

## **SUPPLEMENTAL RESPONSE TO COMMENTS DOCUMENT**

### **A. PURPOSE OF THE SUPPLEMENTAL RESPONSE TO COMMENTS DOCUMENT**

This document has been prepared to respond to comments from agencies and the public received after the end of the formal public review period on the Benicia Business Park Draft Environmental Impact Report (Draft EIR). The 45-day Draft EIR public review period on the Draft EIR mandated by the California Environmental Quality Act (CEQA) extended from January 9, 2007 to February 26, 2007. The City extended this review period by an additional two weeks, to March 12, 2007, in response to requests by the public for additional review time. The Final Response to Comments Document, which contained responses to all letters submitted between January 9, 2007 and March 12, 2007, was released on July 20, 2007.

Since the end of the review period on the Draft EIR on March 12, 2007, additional comments have been submitted on the adequacy of the Draft EIR. In addition, comment letters and e-mails on the Draft EIR and Final Response to Comments Document were submitted immediately prior to and after a public hearing on the Draft EIR, which was held at Benicia City Council on August 7, 2007. The City then opened a supplemental public/agency comment period from August 7 to August 20, 2007. This document includes responses to all letters and e-mails that were received between March 12, 2007 and August 20, 2007. This document also provides responses to verbal testimony provided at the hearing held on August 7, 2007.

This Supplemental Response to Comments Document, together with the Draft EIR and the Final Response to Comments Document released on July 20, 2007, constitutes the Final EIR for the proposed project. Minor text changes to select responses in the July 20, 2007 Response to Comments Document – made at the request of City staff in order to provide additional clarification – are located at the end of this Supplemental Response to Comments Document.

### **B. ENVIRONMENTAL REVIEW PROCESS**

The Draft EIR was deemed “adequate” by the Benicia City Council, in accordance with the City’s CEQA Guidelines, on August 7, 2007. The City Council will consider certification of the Final EIR at a to-be-scheduled hearing currently planned for late 2007 or early 2008.

### C. COMMENTERS

This Supplemental Response to Comments Document includes a reproduction of each comment letter received after March 12, 2007 and a transcript of comments from the August 7, 2007 hearing on the adequacy of the Draft EIR. The individual letters are numbers from E1 to E11 (letters starting with A, B, C, and D – representing agencies, organizations, individuals, and public hearing comments, respectively – are included in the Final Response to Comments Document released on July 20, 2007).

The following comment letters were submitted after the close of the regular public review period on the Draft EIR (March 12, 2007) and August 20, 2007:

<b>Comment Letter</b>	<b>Comment Received From</b>	<b>Date of Letter</b>
E1	Christopher D. Nagano, United States Fish and Wildlife Service	May 1, 2007
E2	Timothy C. Sable, California Department of Transportation	August 27, 2007
E3	Heather C. McLaughlin, City of Benicia Attorney's Office	August 8, 2007
E4	Kristina D. Lawson, Miller Starr Regalia	August 1, 2007
E5	Kristina D. Lawson, Miller Starr Regalia	August 6, 2007
E6	Kristina D. Lawson, Miller Starr Regalia	August 20, 2007
E7	Steven Goetz	August 5, 2007
E8	Marilyn Bardet	August 6, 2007
E9	Marilyn Bardet	August 15, 2007
E10	Andrew F. Siri	July 10, 2007
E11	City Council Minutes	August 7, 2007

The letters are numbered and comments within each letter are numbered consecutively after the hyphen. For instance, comment E1-3 refers to the third comment in the letter from Christopher D. Nagano of the United States Fish and Wildlife Service.

References to Responses to Comments with prefixes of A-, B-, C-, or D- are to responses in the Final Response to Comments Document released on July 20, 2007. Copies of that document have been previously distributed and are available at the City of Benicia Community Development Department, 250 East L Street, Benicia, CA 94510.

### D. COMMENTS AND RESPONSES

Following are reproductions of submitted letters and responses to these letters.

Letter E1 (1 of 3 pages)

Letter E1 (2 of 3 pages)

Letter E1 (3 of 3 pages)

## **COMMENTOR E1**

**United States Fish and Wildlife Service**

**Christopher D. Nagano, Deputy Assistant Field Supervisor, Endangered Species Program**

**May 1, 2007**

E1-1: This introductory comment is noted.

