan overlay design guidelines for the limited industrial zoning designation, master plan overlay design guidelines for the commercial zoning designation, conceptual landscape plan, letter from Abrams & Associates, and a description of the mitigated Project. The mitigated Project incorporated most of the environmentally superior features of the DEIR's Waterway Preservation Alternative and Hillside/Upland Preservation Alternative, and was designed to bring the Project into conformity with the General Plan and further mitigate identified impacts.

Because the mitigated Project included environmentally superior features of both the DEIR's Waterway Preservation Alternative and Hillside/Upland Preservation Alternative, in an effort to comply with the intent of the City Council's direction to evaluate the Hillside/Upland Preservation alternative in an Initial Study that

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conforms to law, the Applicant and City staff evaluated whether the mitigated Project would result in any new or more severe significant environmental impacts not previously considered in the FEIR. The City also retained LSA Associates, Inc. ("LSA") to independently evaluate whether the mitigated project would result in any new or more severe significant environmental impacts not previously considered in the FEIR. Because no new or more severe significant environmental impacts were identified by the Applicant, City, and LSA, an Addendum was prepared.

B. CEQA's Requirements For Post-EIR Certification Environmental Review

Pursuant to section 15164(a) of the CEQA Guidelines, the City is required to prepare an addendum to a previously certified EIR if some changes or additions are necessary, but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred. (See also Pub. Resources Code, §§ 21166 [Subsequent or supplemental impact report; conditions].) Section 15162 of the CEQA Guidelines provides that, for a project covered by a certified EIR, preparation of a subsequent or supplement EIR (rather than an addendum) may be required only if one or more of the following conditions occur:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

As CEQA Guidelines sections 15162 and 15164 indicate, **project changes, standing alone, are not sufficient to trigger the requirement for a further EIR; the other threshold requirements for a further EIR must exist.** An EIR is required in the first instance whenever a project may have a significant effect on the environment. A subsequent or supplemental EIR is prepared only where it is necessary to explore a new or more significant impact that was not considered in the original EIR but that will result from the proposed changes to the project. (See *River Valley Preservation Project v. Metropolitan Transit Development Bd.* (1995) 37 Cal.App.4th 154, 167.)

C. **The Fair Argument Test Is Not The Correct Standard For Determining What Level Of Post-EIR Certification Environmental Review Is Necessary**

The "fair argument" test is a standard of review that the courts will follow where a project is approved without an EIR being prepared, based upon a negative declaration of environmental significance. It has no applicability in the context of this Project, where a full and complete EIR has been prepared and certified.

Ms. Dean ignores the clear direction of the CEQA Guidelines, and instead invents her own test (which has no legal basis) for determining whether a subsequent or supplemental EIR is necessary. She states that:

...where...the altered project involves potential impacts that are *outside the scope* of the original EIR, a supplemental or subsequent EIR must be done. Further in determining whether or not such is required,

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the proper standard of review for such 'outside the scope' impacts is the 'fair argument' standard.

(See June 2, 2008 Letter from Dana Dean to the City of Benicia City Council, p. 2, citations and footnotes omitted.) Ms. Dean provides a citation to *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, as the basis for her conclusion that the fair argument test is the appropriate standard of review.

Unfortunately, in a disservice to both the City and the public, Ms. Dean does not disclose that the issue in *Sierra Club v. County of Sonoma* was far different than the issue presented here. Ms. Dean also fails to disclose that two more recent cases made clear that the test set forth in *Sierra Club v. County of Sonoma* does not apply where a project EIR has previously been prepared. (See *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 704; see also *American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th 1062, 1073.) Ms. Dean fails to properly apply the applicable law, and her baseless argument must be disregarded.

In *Sierra Club v. County of Sonoma*, the First District Court of Appeal evaluated whether the County of Sonoma violated CEQA by certifying a negative declaration and not preparing an EIR for a specific proposal to engage in terrace mining operations along the Russian River, where a program EIR had previously been prepared to evaluate the environmental impacts of a management plan for regulate mining, and certain mining operations. (*Id.* at 1313.) The Real Party In Interest had argued that the test set forth in Public Resources Code section 21166 – which sets forth when a subsequent or supplemental EIR is required, and is less stringent than the fair argument test – “applies whenever the question is whether a second EIR should be prepared, even if the first EIR was a program EIR...” (*Id.* at 1318.) The court rejected this argument, finding that “other provisions of CEQA...specify the preferred procedure when an EIR has been certified for a program or plan and a later project is proposed.” (*Id.*) Specifically, where a program EIR was previously prepared, the proper procedure to be followed to determine whether further environmental review is necessary is set forth in Public Resources Code section 21094(a). (*Id.* at 1319.) That section – not Public Resources Code section 21166 or CEQA Guidelines section 15162 – sets forth a standard that the court found consistent with the fair argument test.¹

As the City is aware, the EIR prepared to evaluate the Project and certified earlier this year was not a program EIR (as was the case in the case cited by Ms. Dean). (See 14 Cal. Code Regs., § 15168(a) [“...A program EIR is an EIR which may be

¹ The “fair argument” standard generally requires preparation of an EIR whenever there is substantial evidence in the record supporting a fair argument that a project may have a significant effect on the environment. (*Laurel Heights Improvement Ass'n v. Regents of the University of California* (1993) 6 Cal 4th 1112.)

prepared on a series of actions that can be characterized as one large project and are related either: (1) Geographically, (2) As logical parts in the chain of completed actions, (3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or (4) As individual activities carried out under the same authorizing statutory or regulator authority and having generally similar environmental effects which can be mitigated in similar ways.") Rather, the certified FEIR is a project EIR, and the standard set forth in *Sierra Club v. County of Sonoma* is therefore inapplicable. (See 14 Cal. Code Regs., § 15161 [definition of project EIR].) "...[W]hen a court reviews an agency decision under section 21166 not to require a subsequent or supplemental EIR on a project, the traditional deferential substantial evidence test applies." (*Sierra Club v. County of Sonoma*, *supra*, 6 Cal.App.4th at 1318.)

D. **An Addendum Is Appropriate Because The Changes Proposed In The Project Do Not "Require Major Revisions Of The Previous EIR...Due To The Involvement Of New Significant Environmental Effects Or A Substantial Increase In The Severity Of Previously Identified Significant Effects"**

Ms. Dean argues that a subsequent or supplemental EIR is necessary "because there are substantial changes in the Project and in the circumstances surrounding the project that necessitate major revisions to the Original EIR." Again, Ms. Dean attempts to mislead the City and the public by misquoting the applicable law.

As set forth above, Public Resources Code section 21166 and CEQA Guidelines section 15162 require preparation of a subsequent or supplemental EIR only where major revisions to a previous EIR are required "due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects." In the Addendum, LSA has concluded that the mitigated Project will not result in any new significant environmental effects or a substantial increase in the severity of previously identified significant effects. Accordingly, no further EIR is required, and the Addendum is the appropriate CEQA document for the circumstances presented.

Notably, in her letter Ms. Dean fails to identify: (1) any change in the project or circumstances she believes is "substantial," (2) any necessary "major revision" to the certified FEIR, or (3) any "new significant environmental effect or a substantial increase in the severity of previously identified significant effect." Her inability to provide evidence in support of any of these elements highlights the baseless nature of her argument.

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3. **SUBSTANTIAL EVIDENCE SUPPORTS A DETERMINATION THAT THE ADDENDUM IS ADEQUATE**

Without any basis in law or in fact, Ms. Dean argues that the mitigated Project will cause potentially significant impacts that have not been identified. Ms. Dean provides no evidence whatsoever to support her claims (and certainly not the substantial evidence required by law).

As set forth in section 15384 of the CEQA Guidelines:

...Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.

(14 Cal. Code Regs., § 15384, *emph. added*; see also Pub. Resources Code, § 21080(e).) In situations where testimony is: (1) "inherently improbable," (2) a witness is biased, or (3) an opinion is unsupported by the facts from which it is derived, such testimony does not constitute substantial evidence. (*Brentwood Assn. for No Drilling v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504.) Further, "dire predictions by nonexperts regarding the consequences of a project do not constitute substantial evidence." (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1417.)

A. **The Certified FEIR And Addendum Fully Analyze Potentially Significant Biological Resources Impacts**

Again, Ms. Dean provides no evidence whatsoever to support her claims that the Addendum or the certified FEIR is inadequate. She argues (without citation to an expert report, or any evidence) that because the Applicant now proposes to preserve more open space than originally proposed, various biological resources impacts analyzed in the certified FEIR must be revisited. This is a surprising statement as the certified EIR and Addendum provide a lengthy expert analysis of the impacts of the mitigated Project on various Biological Resources. (See Addendum, pp. 33-35.)

B. **The Certified FEIR And Addendum Fully Analyze Potentially Significant Water Supply Impacts**

The certified FEIR and Addendum also fully and adequately analyze the Project's future water supply. In fact, the certified FEIR clearly and definitively establishes that there is a *certain* water supply for the Project, thus fully avoiding the problems reviewed by the California Supreme Court in *Vineyard Area Citizens for Responsible*

Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412. With respect to this critical issue, Ms. Dean again misstates the applicable law.

The certified FEIR clearly identifies the actual source of water for the Project. (See FEIR, p. 337-338 ["The WSA determined that the City has adequate existing water supply sources to meet the future water supply needs of the City under all conditions, including development of the proposed project and all other existing and planned future uses anticipated by the General Plan."]; see also Addendum, p. 44 ["...the mitigated project would also have a less-than-significant impact on water supply."]) The question addressed in *Vineyard* (which is cited by Ms. Dean in support of her baseless argument) was "what level of uncertainty regarding the availability of water supplies can be tolerated in an EIR for a land use plan." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra*, 40 Cal.4th at 428.) Where a certain water supply exists, *Vineyard's* requirement to discuss possible replacement sources of water or alternatives is never triggered. Here, as set forth in detail in the certified FEIR, the City's consultants have confidently determined that an adequate water supply exists to serve the Project. This Project faces none of the water supply problems considered in *Vineyard*, and Ms. Dean's argument is unmeritorious.

C. The Certified FEIR And Addendum Fully Analyze Potentially Significant Traffic Impacts

Ms. Dean further argues there is "insufficient environmental review and public discourse" regarding the extension of Industrial Way in the western portion of the Project site. The extension of Industrial Way is clearly identified in the Project Description sections of the certified FEIR (p. 70) and Addendum (p. 10), and the effects of the development of this road were fully analyzed and considered throughout both documents. For additional information, please reference the attached letter from Steve Abrams of Abrams Associates Traffic Engineering, Inc.

D. The Certified FEIR And Addendum Fully And Adequately Mitigate All Potentially Significant Impacts

Again, Ms. Dean attempts to mislead the City and the public by arguing that the mitigation measures included in the Certified FEIR and Addendum are somehow inadequate. (See June 2, 2008 Letter from Dana Dean to City Council, p. 7.) Interestingly, she provides no citation to a particular mitigation measure that she takes issue with, and instead cites to a portion of the Addendum which describes the differences between the original project and the mitigated Project in support of her argument. We note that Mitigation Measures GEO-3a, GEO-3b, and BIO-2 appear to address the issue raised by Ms. Dean on page 7 of her letter, although it is not clear which particular impacts Ms. Dean is concerned with or whether she believes particular mitigation measures are inadequate.

4. **SUBSTANTIAL EVIDENCE SUPPORTS A DETERMINATION THAT THE CERTIFIED EIR IS ADEQUATE**

Despite that over three months have elapsed since the City Council certified the FEIR for the Project, Ms. Dean continues to advance arguments that the certified FEIR is inadequate. As you are aware, on February 19, 2008, the City Council adopted Resolution No. 08-13, certifying the FEIR for the Project. Specifically, the City Council certified that (1) the FEIR was completed in compliance with CEQA, the CEQA Guidelines, and the City's CEQA Environmental Review Guidelines, (2) that the FEIR identified and adequately evaluated all potentially significant environmental impacts and identified and recommended all appropriate mitigation measures to address identified environmental impacts, (3) that the FEIR adequately addressed all agency, organization, and public comment received regarding the DEIR, and (4) that the FEIR reflected the City's independent judgment and analysis. Ms. Dean has provided no substantial evidence that the City's determination was erroneous or unsupported.

5. **THE CITY'S REQUIREMENT IN THE PROJECT CONDITIONS OF APPROVAL THAT THE APPLICANT PROVIDE AN UPDATED URBAN DECAY ANALYSIS IS UNRELATED TO CEQA**

As indicated above, the City Council found that the FEIR identified and adequately evaluated all of the Project's potentially significant impacts, including urban decay impacts. The Urban Decay analysis for the Project is set forth at pages 345-352 of the certified FEIR. As set forth in the certified FEIR, the City has determined that urban decay impacts are less-than-significant with mitigation.

On page 46 of the Addendum it is noted that the mitigated Project and the original Project will result in essentially the same commercial development of the site, and that the Project (unless the amount of proposed retail uses increases) will not result in urban decay. That the City wishes to evaluate further the potential for urban decay is unrelated to CEQA, as the conclusion in the FEIR and Addendum is clear.

6. **THE ADDENDUM IS NOT A STAND ALONE DOCUMENT, AND IS PROPERLY CONSIDERED WITH THE CERTIFIED EIR**

Ms. Dean further attempts to discredit the Project environmental review by suggesting that the Addendum fails to include necessary information and reports. The CEQA Guidelines confirm that an addendum is not a stand alone document, and must be considered with a previously prepared EIR. (14 Cal. Code Regs., § 15164.) Accordingly, we refer Ms. Dean to the certified EIR for the information she believes is missing from the Addendum.

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7. **THE PLANNING COMMISSION HAS REVIEWED THE APPLICATION
AND FURTHER REVIEW IS UNNECESSARY**

As set forth in the staff report, on April 10, 2008, the Planning Commission reviewed the Project and provided a recommendation to the City Council. CEQA does not require that a proposed addendum be circulated for public review or reviewed by an advisory agency. (14 Cal. Code Regs., § 15164(c).) Accordingly, in light of the Planning Commission's April recommendation (which satisfied the requirements of all applicable law) further review by the Planning Commission is unnecessary.

8. **A PROPOSED MITIGATION MONITORING AND REPORTING PROGRAM
HAS BEEN CIRCULATED**

Ms. Dean suggests that the Project's environmental review is flawed because a mitigation monitoring and reporting program ("MMRP") has not been circulated or approved. We refer Ms. Dean to the attachments to the staff report for this evening's meeting, which include a draft MMRP.

9. **THE PROPOSED STATEMENT OF OVERRIDING CONSIDERATIONS IS
SUPPORTED BY SUBSTANTIAL EVIDENCE**

Set forth on page VII-B-130 of the staff report prepared for your consideration is a proposed statement of overriding considerations. This document was prepared by the City's consultants, and fully explains the standards for such a statement and the specific reasons the Project should be approved notwithstanding that the project may have a potentially significant impact on regional air pollution. All identified reasons are fully supported by evidence in the record, including evidence contained in the certified FEIR and Addendum. (See 14 Cal. Code Regs., § 15093.) Ms. Dean provides no evidence whatsoever that the statement is not supported by the requisite substantial evidence.

Mayor Elizabeth Patterson and Members of the City Council
June 3, 2008
Page 12

* * *

As set forth in detail above, Ms. Dean's letter contains a series of meritless legal claims, unsupported by any evidence whatsoever, and in some cases, based on blatant misrepresentations of the applicable law or facts. As you know, the Project team has been working diligently with the City to ensure the Project is well-planned, and sensitive to the concerns raised by the City Council and the public. On behalf of our clients and the entire Project team, we are committed to a Project that is consistent with the City's vision, and look forward to the opportunity to bring the Project to fruition.

Very truly yours,

MILLER STARR REGALIA



Kristina D. Lawson

KDL:kdl

Attachments

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



Abrams Associates
TRAFFIC ENGINEERING, INC.

June 3, 2008

Kristina Lawson
Miller Starr Regalia
1333 North California Boulevard, Fifth Floor
Walnut Creek, CA 94596

**Re: Review of the Potential for Different Traffic Patterns with the Benicia
Business Park Mitigated Site Plan Dated March 20, 2008**

Dear Ms Lawson:

This was prepared in response to a letter from Dana Dean, dated June 2, 2008. This letter asserts that the trip distribution used in the environmental review for the March 20, 2008 mitigated site plan (mitigated plan) has changed due to the location of the commercial uses, the reduced industrial area, and a purported new roadway connection. However, none of these items would invalidate the trip generation estimates used in the Benicia Business Park Final EIR (FEIR)¹.

There has been absolutely no evidence presented that would indicate the mitigated plan would have a different trip distribution or different traffic patterns than what was studied in the FEIR. The mitigated plan is still in the exact same location and has the exact same access points as the previous proposal so there is no reason to revisit the trip distribution assumptions. In addition, the FEIR made extremely conservative assumptions about the trip distribution onto local roads within Benicia. As a result, even if the trip distribution were adjusted it could only result in more traffic being assumed to head to the nearby freeway interchanges thereby reducing the project's traffic impacts. It is clear that there has been an exhaustive analysis of traffic impacts for both the previous proposal and the mitigated plan. As a result of this information, and the extensive list of project traffic mitigations, it is clear that all potentially significant traffic impacts have been identified during this process. It is also clear that there are no changes included in the mitigated plan that would affect the conclusions about the project's traffic impacts.

The fact that the commercial portion of the project is still located in a "cluster" in the same location does not mean that the travel patterns would change in the area. Commercial uses are typically grouped together for economic reasons. Shared customers among the businesses also means shared trips and substantially reduced travel for people who plan visit more than one business there. For the purposes of the environmental review there were no reductions assumed for shared trips or pass-by traffic so the traffic analysis of the commercial area was very conservative. However, it is also important to point out that the retail components on the site comprise less than five percent of the total building area proposed in the mitigated plan. As a result, there is no evidence to suggest that having the same commercial component in the mitigated plan would somehow result in traffic impacts being overlooked. The same is true for the reduced industrial area.

¹ Benicia Business Park Final EIR, LSA Associates, Berkeley, CA, December, 2007.

Abrams Associates
TRAFFIC ENGINEERING, INC.

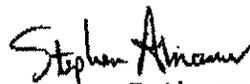
Page 2

This is the primary component of the project and reducing this component only provides an overall reduction in the trip generation. Reducing this component clearly would not result in the creation of new traffic patterns or the potential for new traffic impacts.

It must also be noted that the extension of Industrial Way that is referred to was also a component of the previous project. In the previous plan the roadway may not have been identified as an "extension" of Industrial Way. There may also be some minor shifts in the alignment of the roadway. However, the mitigated plan clearly still has the same access to Industrial Way that was studied in the FEIR and, as a result, the traffic analysis for the FEIR can still be considered directly applicable to the mitigated site plan.