E1-2: As noted on pages 181 to 182 of the Draft EIR, California red-legged frog has a “very low” potential for occurrence within the project site due to lack of breeding habitat and the compromised condition of the site’s waterways. We agree with the United States Fish and Wildlife Service (USFWS) that red-legged frog occurs in portions of Solano County near the project site. However, red-legged frog would not be likely to occur within the site due to the lack of suitable habitat (as described in the Draft EIR) and lack of connectivity to open space areas in other parts of the County that contain suitable habitat for red-legged frog. The conclusion about the lack of suitable habitat for red-legged frog on the site was made after undertaking substantial investigation of resources on the site, including conducting red-legged frog surveys during both day and nighttime hours, conducting two reconnaissance-level surveys of the project site, and reviewing the various natural resources reports listed on page 167 of the Draft EIR. Mitigation Measures BIO-4b and BIO-4c (which require protocol-level surveys of California red-legged frog and implementation, as appropriate, of a USFWS-approved mitigation plan) were included in the Draft EIR to protect red-legged frog in the unlikely event that the species does occur on the site. See also Responses to Comments C6-65, C6-83, C6-84, C6-85, C7-11, and C10-24.

As noted on page 181 to 186 of the Draft EIR, callippe silverspot butterfly is “not likely to occur onsite” due to the lack of the butterfly’s host plant (Johnny jump-up) on the project site. The butterfly occurs in other portions of Solano County; however, the closest known occurrence of the species is approximately 4.3 miles north of the project site. See Response to Comment B1-5.

E1-3: On the basis of previous resource surveys on the project site, we do not believe that protocol-level surveys are necessary to determine the potential impacts of the project on California red-legged frog and callippe silverspot butterfly, both of which are unlikely to occur on the project site due to poor habitat, lack of connectivity to existing populations of the species, and lack of the suitable host plant (in the case of callippe silverspot butterfly). However, Mitigation Measure BIO-4b in the Draft EIR requires that protocol-level surveys for California red-legged frog be conducted in areas of the site that *may* provide suitable habitat for the frog. This mitigation measure also requires that the results of the survey be provided to USFWS and the California Department of Fish and Game (CDFG). Incidental take authorization would be required if red-legged frog is identified on the site. Because Johnny jump-up (the host plant of callippe silverspot butterfly) does not occur on the site (based on the results of the botanical survey), and the closest known occurrence of the protected butterfly is over 4 miles north of the project site, we do not believe there is a nexus for requiring mitigation for impacts to the butterfly. Therefore, protocol-level butterfly surveys are not required as part of mitigation measures in the Draft EIR.

- E1-4: As noted on page 201 of the Draft EIR, we agree with USFWS that burrowing owl may occur on the site (although burrowing owl was not observed on the site during field visits conducted in preparation of the EIR). Mitigation Measures BIO-6a and BIO-6b require implementation of a package of burrowing owl mitigation measures, including a preconstruction survey that conforms to the protocol established by the California Burrowing Owl Consortium. Many of the other bird species listed by the USFWS in this comment (e.g., loggerhead shrike, horned lark, and nesting raptors) have the potential to occur on the site (as indicated on pages 186-188 of the Draft EIR). The habitat assessments for these species recommended by USFWS would be required as part of Mitigation Measure BIO-5 in the Draft EIR. See also Response to Comment C6-77. Likewise, the Draft EIR concludes that the American badger has the potential to occur on the site. Mitigation Measure BIO-7 in the Draft EIR would require focused badger surveys and the establishment of exclusion zones if badgers were found. Mitigation Measure BIO-4a would require that surveys for Pacific pond turtle be conducted in the vicinity of on-site stream channels. If Pacific pond turtles occur on the site and relocation would be required, CDFG coordination and approval would be required. No records for foothill yellow legged frog occur near the site, and there is no suitable habitat for this species on the site. Therefore, foothill yellow-legged frog is not expected to occur on the site and no surveys are required.
- E1-5: Wildlife corridor issues are addressed in Responses to Comments C6-76 and C12-3. In these responses, we note that many common wildlife species (including black-tailed deer, bobcat, and gray fox) use the site, but the location of the site at the edge of the City's developed area and adjacent to Interstate 680 precludes the site from being used as an important wildlife movement corridor that connects natural open spaces. Therefore, mitigation to protect existing wildlife corridors would not be required. However, the environmentally-superior development alternative (the Hillside/Upland Preservation alternative), discussed on pages 360-363 of the Draft EIR, seeks to maximize the connectivity of open space on the project site (even though such connectivity would not be necessary to sustain a major wildlife movement corridor).

The City of Benicia is not a participant in the Solano Habitat Conservation Plan currently under preparation and as such, no conservation areas are being developed within the City. We have reviewed version 2.2 of the Draft HCP (Solano County Water Agency, 2007) and found that the proposed business park site would not affect any conservation strategies for movement corridors or any areas of high conservation value.

- E1-6: Central California steelhead and coho salmon are not expected to occur on the site due to the highly intermittent nature of the on-site creeks/drainages and the fact that the creeks are tributaries to Sulfur Springs Creek, which is itself culverted downstream from the site and does not provide good habitat for steelhead and salmon. A check of "Ecology, Assemblage Structure, Distribution, and Status of Fishes in Streams Tributary to the San Francisco Estuary, California" by R.A. Leidy further shows that Sulphur Springs Creek does not support Coho or steelhead, and even the native rainbow trout are likely extinct.

E1-7: This comment, which does not pertain to the adequacy of the environmental analysis, is noted.

References Used in Response to Comments E1-1 through E1-7:

Leidy, R. A., 2007. "Ecology, Assemblage Structure, Distribution, and Status of Fishes in Streams Tributary to the San Francisco Estuary, California." *SFEI Contribution #530*. San Francisco Estuary Institute, Oakland, CA. 194 pp.

Solano County Water Agency (SCWA), 2007. *Solano Multispecies Habitat Conservation Plan (Working Draft 2.2)*.

Letter E2 (page 1 of 2)

Letter E2 (page 2 of 2)

**COMMENTOR E2**  
**California Department of Transportation**  
**Timothy C. Sable, District Branch Chief**  
**August 27, 2007**

E2-1: A copy of the requested hydrology document was sent to Christian Bushong at Caltrans on September 12, 2007.

E2-2: All assumed freeway capacities were taken directly from the *Transportation Research Board's 2000 Highway Capacity Manual*, as described in the transportation and circulation section of the Draft EIR. According to the 2000 Highway Capacity Manual, Chapter 21, with a free flow speed of 60 miles per hour, a freeway's capacity is estimated as 2,200 vehicles/hour/lane. This capacity was assumed for all two-lane freeway segments.

For three-lane segments, it was assumed that the free flow speed would increase to 65 miles per hour due to the increase in overall capacity, and widening of the roadway. Using the data in the Highway Capacity Manual's Exhibit 21-2, a maximum capacity of 2,300 vehicles/hour/lane was assumed for these segments.

E2-3: Mitigation Measure TRANS-15 in the Draft EIR (mitigation for the East 2nd Street/I-780 Eastbound Off-Ramp intersection) was revised in Response to Comment A8-8. As described in that response, under the revised configuration, queuing on the off-ramp would become minimal due to the free westbound right-turn movement.

The mitigation measures proposed for the East 2nd Street/I-780 Westbound Off-Ramp and I-680 Southbound Off-Ramp/Lake Herman Road intersections include an optimization of the traffic signal timing. As part of the optimization presented in the Draft EIR and Responses to Comments Document, the intersections would be optimized to achieve the lowest vehicular delay experienced by all movements at the intersection. As the comment suggests, this optimization would result in improved operations for the intersections as a whole (LOS D or better), but at these two locations it would result in poor operations for the off-ramp movements. Additional investigation has determined that these two intersections could be timed so that they would function at LOS D or better for all movements, including the off-ramp movements. While this retiming would result in a slightly higher average delay for all vehicles traveling through the intersection, the off-ramp movements would function at LOS D or better, and extensive queuing would not be expected on any movements. Under this configuration and timing, the proposed mitigation measures would mitigate the identified significant adverse impacts to a less-than-significant level based on the City's established significance criteria.