The questions that have been raised about different traffic patterns for this lower density plan (on the same site) clearly do not provide any reason (or even a fair argument) that would indicate the City should revisit the traffic analyses conducted as part of the environmental review. We are confident that the environmental review of traffic impacts for the mitigated plan is thorough and very conservative. In fact, any potential changes to the project trip distribution would be expected to result in more trips being assigned to Interstate 680. This would clearly result in reduced traffic impacts and possibly the elimination of some local roadway mitigations. In summary, there is no credible evidence that the mitigated plan would create new traffic impacts that were not previously identified in the traffic analyses conducted as part of the Benicia Business Park FEIR. I hope you find this information useful and please don't hesitate to call if there are any questions.

Sincerely yours,



Stephen C. Abrams

Vice President

T.E. License No. 1852

Melissa Andersen - Fwd: The Seeno Project

From: Anne Cardwell
To: Charlie Knox; Heather McLaughlin; Jim Erickson; Melissa Andersen
Date: 6/3/2008 1:58 PM
Subject: Fwd: The Seeno Project

Not sure that you got this one that went just to Lisa and Council.

>>> <5plus1rays@sbcglobal.net> 6/2/2008 6:51 AM >>>
Dear Honorable Mayor and City Council Members:

I am writing this morning to ask you to vote NO on the current Seeno Industrial Park Project Proposal.

I am an employee of Contra Costa County and over the years I have watched the Seeno family/companies walk all over the government, take advantage of the low fine structure on project violations and destroy the environment for the maximum financial gain on their projects.

I understand that you can put as many Conditions of Approval as you please on the project - but what can the Building Inspection do to enforce them? What if Seeno/Discovery Builders does not follow them? What if, like in Contra Costa County, they would rather face a few thousand dollars in fines and rake in bigger money on their project?

Please don't enter into this deal - it feels like doing a deal with the devil!

Please wait until there is more time, a better proposal and more ability to control this project. We have such a wonderful community right now - let's not make the same mistake that others have made before when dealing with the Seeno Companies!

Sincerely,
Jill Ray
486 West K Street

>>> Anne Cardwell 6/3/2008 11:11 AM >>>

Hello,

Priscilla Whitehead called to encourage you all to vote to deny the Benicia Business Project and send it back to be re-done. She said due to reasons such as Robert Semple and the increased pollution, as well as many others - that this project needs to start over for the benefit of the city. She thinks it is a bad proposal.

Thank you

From: Anne Cardwell
To: Charlie Knox; Council; Heather McLaughlin; Jim Erickson
Date: 6/3/2008 9:31:22 AM
Subject: Fwd: For June 3 City Council Print for side table

>>> "BeniciaFirst@earthlink.net" <BeniciaFirst@earthlink.net> 6/3/2008 7:00 AM >>>

A Statement from *BeniciaFirst!*

QUESTIONS AND ANSWERS ON THE SEENO PROJECT:

Question: Does this debate represent a clash between pro-development and anti-development forces?

Nothing could be further from the reality of the case we have presented. The central issue is the quality and practicality of the currently proposed plan. What Seeno is proposing is a dated plan for a commuter-driven park--one that is geared to attract conventional warehousing and shipping, with a commercial area located at the freeway. Such an outmoded model ignores the new realities upon which Benicia First has focused. We face an energy-constrained future economic environment as highlighted by the Global Warming Solutions Act, AB32, which mandates drastically reduced "vehicle miles traveled" generated by any new project. At the same time, there is a revolution in thinking about green industrial development together with an unprecedented demand for the kind of research and development campus for which Benicia is uniquely suited.

Question: If your concerns and hopes for achieving what you call a 21st Century project are spelled out in "Conditions of Approval" set by the City, would this not be a solution?

Essentially, this approach heightens one of the major drawbacks of the Seeno proposal. With a project that incorporates neither coherence nor a visionary comprehensive plan for a campus-style R&D park, attempting to reshape that project through hundreds of conditions simply underlines and emphasizes its flaws and its fragmented character. It would require permitting and overseeing virtually all detail of the development and attempting somehow to create coherence through endless, difficult management of detail. It would require enormous oversight responsibilities for the city extending through 25 years into the future. We do not think this feasible or realistic. Practical enforceability is questionable. Nor do we believe it possible to create an integrated, coherent, energy sensitive and future oriented project in this fashion.

Question: Didn't the Final Environmental Impact Report (FEIR) with the recently produced Addendum give this project a clean bill of health?

No. The voluminous comments submitted by Steve Goetz and Don Dean, both professional planners, detail the numerous flaws and inadequacies of the FEIR and the present revised proposal. We cite here just one dramatic example: its treatment of traffic increases and resulting air pollution impacting Semple School. If you think the health and safety of Semple school children are important, consider this. The FEIR contained a gross error in its estimates of future traffic on I-780 and East 2nd St., adjacent to Semple School. Real world traffic projections put that figure far over the prescribed limit for locating new schools.

NOTE THIS CAREFULLY. The City Council must legally agree that these unavoidable negative impacts on air quality affecting the Semple School, are justified by "overriding considerations"; in short that the benefits of the Seeno project override those impacts. Would you want that Resolution of CEQA Findings signed?

Question: If this project is denied, won't that delay development for many years?

In reality the highly questionable phasing plan of the present proposal already delays the industrial development for five to ten years. Currently there is a great need and business climate for the kind of development that Benicia should be getting. Venture capital is flowing to precisely those research and development, future-oriented clean tech projects that are most desirable for Benicia. There will never be a more obvious window of opportunity for Benicia to get the green industrial development that enhances and serves the city while exploiting its unique demographics and location.

Question: With denial, what would happen next?

It would be essential for the city to send the strongest possible signal to Seeno that it wants to cooperate, proactively and immediately, in helping the company to both advance a new plan and to recruit the kind of research and development ventures, (biotech and alternate energy enterprises and other supporting businesses) that are now demonstrating such promise for the future in the Bay Area.

BeniciaFirst@earthlink.net

CC: Melissa Andersen

From: Anne Cardwell
To: Melissa Andersen
Date: 6/3/2008 5:44:54 AM
Subject: Fwd: "Semple School Letter", from Argos Scientific, regarding sample air monitoring accomplished May 30th

for the web...

>>> Marilyn Bardet <mjbardet@sbcglobal.net> 6/2/2008 6:58 PM >>>
Charlie and Anne,

I know it's late, but here's one more hugely important puzzle piece for the record on cumulative Air Quality impacts of the Seeno project whose projected traffic increases on East 2nd St and I-780 threaten Semple School children's health and safety, wherein existing conditions are on the margins of unacceptable risk.

The finding of significant unavoidable air quality impacts and the resolution for "overriding considerations" on regional air quality impacts makes a sure case for denial of the project, if the the implications of the following letter and its data revelations are fully interpreted, understood and extrapolated. The letter was sent by Don Gamiles, of Argos Scientific Inc, to me and Dana Dean, founding members since 2000 of the Good Neighbor Steering Committee and members of the Valero CAP. We have consistently demonstrated our concern about local ambient air quality and air emissions in Benicia and have worked with Valero and Don Gamiles and the Bay Area Air Quality Management District, since 2003, to ensure that a local air-monitoring program to sample local air quality would be established for at least one year.

The letter presents data from a 15 minute sampling done with a UV monitor that records emission "signatures" of various typical gases associated to tailpipe exhaust and also certain industrial processes, such as the refinery's. Air contaminants that are detectable from passing cars, for example in this case, are read by the light beam inside the monitor and show up in "real time" as data numbers collected in programmed software that can register and store data samples taken in increments of time as short as 5 seconds.

On Friday morning, May 30th, air sampling was done between 7:45 and 8 a.m., from a parked car at the driveway of the temporarily closed Valero gas station, across from Semple Elementary's playing field. The data records immediate emission spikes of key tailpipe emissions from passing cars in nearby lanes. I was actively present for this sampling event, holding the laptop that recorded the emissions. I saw the spikes as individual cars and trucks whizzed by at varying speeds. I noticed repeated spikes of ammonia, NO, SO2 and benzene. Benzene detection is particularly worrisome since the volatile organic compound is a known carcinogen on the California special list of toxics under Prop 65. I've also learned that when ammonia mixes with NO, a particulate is formed which other organic compounds can attach. Such particulates, as small as 1 or 2.5 microns, can pass through lung tissue into the bloodstream. Further, as I understand it, ammonia is a product of the catalytic converters burning off of fuel and is ubiquitously present around city streets and freeways. NO is prevalent in cities and industrial areas. Presently, the synergistic effects of multiple chemical air contaminants on human health are not fully studied. But

risks to "sensitive receptors" to chronic exposures of air pollution are known (see Contra Costa Children's Health Study, formerly submitted into the record).

It should go without saying that taking a precautionary conservative approach to addressing what the certified FEIR says are "unavoidable air quality impacts" is in order with regard the health and safety of our local children and neighbors in the vicinity of East 2nd St.

I will be presenting this letter into the record at the public hearing and explaining further some of the ramifications, and the inadequacy of suggested mitigations. I believe the recommendation to approve overriding conditions for significant and unavoidable regional air quality impacts--an acceptance of which would allow approval of the business park project as currently designed--amounts to a form of heresy, an abdication of responsibility to a whole generation of local children.