Letter E3 (1 of 2)

Letter E3 (2 of 2)

### COMMENTOR E3

City of Benicia Attorney's Office

Heather C. McLaughlin, City Attorney

August 8, 2007

- E3-1: In this comment, the City Attorney seeks to clarify the process outlined in Mitigation Measure DECAF-1 in the Draft EIR for determining whether a change in tenant mix on the project site would result in urban decay impacts. The City Attorney also suggests that a provision be added to the mitigation measure that requires a public hearing to be held to assist in the City's determination of whether the changes to tenant mix could result in urban decay.

After discussion with City staff, it was determined that the occupancy, use, or building permit stage of the entitlement process would be too late to legally determine whether the project could result in urban decay. Instead, the appropriate point in the entitlement process for re-evaluation of the project's potential urban decay impacts would occur at the time the project exceeds 100,000 square feet of retail uses (a maximum of 100,000 square feet of retail uses was assumed for the purposes of environmental review). Lastly, "land use" as opposed to "tenant mix" is the appropriate variable to consider in identifying the potential for urban decay (because tenant mix is permitted to change once retail land uses are already entitled).

Requiring a public hearing to be held if the Community Development Director finds that the commercial tenant mix has substantially changed would not be necessary to ensure that the project would not result in urban decay impacts. The Director of Community Development, as an independent authority, has adequate expertise to determine – after reviewing the economic analysis (which itself would be available for public review) and consulting with other City staff, as needed – whether a change in land use would have a potential for urban decay.

Impact and Mitigation Measure DECAF-1 (as revised on page 579 of the July 20, 2007 Response to Comments Document) are further revised as follows in response to the letter from the City Attorney and discussions with City staff. These revisions clarify the intent of the original mitigation measure and would not require recirculation of the Draft EIR.

**Impact DECAF-1: If the land uses ~~tenant mix~~ of the project changes, the project could result in urban decay. (S)**

Mitigation Measure DECAF-1: The land uses proposed for the Benicia Business Park and analyzed in this EIR include a maximum of 100,000 square feet of retail uses. This limitation on commercial development would preclude the establishment of big box retail uses on the project site without additional evaluation. As identified in the EIR, a substantial increase in the amount of retail uses could increase the potential for urban decay in Benicia or other local commercial centers. Prior to issuance of an occupancy permit for the proposed project, the City shall review the anticipated tenant mix of

~~the Business Park and determine whether the mix has substantially changed from the tenant mix analyzed in this EIR. A substantial change in tenant mix would be a change that increases the *potential* for urban decay in Downtown Benicia or other local commercial centers, and could include (but would not be limited to) the addition of a big box retail tenant. If the project sponsor proposes to increase the amount of retail uses beyond 100,000 square feet, City determines that the new tenant mix has substantially changed, the project sponsor shall provide the City with an updated the economic analysis prepared for the project, or provide a letter prepared by an economic analyst that discusses changes to the previous analysis. The adequacy of the economic analysis shall be subject to review and approval by the City's Director of Community Development, who may require revisions and additional analysis if he or she deems it appropriate. If the Director finds, based upon the economic analysis, that the additional retail uses If the economic analysis shows that the new tenant mix could contribute to urban decay, the City and project sponsor shall develop a mitigation measure to reduce this impact to a less-than-significant level. Following implementation of this mitigation measure, an occupancy permit could be issued. If the economic analysis shows that the new tenant mix would not result in significant urban decay impacts, the occupancy permit could be issued without further analysis or mitigation.~~

If no effective and feasible mitigation measures are identified to reduce the potential urban decay impacts to a less-than-significant level, the City shall conduct environmental review for the project changes that would allow for the adoption of a statement of overriding considerations and appropriate findings (e.g., a supplemental or subsequent EIR).

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

Letter E4 (page 1 of 3)

Letter E4 (page 2 of 3)

Letter E4 (page 3 of 3)

**COMMENTOR E4**  
**Miller Starr Regalia**  
**Kristina D. Lawson**  
**August 1, 2007**

- E4-1: This comment, which addresses the City of Benicia's CEQA process, does not raise concerns about the adequacy of the Draft EIR. Therefore, no additional response is required.