Sincerely,
Marilyn Bardet

Begin forwarded message:

> From: "Don Gamiles" <dsgamiles.argos@gmail.com>
> Date: June 1, 2008 8:29:55 PM PDT
> To: "Dana Dean" <danamail@pacbell.net>, "Marilyn Bardet"
> <mjbardet@sbcglobal.net>, dsgamiles.argos@gmail.com
> Subject: Semple School Letter
> Reply-To: dsgamiles@argos-sci.com
>
> Hello Dana and Marylin.
>
> Here is a letter for your review.
>
> take care,
>
> Don
>
> --
> Donald S. Gamiles, PhD
> Argos Scientific, Inc.
> Phone 404 403-4709
> Fax 815 572-0443
> www.argos-sci.com

CC: Heather McLaughlin



Argos Scientific Inc.
416 NE 153rd Ave
Vancouver, WA 98684
Phone: 503 465-4215
Fax: 815 572-0443

Dear Ms. Dean,

On May 30, 2008, Argos Scientific, Inc. collected air samples near the Robert Semple Elementary School. The purpose of the study was to collect a number of baseline ambient air samples near the school before any modification of the current traffic patterns change. The samples were taken on 2nd street across from the field that is part of Semple school. During the course of the monitoring elevated levels of ammonia, sulfur dioxide, nitric oxide and benzene were detected, the results of which are included in Table 1 of this report.

Table 1 - Maximum Concentration of Detections

Chemical	Max Concentration (PPB)	Time
Benzene	25.41	7:40 AM
Ammonia	51.50	7:42 AM
SO2	36.17	7:45 AM
NO	7.57	7:50 AM

As you are aware, these levels are elevated above what would be considered to be ambient levels in the Benicia area. Benzene is a known carcinogen and ammonia, sulfur dioxide, and nitric oxide have been associated with respiratory disease.

If you have any questions, please feel free to contact me at (404) 403-4709.

Best Regards,

A handwritten signature in black ink, appearing to read "Donald S. Gamiles".

Donald S. Gamiles, PhD
President - Argos Scientific, Inc.

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

June 2, 2008

Ron Glas, Principal Planner
Solano County Department of Resource Management
675 Texas St. ; Fairfield, CA 94533—via email

also
Charlie Knox, Community Development Director
City of Benicia—via email

and

City of Benicia, Mayor Elizabeth Patterson,
Vice Mayor Tom Campbell,
Councilmembers Mike Ioakimedes, Mark Hughs and Alan Schwartzmann

**ADDITIONAL COMMENTS Pertinent to
Department of Resource Management Initial Study of Environmental Impacts of the
Signature Properties' Subdivision Application No. S-05-01, Parcel No. 0181-230-030,
the "Siena" Tentative Map, City of Benicia vicinity, dated 4-18-08
AND
Discovery Builders (Seeno) "Benicia Business Park Project"
Certified Final Environmental Impact Report, and Addendum, dated 4-29-08**

I submitted initial comments to the County on May 27th, on the Initial Study for the Signature Properties, to raise many aspects of the proposed rural subdivision project and its potential impacts. In those comments, assert that the impacts are not thoroughly identified and are inadequately reviewed and therefore require an EIR to further determine their range and depth of consequences.

Here, I resubmit these same comments and ADD ADDITIONAL COMMENTS (see below) into the record for the final certified EIR including its Addendum of April 29th, on the Seeno-proposed "Benicia Business Park" development. It should be obvious why further public comment is necessary, but I will try to state my reasons clearly. What I offer below are by no means comprehensive comments. Simply, I have given broad and particular examples of the fatally flawed nature of analysis of cumulative impacts that could foreseeably be identified as being contributed to by both development projects, both of which are now being simultaneously reviewed for respective approvals of Tentative Maps, etc. The cursory, dismissive treatment of Growth Inducing impacts of both projects represents intolerable obfuscation of the obvious and a gross misuse of CEQA for purposes of disguising real world impacts of two highly consequential development projects for the City of Benicia and Solano County.

Thus, my further comments in this letter are meant to expose the unidentified NEXUS between the projects and also, the potential and obvious GROWTH-INDUCING IMPACTS associated to

both projects which show interdependence: a rural housing subdivision proposed for unincorporated ag-land within one mile of a proposed employment center to be located within the city limits of Benicia.

CEQA requires that all foreseeable potential direct and indirect significant and cumulative impacts of a proposed development be identified and analyzed—including those cumulative impacts associated potentially to all other proposed development projects simultaneously being reviewed or known to be in the pipeline at the time the environmental review of the development under primary consideration is being prepared and/or considered for certification. Such assessment must include analysis of cumulative impacts potentially flowing from future projects that could be considered reasonably foreseeable as a consequence of a pattern of development being currently pursued that invokes the condition of maximum development of similar properties. Mitigations must be identified and recommended that would avoid or reduce to less than significant such impacts. Such mitigations must be reasonably and fairly identified and found to be feasible, enforceable and funded.

The certified final EIR and Addendum reviewing impacts of the Seeno-proposed business park dismisses the clearly foreseeable **growth-inducing impacts** that could potentially flow, *directly and indirectly*, from development of an employment center and magnet park within Benicia city limits.

Concomitantly, if Solano County's new draft General Plan Update allows rural residential to be hop-scotched in piecemeal parcels on grazing land within a mile of a planned major employment center located within Benicia city limits, it doesn't take rocket science to reasonably predict or foresee the potential for maximum development: e.g., for future massive sprawl housing development in Sky Valley—thus, further more drastic foreseeable loss of unincorporated grazing land in Benicia's Sphere of Influence. Sky Valley—as the area is referred to, extending between Sky Valley Mountain in the west to Reservoir Rd, is now being discussed, as I understand it, as a possible compensatory "receiving site" for housing development otherwise denied or limited elsewhere up county, as part of the County's draft General Plan Update.

This potential land use development pattern for rural housing—currently allowed by Ag-20 zoning—is clearly represented in the proposed Signature Properties proposal which was available publicly at the time the Seeno FEIR Addendum was produced in late April '08. The Signature Properties Initial Study was made publicly available April 18, '08.

This proposed "rural subdivision" of 8 "estate homes" augers the potential for inevitable gross loss of rural ag-grazing land adjacent to our city that clearly needs further that very same land still represents future potential agricultural use—grazing of livestock and dairying having been part of Benicia's 150+ year agricultural and ranching history. Productive farming activity could again be necessary in an energy-constrained world, wherein such constraints will likely affect and play out with domino effects, every environmental and economic aspect of food production and distribution. Benefits of preserving ag land now will accrue to both current and future farmers, ranchers and nearby cities.

Allowing rural housing subdivisions to sequentially chew up rural ag land parcels will also potentially cause severe diminishment of the local aquifer especially under conditions of

diminished re-charge in times of chronic (predicted) drought conditions from increased global warming effects.

Loss of watershed lands also disrupt drainage patterns, permanently destroy wildlife habitat and biological resources, including endangered and specially protected species.

Lack of analysis in the Signature Properties Initial Study of foreseeable water usage by a rural subdivision that could potentially induce further residential growth on unincorporated county ag-land is a gross omission, when such housing developments would be dependent on wells for water supply for home use as well as for irrigation of any farmed area of the properties, such as for one acre vegetable gardens or raising of animals.

The consequences of such lack of analysis of foreseeable water usage spill over into consequences for the City of Benicia, which, in reviewing the water supply issue for the Seeno business park project, must assure adequate water supply for a large new development under potential prolonged and/or chronic drought conditions as predicted under various global warming scenarios discussed by the state under AB32.

It is imperative to state here that potentially grave, long-term cumulative impacts to natural resources such as given in examples above have neither been analyzed by the Seeno business park certified final EIR or its Addendum, NOR, have these impacts been identified and analyzed in the Signature Properties Initial Study, with the County's absurd recommendation for awarding a Negative Declaration of impacts.

In the CEQA documents for both concurrently reviewed proposed projects, no nexus has been identified or analyzed between the projects with regard cumulative, reasonably foreseeable potential impacts. No mitigations are recommended that could clearly and adequately avoid or reduce to less than significant such impacts, including recommendations for new general plan guidance policy at the city and county level.

The CEQA analyses for both projects have been promulgated as if their respective proposed developments would not exist within one mile or two of each other, or SERVE each other, with regard to use of new fire and police units, to be provided by the Seeno project, that could be called up in case of wildfire or burglary or other incidents at the Signature Properties site. YET, the respective CEQA reviews of impacts for each project apparently assume that each project is a "stand alone", that will exist on paper at least, in their CEQA documents, in defiance of reality, as isolated, unrelated developments in the future.

And further: without comprehensive reviews of existing and future predictable and/or reasonably foreseeable conditions of traffic, air quality, land use, biologic resources, hydrology, water supply, aesthetics, and city services owing to these two projects and also, with other similar projects that might be proposed as a result of growth-inducement encouraged by allowing sequential development of a large-scale employment center within city limits and housing development on unincorporated rural lands, AND, without accounting for greenhouse gas reduction targets for cities and regions which are considered shared under AB32, **one can only conclude that both the Initial Study and recommended Negative Declaration for the Signature Properties rural housing subdivision project and the conclusions of the certified final EIR and Addendum for the Seeno business park project**

are grossly inaccurate, incomplete and fatally flawed.

These inadequacies and omissions of analysis in both cases go beyond any remedy such as provided for under CEQA by “overriding considerations” for project approval, when current conditions and future foreseeable impacts have not been properly identified and accounted for. Conclusory assertions that avoid reference to potentially significant cumulative impacts contributed to by other known projects under simultaneous or sequential review under CEQA represent a profound misuse of CEQA. The environmental reviews discussed here should have discussed the nexus between the two projects. Since they don’t, these reviews serve only to confuse the public and decision-makers, almost as though by intent, and therefore, confound our ability to understand a project’s relations to its surroundings and its impacts, and what remedies are available that can protect environmental resources, including ag-land, and allow for sustainable development within cities.