Letter E5 (1 of 5)

Letter E5 (2 of 5)

Letter E5 (3 of 5)

Letter E5 (4 of 5)

Letter E5 (5 of 5)

**COMMENTOR E5**  
**Miller Starr Regalia**  
**Kristina D. Lawson**  
**August 6, 2007**

- E5-1: This comment expresses disagreement with the recommended finding in the staff report for the August 7, 2007 City Council meeting. It does not pertain to the adequacy of the Draft EIR. Therefore, no additional response is required.
- E5-2: Both the environmental consultants and City staff agree with the thrust of the comment that the City Council is the proper decision-making body to make an overall finding on the consistency of the project with the Benicia General Plan. It is the City Council's responsibility both to interpret the sometimes arguable language of the General Plan policies and to weigh the competing policies (including policies that do not pertain to environmental impacts) and then make findings regarding whether the project is consistent with the General Plan.

General Comments

However, we respectfully disagree with the comment that it is not a role of the Environmental Impact Report (EIR) to draw at least preliminary conclusions about the consistency of the project with policies adopted for the purpose of environmental protection. The fundamental purpose of the EIR is to disclose the environmental impacts of the project. The project's environmental impacts were identified based on the environmental criteria of significance used by the City of Benicia. The criterion used to determine that the project could result in a significant unavoidable physical impact associated with numerous General Plan policy conflicts is repeated below (from page 103 of the Draft EIR):

“The proposed project would have significant land use and planning impacts if it would: Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the **general plan**, specific plan, local coastal program, or zoning ordinance) **adopted for the purpose of avoiding or mitigating an environmental effect** [emphasis added].”

The EIR rightfully examines the consistency of the project not with all applicable policies in the General Plan – but with the policies in the General Plan *adopted for the purpose of avoiding or mitigating an environmental effect*. It is the City Council's responsibility to consider this information – in the context of other General Plan policies – when making a finding on the overall consistency of the project with the General Plan.

The Draft EIR is a document that is required by State law to disclose the environmental effects of the project to decision-makers. The analysis of environmental impacts is based on the criteria of significance used by the City. One of the criteria of significance used by the City is the one cited above – that a significant impact would result if the project conflicts with applicable policies adopted for the purpose of avoiding or mitigating an environmental effect. In this case, the proposed project appears to be inconsistent with over 60 General Plan goals, policies, and programs adopted for the

purpose of environmental protection and these inconsistencies would result in significant adverse environmental effects. Therefore, it is not only appropriate – but it is the obligation of the EIR to disclose these impacts to the City’s decision-makers, in accordance with the California Environmental Quality Act (CEQA). This obligation does not remove the City Council’s independent authority to make a finding on the overall consistency of the project with the General Plan.

#### Specific Comments

We agree with the comment's statement that “when a determination of consistency is uncertain or complex, the proper role of the EIR is to set forth the issue and to relate it to the discussion of environmental impacts.” In the case of the proposed project, the determination made in the Draft EIR that the project is inconsistent with numerous policies adopted for the purpose of environmental protection is complex, but it is not uncertain. This determination is based on a careful analysis of goals, policies, and programs in the General Plan that are applicable to the project and pertain to environmental protection. As noted above, the project appears to be inconsistent with over 60 of these goals, policies, and programs, and these inconsistencies would result in significant adverse environmental effects.

The analysis in the Draft EIR (page 105) relates these inconsistencies to physical effects: “These policy inconsistencies would remain associated with substantial adverse changes to the physical landscape and use of land in Benicia, and would represent a significant deviation from the overarching goals and policies of the General Plan.”

The comment also suggests that the ultimate determination of consistency must be made by City Council and may not be arbitrary or capricious. For the reasons stated above, we disagree that conclusions regarding the consistency of the project with policies adopted for environmental protection must be made only by City Council. The policy analysis in the Draft EIR is neither arbitrary nor capricious; it is based on a careful examination – available for public review on pages 96-102 of the Draft EIR – of the project’s consistency with policies in the General Plan adopted for the purpose of environmental protection. The analysis does not unfairly target the project and gives weight to the beneficial impacts of the project as they relate to environmental protection.