Further, there seems to be obvious AVOIDANCE of discussion of growth-inducing impacts, which are reasonably foreseeable in Sky Valley as a future pattern of land-use represented by the Signature Properties proposal for rural housing subdivision on Ag-20 land—a pattern which can be seen to be encouraged by the development of a nearby employment center to be built over the next 20 years. This avoidance almost seems contrived to ACHIEVE that very aim of maximum development along Lake Herman Rd. Therefore, it appears that *the conclusions themselves*, reached under separate CEQA reviews for the Seeno Property and the Signature Properties, encourage urban sprawl on unincorporated county ag-land, which may further encourage or even force, at a later future date “down the road”, annexation of developed ag-land by the City of Benicia or Vallejo,

Whether or not there can be shown any clear intent to disguise broad, long-range development aims through such obscuring of fact under CEQA, I leave to others to be raised as an issue of willful (or negligent) obfuscation. Certainly in my experience of past very public discussions of Sky Valley development potential, I am aware of local and county stakeholders who consider such development both “inevitable” and even “desireable”. Fear of county appropriation of control of ag-land for housing development in Benicia’s Sphere of Influence has been raised repeatedly since 5,000 houses were proposed for Sky Valley in the early 90’s. Talk of Vallejo putting pressure on the county for annexation of Sky Valley for such housing development has been an argument used for garnering the resignation among Benicians advocating for the Urban Growth Boundary to the idea of inevitable development of Sky Valley.

The so-called economic benefits from suburban or ex-urban rural housing development have not been shown to be real: servicing costs after 10 years do not “pencil out”.

In fact, no economic analysis of the economic impacts that would *potentially and negatively accrue from immediate and long-term drastic energy constraints and cutbacks—which now and in the future could potentially and chronically affect everything from housing construction to road maintenance and the food supply*—has been researched and included in CEQA reviews of either project. There is absolutely no such economic analysis in either the Seeno project certified final EIR and Addendum, or the Signature Properties Initial Study. No detailed study (or references to same) about future energy constraints have been included in the CEQA reviews of both projects. Yet, **energy supply constraints** will foreseeably be a huge factor that may determine the relative “success” or “failure” of either project from both an economic and environmental perspective with regard to sustainability in the future of our city and region.

These failures of analysis are of particular concern since the Signature Properties Initial Study and recommended Neg Dec has been generated by the County, which is in the midst of a contentious and unresolved General Plan Update process with outstanding and challenged issues surrounding housing development on ag-land and presumed maximum densities.

I submit these comments in respect for the Benicia General Plans' environmental and economic goal for sustainable development, and with regard a succesful citizens' initiative to protect Sky Valley from development through establishment of our Urban Growth Boundary, AND, with due respect to the state mandate to reduce greenhouse gases through innovative, smart planning for land use and public transit, as put forth and directed by AB32.

Thank you for considering these comments.

Sincerely,

Marilyn Bardet

From: Anne Cardwell
To: Council
Date: 6/2/2008 10:28:57 AM
Subject: Fwd: Citizens Considering the Consequences Comment Letter- Hearing Date 6/3/08

>>> "Brenda Bruessard" <brenda@danadean.com> 6/2/2008 10:25:58 AM >>>

Dear Anne: Please find enclosed a letter from Dana Dean re: Consideration of Approval of the Addendum to the Previously Certified Environmental Impact Report, certified on 2/19/08 for Benicia Business Park.

Please contact me if I can be of further assistance. Sincerely, Brenda Bruessard

Legal Assistant

Law Offices of Dana Dean

835 First Street

Benicia, CA 94510

707-747-5206 (Office)

707-747-5209 (Facsimile) This message and any files or text attached to it are intended only for

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delete all electronic copies of it from your system.

CC: Charlie Knox; Heather McLaughlin; Jayne York; Melissa Andersen

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

Law Offices of
DANA DEAN



835 First Street
Benicia, California 94510
p 707.747-5206 • f 707.747-5209

June 2, 2008

City Council
City of Benicia
250 East L Street
Benicia, California 94510

RE: *Consideration of Approval of the Addendum to the Previously Certified Environmental Impact Report, certified on February 19, 2008 for Benicia Business Park*

Dear Council Members:

Please recall that this firm represents Citizens Considering the Consequences ("CCC"), an unincorporated association that opposes approval of the Vesting Tentative Map, Master Plan Overlay and Rezoning for the so-called Benicia Business Park "Mitigated Project,"¹ as well as the Addendum prepared for those approvals. Please accept this correspondence in follow up to my recent comments at hearing. They are submitted on CCC's behalf and in the public interest.

As detailed below, CCC objects to the quality and the quantity the environmental review contained in the Addendum because an addendum is not adequate for the level of environmental review required for the potentially significant impacts posed by the March '08 Project as now contemplated.

Moreover, there are glaring procedural errors that must be corrected to ensure that review of this Project adheres to minimal due process requirements.

Finally, CCC urges the Council to reject the adoption of a Statement of Overriding Considerations required for approval of the March '08 Project, because the Council can reasonable determine that the proposed considerations are speculative and/or insufficient as a basis for ignoring *acknowledged* unavoidable environmental impacts.

¹ The term "Mitigated Project" was apparently chosen by the applicant to refer to its newly submitted project. This is a new project because it was never presented or analyzed before. At best, the "Mitigated Project" is a project alternative that was never analyzed in EIR. We reference the term "Mitigated Project" solely as to avoid confusion, not as an adoption of the concept. It remains to be seen whether the project is "mitigated" because many of the potential impacts and possible mitigations are yet to be analyzed. Thus we refer to the project before the body as the "March '08 Project", referencing the date the project was first submitted to the City.

A FAIR ARGUMENT EXISTS THAT ADDITIONAL ENVIRONMENTAL REVIEW IS
REQUIRED BECAUSE THERE ARE POTENTIALLY SIGNIFICANT
ENVIRONMENTAL IMPACTS OUTSIDE THE SCOPE OF THE ORIGINAL EIR

“Fair Argument” is the Correct Standard of Review

It is correct, that, as LSA has indicated, when a project is changed after certification of an EIR, Public Resources Code §21662 and the CEQA guidelines call for a supplemental or subsequent EIR rather than an addendum only when there are substantial changes to the project or circumstances surrounding the project or when there is new information that was not known the time of certification of the original EIR, any of which might result in potentially significant impacts to the environment. ²

Interestingly, this test is used, “precisely because in depth review has already occurred, *the time for challenging the EIR has long since expired* and the question is whether circumstances have changed enough to justify repeating a substantial portion of the process.”³ This, of course, is not the case here. The time between certification of the original EIR and the applicant’s presentation of a different project was a scant 30 days. Moreover, because of the unusual “bifurcated process”,⁴ no Notice of Determination has been filed. As a result, challenges to the original EIR are still timely. Thus, the purpose behind the Section 21166 threshold has been thwarted, if not nullified, by the applicant’s own conduct here.

In any case, where, as here, the altered or new project involves potential impacts that are *outside the scope* of the original EIR, a supplemental or subsequent EIR must be done.⁵ Further, in determining whether or not such is required, the proper standard of review for such “outside the scope” impacts is the “fair argument” standard.

More specifically, the question is whether or not substantial evidence supports a fair argument that potentially significant impacts that were not identified in the original EIR now exist as a result of the new project. In cases where the project presented involves

² PRC §21166 states: When an [EIR] has been prepared for a project pursuant to this division, no subsequent or supplemental [EIR] shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs: (a) Substantial changes are proposed in the project which will require major revisions of the [EIR]. (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the [EIR]. (c) New information, which was not known and could not have been known at the time the [EIR] was certified as complete, becomes available.

³ *Sierra Club v. County of Sonoma* (1992) 6 Cal. App.4th 1307, 1317, citing *Bowman v. City of Petaluma* (1986) 185 Cal.App.3rd 1065, 1072-1073.)(Emphasis added.)

⁴ In refusing repeated requests for a more holistic approach to this process, the applicants’ representatives have repeatedly asserted at hearing that the bifurcated process is relatively standard in their many land use applications. It follows then that they are well aware that by choosing bifurcation they have left the door open to continued challenges to the original EIR.

⁵ *Sierra Club v. County of Sonoma*, supra, 6 Cal. App.4th 1307, 1317.

elements outside the scope of the original EIR, the courts have applied the “fair argument” standard and held that the “deference to the agency’s determination is not appropriate and its decision not to require an EIR can be upheld only when there is *no credible evidence* to the contrary.”⁶

The bottom line really is this – is there evidence to indicate a reasonable probability that impacts will result from the March ‘08 Project that were not and could not have been identified and addressed in the original EIR?

The answer to the question is yes. Potentially significant impacts that are outside the scope of the original EIR include, but are not limited to:

1. substantial changes to the proximity of commercial and industrial development to native habitat as a result of added open space and inclusion of reaches within the development;
2. recent judicial restrictions on water supply and the resulting impact on the March ‘08 Project;
3. global warming’s effect on the long term water supply for the March ‘08 Project;
4. new and different traffic patterns resulting from the split of commercial space, the extension of Industrial Way, and new projects in the area;
5. cumulative impacts as they relate to the foregoing.⁷

None of these issues were properly addresses in the Addendum. None were disclosed and analyzed in the original EIR. This is so because the March ‘08 project was *never contemplated before*. As an example, impacts such as those that derive from preservation of all of the reaches and greater open space in such close proximity to commercial and industrial development *could not have been analyzed*, because such was simply not presented in the original project.

Potential Impacts as a Result of Increased Open Space and Preservations of the Reaches

Increasing the drainage buffers and open space within the Project may help reduce some of the potentially significant impacts, such as to the creeks and their water quality. All the while, these changes create other potentially significant environmental impacts that have not been sufficiently analyzed. For example, more open space and preservation of the reaches create a reasonable likelihood that flora and fauna will try to coexist with the Projects commercial and industrial development. This is especially so because of this project’s proximately to large tracks of open space in the Suisun Marsh and Sky Valley.

⁶ *Sierra Club v. County of Sonoma*, supra, 6 Cal. App.4th 1307 (Emphasis added.)

⁷ This list also summarizes changes in the Project and/or circumstances since the certification of the original EIR. Moreover, as an aside, there are several documents and studies that are referenced in the original EIR that were never incorporated in the original EIR. Accordingly, each of those is outside the scope of the original EIR as well.

In other words, many of the sensitive, endangered or threaten species such as the Callippe Silverspot Butterfly, and the California Red-legged Frog that have been identified in the Record as potentially present on site are more likely to be present because the March '08 Project provides more viable habitat for such species. More specifically, the Original EIR indicated that Callippe Silverspot Butterfly ("CSB") was not likely to inhabit the site. However, now that the space for CSB habitat and food sources increase in the new plan, it is very possible that even if that original determination were correct, it is not now.⁸ The original conclusion must be revisited. Because of the increased potential habitat, a fair argument exists that the potentially significant impacts of the March '08 Project in regards to the flora and fauna must be evaluated in a supplemental EIR.

Unanalyzed Effects on Long Term Water Supply

In today's environment, the Project is particularly vulnerable to the potentially adverse impacts from global warming. This is in part because part of the water source for Project is Lake Berryessa. Water sources are vulnerable to changes due to global warming and lakes particularly so. It has recently been established that temperatures this century are projected to increase by about 2.5 to 9 degrees Celsius. Rising temperatures push snow lines to higher elevations, where the steep mountain peaks present less ground for snow to cover.⁹

Because of the current uncertainties raised by the effects global warming on the long-term water supply for the March '08 Project, impacts of alternatives must be resolved. The Supreme Court has recently ruled that "...[A]n adequate environmental impact analysis for a large project, to be built and occupied over a number of years, cannot be limited to the water supply for the first stage or the first few years."¹⁰

Here the water supply analysis is inadequate in light of the recent changes to the certainty of water supply for the project due, in part, to global warming. CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies.¹¹

Moreover, a recent U.S. District Court Decision¹² involving restrictions to water flow rates for the State Water Project (SWP) was not addressed in the Original EIR water

⁸ Please see comments of California Department of Fish and Game, dated May 27, 2008 and May 28, 2008 for further evidence of deficiency in the underlying assumptions of the Project's environmental review and supporting a determination to require additional environmental review.

⁹ San Francisco Chronicle Article, November 12, 2006, see <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/11/12/MNG5LMBD7R1.DTL>, last viewed April 20, 2008. (submitted concurrently)

¹⁰ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412.

¹¹ *Id.* at 432.

¹² *Natural Resource Defense Council, et al. v. Kephthorne, et al.* 2005 1:05 CV-1207 (U.S. Dist Eastern District)

supply from the SWP and the Delta. Among other protections for Delta Smelt and other threatened wildlife, the Court ordered restriction of water flow rates based on certain triggering events. Neither the original EIR nor the Addendum provide information as to how the environmental analysis might change as a result of the restrictions on water pumping from the Delta ordered in that case.

New and Different Traffic Impacts from the Creation of a New Road – The Extension Of Industrial Way

There is insufficient environmental review and public discourse in regards to the March '08 Project's proposal to extend Industrial Way, thereby creating a road where there was no road in the past. This road needs to be analyzed in terms of how it will affect biological resources (i.e. separating habitat, removing grassland, and as a growth inducing impact.) In particular, consideration must be given to possible changes to these and other impacts in light of the Signature Properties project above Lake Herman Road which is currently before the County and under consideration by our Council on June 3, 2008.¹³ This Signature property project was never considered or analyzed in the Original EIR or the Addendum.

Cumulative Impacts

The environmental review must analyze the cumulative impacts for the changes to the Project.¹⁴ For example, the Project must analyze the cumulative impacts it has to Benicia's water supply in light of Justice Wanger's decision and new data on global warming; the Project must analyze the cumulative impacts of the road and growth inducing impacts; the Project must analyze the cumulative impacts to the flora and fauna as a result of the March '08 Project.

THERE ARE SUBSTANTIAL CHANGES TO THE PROJECT AND THE SURROUNDING CIRCUMSTANCES THAT NECESSITATE FURTHER ENVIRONMENTAL REVIEW

Even absent consideration of the fair argument standard that applies to the portions of this Project outside the scope of the previous EIR, the substantial evidence test would apply to support CCC's request for further environmental review. This is because there are substantial changes in the Project and in the circumstances surrounding the Project that necessitate major revisions to the Original EIR.

As detailed in the Administrative Record ("the Record"), the Project is comprised of approximately 527.8 acres. A scant month had elapsed from the certification of the EIR to the Project Sponsor presentation of a project very different from the Project description as stated in the original EIR.

¹³ The Staff report, June 3, 2008 and Council comment on this matter are incorporated by reference here.

¹⁴ Guidelines §15130

The primary changes to the Project are:

- i. less square footage of industrial – diminished from 4,443,440 square feet to approximately 2,399,760 square feet;
- ii. clusters of commercial (the same 857,000 square feet as the original Project) and industrial land uses would be bisected by bands of open space;
- iii. new infrastructure to the Project site including roads, water lines, wastewater lines, and other utilities.¹⁵
- iv. New road –an extension of Industrial Way – where there was no extension before.

In addition to potentially significant environmental impacts being outside the scope of the EIR, there are also substantial changes in the project which necessitate supplemental environmental review and Substantial evidence would not support the City's decision to approve of this project with a mere Addendum. Rather, CEQA provides that a subsequent or supplemental EIR is required if substantial changes in the Project will require major revisions of the EIR.¹⁶

In the case at hand, there are several substantial changes that are subject to current approvals by the City Council that require major revisions in the EIR. As such, an Addendum is not the appropriate level of environmental review.

Such determination is important because, among other things, a substantial adverse change in the significance of the traffic is treated as a significant effect on the environment.¹⁷ Changes in circumstances require supplemental environmental review if four conditions exist:

- The change in circumstance is substantial;
- The change involves new or more severe significant environmental impacts;
- The change will require major revisions to the previous EIR due to new or more severe impacts; and
- The impacts were not covered in previous EIR.

In this case, as demonstrated above all four (4) conditions are satisfied.

THE MARCH '08 PROJECT'S ENVIRONMENTAL REVIEW IMPROPERLY DEFERS MITIGATIONS AND FAILS TO DISCLOSURE REQUIRED INFORMATION

In addition to the procedural and substantive problems associated with the March '08 Project, persistent problems linger from the original EIR. For example, the EIR and the

¹⁵ For example, the March '08 contains two (2) 1,000,000 gallon tank reservoirs and 12 inch water lines; 8 inch sewer lines connecting to existing 10 inch sewer lines, a pump station; turning existing creeks into stormwater detention facilities.

¹⁶ PRC §21166 and Guidelines 15162.

¹⁷ Guidelines §15064.5(b).

Addendum improperly defer mitigation and/or fail to properly require enforceable mitigation measures to bring significant impacts to less than significant levels.

An EIR must identify the potentially substantial environmental adverse change in the environment.¹⁸ An EIR [prior to project approval] should provide information regarding the project's [potentially] significant environmental impacts that is sufficient to allow decision-makers and the public to understand the environmental consequences of the project.¹⁹ Thus an EIR must provide a description and analysis of the project's significant impacts. Appendix G recognizes that potentially significant impacts from grading and from traffic must be discussed. Additionally, the reasoning supporting the determination of insignificance must be disclosed.²⁰

In this case, the Addendum notes that mitigation "may" be required for the impacts from grading and the construction of roadways requiring fill, but it does not indicate what type of mitigation and how much mitigation will be required.²¹ Page 14 of the Addendum concludes *without any analysis or disclosure* that "a negligible amount of wetlands and creeks is expected to be disturbed as part of grading and road construction..." However, no information is provided as to how the conclusion that disturbance is "negligible" and what amount of impact is considered "negligible" was reached.

Furthermore, the Addendum discusses potentially significant impacts to traffic and circulation, yet it concludes that it cannot determine the level of impact related to Traffic Impact 22. This lack of determination violates CEQA because potentially significant impacts in regards to traffic must be disclosed, analyzed and mitigated and/or avoided. If the impact is not significant, then a brief explanation must accompany such conclusion. Simply stating an impact cannot be determined is insufficient.

Finally, in an apparent nod to the demonstrated inadequacies of the Urban Decay analysis the current project includes a condition requiring additional urban decay analysis with the application for a final map. This fails CEQA on two levels. First any required analysis and mitigation must be secured (disclosed, analyzed, and approved) at the time of project approval, not after. Secondly analysis alone is not sufficient as mitigation. Rather any enforceable mitigation would require measurable performance standards be incorporated.

¹⁸ Public Resources Code §§21100(b)(1) and (d), 21068, Guidelines §§15126(a), 15126.2(a), 15143 (an EIR need not discuss a potential environmental impact only if the initial study dismissed the impact as clearly insignificant and unlikely to occur), 15382 and Appendix G.

¹⁹ *Laurel Hts.* (1988), 47 Cal.3d 376, 404

²⁰ *Amador Waterways* (2004) 116 Cal.4th 1099, 1111.

²¹ Addendum, pp. 11, 14, 33.

THE ADDENDUM AND UNDERLYING EIR FAIL TO INCLUDE REQUIRED INFORMATION AND REPORTS

Certain mitigation measures fall short of adequate description and disclosures as required by CEQA. For example:

- i. How will native grasses that are seeded be managed to ensure that the more aggressive European grasses don't squelch them out? (Addendum, pp. 10, 16) What type of native grasses?
- ii. Since the March '08 Project includes 313 acres of open space, the March '08 Project must disclose and analyze how that open space will be managed. For example, native grasslands must be managed with animals or the like to eat down the aggressive European grasses. This will require fences and other management tools.
- iii. How will the fences affect wildlife?

The Addendum at page 10 indicates that the Project sponsor has provided information as to what type of detention facilities would ensure that on-site storm water features would ensure that peak runoff from the site would not increase after the implementation of the Project. This information must be included.

The Addendum estimates that 4 million cubic yards of soil would be kept on-site. To where would it be moved? How will it not runoff the site and alter drainage and affect the local water ways and the important fish habitats of Suisun Marsh and its tributaries?

The Addendum concludes without analysis that there is a sufficient buffer between residential and industrial uses.²² However, the Addendum fails to quantify how wide the buffer is, whether it actually creates relief from anticipated impacts such as noise. For example, how many decibels is the buffer capable of reducing? How many decibels will be required to be reduced from the anticipated industrial uses?

The March '08 Project's inclusion of two 1,000,000 gallon water tanks changes the analysis for potential flooding hazards associated with accidental or earthquake-induced spills.

The Addendum concludes without analysis or reference to any study or report that the Project site is not underlain by "any groundwater aquifer."²³ The source of this conclusion must be included in the environmental review for the project. Moreover, the Addendum should clarify that it is not necessary to have an aquifer to have groundwater reserves or channels. For example, elsewhere the Addendum states that groundwater levels are high during the rainy season.²⁴ The Addendum admits that the March '08 Project would allow a greater amount of water to infiltrate the soil than would the

²² Addendum, p. 15.

²³ *Id.* at p. 29.

²⁴ *Id.* at p. 28.

Original Project. However, inexplicably the Addendum concludes that the March '08 Project will have less landslide risk compared to the Original Project.²⁵ Such conclusion is without support. The more water in the soil, the heavier soil will be and the more likely that it may slide. Mitigation Measure GEO – 4 needs to be discussed in light of the change of increased groundwater, especially in the rainy season.

The Addendum concludes without analysis that “no special-status wildlife species are likely to inhabit the grasslands on the site; impacts to wildlife that inhabit the grassland habitat would be less than significant.” There is no analysis for this conclusion. On the contrary the subsequent environmental review must analyze how the increase in open space may better accommodate special status species. As previously indicated, it is more likely with more open space and preservation of creeks that animals will inhabit the area. Accordingly there may be a significant impacts to the wildlife by situating incompatible uses in proximity to each other – industrial/commercial adjacent to open space.

A fair argument exists that the foregoing information involves impacts outside the scope of the Original EIR, such that a supplemental EIR is required. Moreover because of changes to the project and its circumstances approval of the project without additional environmental review is not supported by substantial evidence. Rather the opposite is true. Substantial evidence supports a denial of the project because environmental review of the March '08 project has been insufficient.

THE CITY COUNCIL SHOULD NOT APPROVE AN ADDENDUM, MMRP OR REZONE WITHOUT PRIOR REVIEW BY THE PLANNING COMMISSION

The Planning Commission is the City Council's advisory board for land use determinations. Of particular import here, Government Code §65854 requires that the Planning Commission make a recommendation to the City Council regarding this for this Project. Proper review of a project and recommendations therefrom necessarily involves review of supporting documentation. However, in this case, the Planning Commission has been precluded from making a recommendation based on the essential supporting information that is before the Council. This is so even though the Planning Commission has requested review of that documentation.²⁶

Rather than being afforded the opportunity to review the documentation as required, the Planning Commission was given 6 days to review over 200 conditions and a short document originally identified as “the Addendum” or “an Addendum”, which later turned out not to be the Addendum upon which the Council is now asked to rely in making its determinations. Moreover, the Planning Commission was never afforded the opportunity to review the MMRP which is of critical importance to the consideration of these approvals as a whole. This entire episode is in direct contravention to orderly and appropriate planning process.

²⁵ *Ibid.*

²⁶ See Planning Commission Hearing April 10, 2008.

THE MITIGATION MONITORING AND REPORTING PLAN MUST BE INCLUDED
AND SHOULD BE CIRCULATED PRIOR TO THE APPROVAL.

Condition 1 calls for a stay of project approval until the adoption of an Mitigation Monitoring and Reporting Plan (“MMRP”). However, when a project is approved on the basis of an EIR, PRC §21081.6 is triggered by the adoption of findings on imposition of mitigation measures. Thus, an MMRP for the March ‘08 Project must be adopted when the findings are adopted as a part of the project approval.²⁷ This is a problem here because, though the public review of this project started over a month ago, no MMRP was circulated with the project plans and proposed approvals for consideration by the public. This flawed process is not saved by the inclusion of Condition 1.

Under PRC 21081(a) and Guidelines 15091(a) an agency must make specific findings relating to the mitigation measures recommended for each significant impact identified in the EIR. When an agency approves a project, CEQA requires that it adopt mitigation measures, when feasible to “avoid or substantially lessen” significant impacts.²⁸ Thus, an enforceable, unambiguous MMRP must be reviewed and adopted prior to the March ‘08 Project approval. As indicated in the Record, several of the mitigations proposed are insufficient and or impermissibly vague. Language that demonstrates plain unambiguous requirements for mitigation must be adopted. Condition 1 cannot save an insufficient MMRP.

THE STATEMENT OF OVERRIDING CONSIDERATIONS SHOULD BE REJECTED

Because the project involves unavoidable impacts in the area of Air Quality, the only way the project can be approved is if approval is accompanied by a Statement of Overriding Considerations. These Overriding Considerations should articulate valid added benefits *derived from the project* that outweigh (and justify ignoring) the acknowledged impacts to the environment that result from the project.

The City Council Cannot be Compelled to Adopt the Statement

Adoption of a Statement of Overriding Considerations is an extraordinary act that should occur only in rare circumstances. It is not something done as a matter of course or as standard operating procedure. Nor is it true that a governing body *must* adopt such a statement. This is a requirement only if the body intends to accept the project.

Overriding Considerations should be Legitimate Benefits Derived from the Project

As presented, a majority of the proposed considerations are not *added* benefits of the Project. In essence, these considerations involve maintenance of the status quo (preservation of certain hillsides) or standard requirements for any project (compliance

²⁷ Guidelines 15097(a).

²⁸ PRC §21002.

with the General Plan.) These are not added benefits that override the negative consequences of the Project, especially given that the unavoidable impact involves air quality and an increase in precursor pollutants.

Further, while two of the considerations involving economic benefits would otherwise be sufficient, the record is replete with concerns about the deficiency of the economic analyses and evidence of the conclusions, underlying assumptions, and timing of the conclusions.²⁹ As such, there is substantial evidence in the record to support a determination not to adopt the Statement of Overriding considerations presented.

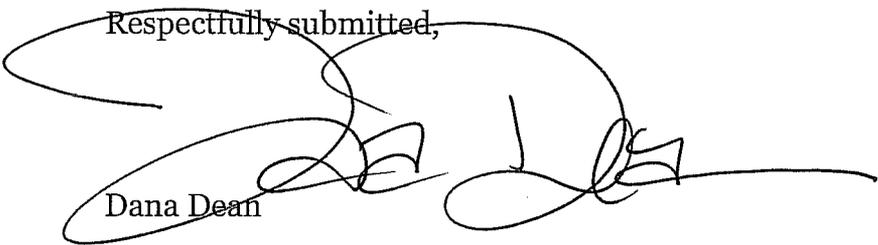
Conclusion

In sum, as detailed herein and in the Administrative Record, the Addendum to the Original EIR is not the appropriate level of environmental review because it does not analyze and disclose impacts that are reasonably likely to occur, as required by CEQA.³⁰ Additionally, changes to the project and the circumstances surrounding the Project have occurred, thus necessitating another environmental report.³¹ Moreover, the Council should reject the Statement of Overriding Considerations because it is in sufficient justification for ignoring unavoidable impacts to Air Quality.

For the foregoing reasons, we respectfully request that the City Council deny approval of the Addendum, Vesting Tentative Map, Master Plan Overlay and Rezoning, and instead require the applicant to provide the level of environmental review required by law before approval of any project at the site.

Respectfully submitted,

Dana Dean



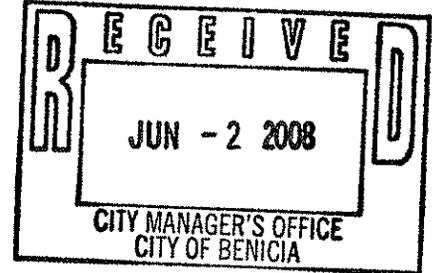
²⁹ By way of example, commentors have expressed concern about the staleness of the economic analysis, now years old, as well as the deficiency of the urban decay analysis. Several commentors have offered evidence of alternative conclusions, in particular regarding the economic failures that can be anticipated as a result of the commercial centers of the March '08 Project as well as the incompatibility of anticipated employment stock with Benicia available workers.

³⁰ PRC 21094, Guidelines 15168.

³¹ PRC 21166, Guidelines 15162.



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May 30, 2008

Mayor Elizabeth Patterson and City Council Members
City of Benicia
City Hall
250 East L Street
Benicia, California 94510

Re: Proposed Benicia Business Park

Dear Mayor Patterson and Council Members Campbell, Schwartzman, Hughes,
and Ioakimedes:

The Benicia Chamber of Commerce commends Discovery Builders for their concessions in addressing the staff and public concerns with their Industrial Park project. Their modified proposed development has been substantially altered from its original conception. Addressing numerous requests for "greener" planning, the new land use ratio provides sixty percent open space accommodation. Additionally, another two hundred issues have been mitigated and with that, staff has recommended project approval.

Benicia will benefit from significant tax revenues and careers for thousands of new employees. This will enhance the vibrancy of the business community and our greater city as well. We look forward to the progress of this important development.

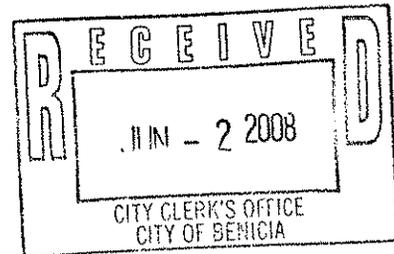
Sincerely,

A handwritten signature in cursive script that reads "Martha Christopher".

Martha Christopher
Chair of the Board
Benicia Chamber of Commerce

May 30, 2008

Dear Ms. Elizabeth Patterson,



I have lived in Benicia for over 25 years and have been active an active parent in the community. I have been involved in building the Playground of Dreams, soccer referee, little league umpire, boy scout leader and many church activities. I have read the report from the Community Development Director on the Benicia Business Park Vesting Tentative Map, Master Plan Overlay and Rezoning and recommend this item not be approved. In the future this may be a fine project for Benicia but not at this time.

Comments:

1. With the over 6,000 housing foreclosures in just Solano County, why would the City rush to approve the development of commercial space at this time. If I were the developer, I would grade the site for development, sell off parcels quickly and leave it to the new owners to build out the area. Fast money for the developer and a bad deal for Benicia.
2. The report states there is a reduction of industrial square footage from 4.44 million down to 2.35 million without a reduction of jobs.
3. Assuming Benicia currently has over 9,000 jobs, why locate an additional 4,000 away from the city center. If the businesses can be attracted why not locate them closer to downtown or in the Industrial Park?
4. A few months ago, I received a telephone call poll regarding this project and I questioned some of the assumptions presented in the poll. The information presented did not make common sense. Unfortunately I do not take notes of the call as I did not plan on writing a letter about this issue. I do remember questioning the number of jobs being created and

This plan appears flawed, with enough wiggle room for the developer to provide Benicia with a blighted area to view for the next few years while the economy changes. I truly hope you will vote no on this project.

Sincerely,

Daniel Swienton
271 Carlisle Way
Benicia, CA
745-6398

From: Anne Cardwell
To: Heather McLaughlin
Date: 6/2/2008 2:13:09 PM
Subject: Fwd: Comments on Growth-Inducing Impacts and Nexus under CEQA of Seeno Project and Signature Properties s

>>> Marilyn Bardet <mjbardet@sbcglobal.net> 6/2/2008 1:45:26 PM >>>
Hello Charlie and Ron,

I'm entering for the CEQA record on the Seeno business park project my comments recently submitted to the County on the Signature Properties Initial Study and recommended Neg Dec for the proposed 170 acre "8 estate homes" rural subdivision on county unincorporated ag land, in Benicia's Sphere of Influence, north of Lake Herman Rd, directly across from Benicia's Lake Herman Recreation Area.

My initial submission on the Sig. Properties Initial Study discusses many aspects of the proposal and its potential impacts and identifies serious errors inadequacies and omissions of fact, for basis of the Study's arguments concluding less than significant impacts, including for growth-inducing impacts. In fact, the Initial Study does not identify the nexus and interrelatedness of the two projects now under consideration. I concluded that the Initial Study was inadequate and that the Negative Declaration was unacceptable, as a consequent determination of the Study's cursory and flawed identification of impacts. Therefore, I concurred with Steve Goetz and others that an EIR must be required to further identify and determine the full range and depth of consequences of impacts.

My reason to submit these same comments into the record for the review of the Seeno development project should be obvious, but need stating here. The City staff's brief review of the Signature Properties Initial Study does not fully regard the nexus for growth-inducing cumulative impacts that could be set in motion if both projects are approved.

I am therefore submitting by pdf file (below), not only my initial comments submitted to the County, but also ADDITIONAL COMMENTS for both the CEQA record on the Seeno project and the record on the Signatures Property subdivision. These further specific comments are pertinent to identifying the obvious nexus between the two projects with regard to cumulative growth-inducing impacts contributed to by each project, since they can be seen to be clearly related, both physically and in purposes. These impacts were virtually dismissed by the certified FEIR and Addendum for the Seeno project as well as by the Initial Study for the Signature Properties proposal.

Under CEQA, growth-inducing factors must be analyzed--e.g., the potential full array of long-range and immediate impacts that reasonably and foreseeably could be predicted in the case of maximum development suggested by the projects under consideration. Those impacts include those directly or indirectly associated to traffic, air quality, AB32, city services, hydrology, land use, water supply, aesthetics, etc.

Mitigations for such significant and cumulative impacts must be

identified with regard to impacts streaming from the Signature Properties and Seeno project nexus.

Mitigations must be shown to be feasible, enforceable and funded. They should include such options as land use policy changes, revised master-planning for roads within the city limits, such as relevant and associated to the current Tentative Map of the Seeno proposed development. Such mitigations must SEEK TO AVOID encouragement of unwanted, negative traffic congestion on Lake Herman Rd. and accompanying air pollution, including greenhouse gas emissions from auto commute traffic, etc. AND, destruction of ag-land, wildlife habitat, natural watershed and biologic resources, and diminishment of the aquifer.

CEQA requires that all foreseeable potential direct and indirect significant and cumulative impacts of a proposed development be accounted for and analyzed, with recommended mitigations to reduce to less than significant or avoid such impacts that are reasonably and fairly identified. Such recommended mitigations must be feasible, enforceable and funded.

Here's a summary of what my Additional Comments include:
The certified final EIR and Addendum for the Seeno business park project Tentative Map dismisses the clearly foreseeable growth-inducing impacts that could potentially flow, directly and indirectly, from development of the park. Concomitantly, if the County's new draft General Plan Update allows rural residential to be hop-scotched in piecemeal parcels on grazing land within a mile (or two or five) of a planned major employment center located within Benicia's city limits, it doesn't take rocket science to predict further more massive sprawl development in Sky Valley--unincorporated Ag-20 land in our Sphere of Influence, now being discussed, as I understand, as a possible compensatory "receiving site" for development otherwise denied or limited elsewhere up county. Such a land use pattern for MAXIMUM DEVELOPMENT is not analyzed, but is now certainly foreseeable, by clear example of the proposed Signature Properties proposal under Ag-20 zoning designation. The Initial Study for the Sig Properties subdivision was available publicly at the time the Seeno FEIR Addendum was produced; and it is presumable that discussion of the potential for such a subdivision proposal to arise existed at the time the 2007 draft EIR for the Seeno project was produced and circulated. Community members participating in scoping session and through CEQA hearings and through written comments, discussed such potential, foreseeable growth-inducing impacts that could flow from a future Benicia Business Park. Apparently, our comments were made to no avail.

The proposition for subdivision for "estate homes" in our Sky Valley area augers gross loss of rural ag-grazing land adjacent to our city. A remedy, to ensure protection of our Urban Growth Boundary, at both the city and county level through policy changes and zoning, could clearly help protect ag land that could be irrevocably lost. Ag grazing land near our city represents future potential agricultural use--grazing of livestock and dairying having been part of Benicia's agricultural history. Productive farming activity could again be economically necessary in an energy-constrained world, with rising costs of every aspect of food production and distribution. Precedents are being set

for "re-localizing" food production. This would include grazing of cattle, horses, sheep, goats, pigs, and farming for local produce. One can envision productive olive groves appropriately sited in nearby ag-land, for table olives and olive oil.

Allowing "estate home" subdivisions to sequentially chew up ag land by "creep", could create the conditions for "the inevitable" maximum development to occur in Sky Vallery. Such a fate would foreseeably cause severe diminishment of the local aquifer especially under conditions of diminished re-charge in times of chronic (predicted) drought conditions from global warming. Loss of watershed lands also disrupt drainage patterns, permanently and irrevocably destroy wildlife habitat and biological resources, including endangered and specially protected species.

I submit my comments in respect for the Benicia General Plans' environmental and economic goal for sustainable development, and with special regard for a succesful citizens' initiative to protect Sky Valley from development through establishment of our Urban Growth Boundary, AND, with all due respect to the state mandate to reduce greenhouse gases through innovative, smart planning for land use and public transit, as recognized by the intent of AB32--which as law must be implemented through planning activities of cities and regions, by inclusion of goals, policies and programs guiding new development, through updates of general plans, as is currently underway by Solano County.

Respectfully,

CC: Melissa Andersen