The commenter suggests that *CEQA Guidelines* sections 15125, 15126, and 15126 limit an EIR to merely a *discussion* of inconsistencies with applicable plans. We disagree. Section 15125 of the *CEQA Guidelines* (which pertains to the setting section and not to the impacts analysis of an EIR), for instance, mandates that an EIR “discuss any inconsistencies between the proposed project and applicable general plans and regional plans,” but it does not prohibit a determination in the EIR that these inconsistencies would result in a significant adverse environmental effect. The comment represents misinterpretation of these provisions of the *CEQA Guidelines*.

- E5-3: We do not fully agree with the comment’s contention that “an inconsistency between a proposed project and an applicable plan is a legal determination, not a physical impact on the environment.” We would edit the statement as follows to make it consistent with

the *CEQA Guidelines* and applicable case law: “An inconsistency between a proposed project and an applicable plan is in and of itself a legal determination, not a physical impact on the environment.” As is noted in Response to Comment E5-3, the determination of inconsistency in the Land Use and Planning Policy section of the Draft EIR is not considered the physical impact in and of itself; instead, the physical impact comprises the environmental effects associated with the numerous policy inconsistencies identified in the Draft EIR.

- E5-4: This comment pertains to the City’s environmental review process and not to the adequacy of the EIR. No additional response is required.

Letter E6 (1 of 9)

Letter E6 (2 of 9)

Letter E6 (3 of 9)

Letter E6 (4 of 9)

Letter E6 (5 of 9)

Letter E6 (6 of 9)

Letter E6 (7 of 9)

Letter E6 (8 of 9)

Letter E6 (9 of 9)

**COMMENTOR E6**  
**Miller Starr Regalia**  
**Kristina D. Lawson**  
**August 20, 2007**

- E6-1: This introductory comment is noted.
- E6-2: Page 104 of the Draft EIR notes that “the project is generally consistent with General Plan designations for the project site (General Commercial and Limited Industrial).” In addition, the inconsistency determination in the Draft EIR does not pertain to all General Plan policies that are applicable to the project, only ones that were adopted for the purpose of environmental protection. See Response to Comment E5-2 for a more detailed explanation of how the land use policy analysis in the Draft EIR focused only on policies adopted for environmental protection.
- E6-3: As noted in Response to Comment E6-2, page 104 the Draft EIR explicitly states that the proposed project is consistent with the General Commercial and Limited Industrial designations for the project site. In this comment, the commenter lists two General Plan goals and several policies and programs that are applicable to the proposed project. We agree. Two of the cited policies and programs – Policy 2.6.5 and Program 2.6.F – were included in Table IV.A-1 in the Draft EIR (the policy consistency table). In the analysis of this policy and program in the Draft EIR, the EIR notes that industrial uses have already developed along – and outside of – the western edge of the site (reducing the effectiveness of a buffer set aside within the project site), but that there is a topographical separation between the project site and nearby residential uses in the Tourtelot Area. Therefore, we agree with the comment that the project is generally consistent with Policy 2.6.5 and Program 2.6.F.

We also agree with the comment that the project is generally consistent with the other goals, policies, and programs listed in comment E6-3 (although the project would be consistent with Policy 2.6.4 only after implementation of Mitigation Measures TRANS-1 through TRANS-24, PUB-1, and UTIL-1 through UTIL-4). These goals, policies, and programs encourage the preservation of industrial land in Benicia, support continued development of the Benicia industrial park, and seek to streamline the review process for development of limited industrial lands, among other objectives. The project’s consistency with these policies should be taken account of by City Council.

However, the referenced goals, policies, and programs (with the exception of Policy 2.6.5 and Program 2.6.F) were not included in Table IV.A-1 because, although they are applicable to the project, they were not adopted for the primary purpose of environmental protection. The policy analysis was confined to General Plan policies adopted for the purpose of environmental protection for three key reasons: 1) to respond directly to the City’s land use and planning criterion of significance that pertains to a project’s inconsistencies with local environmental policies; and 2) because of the scale of the project, the policy table would grow to an unwieldy size if all applicable policies were analyzed, reducing the usefulness of the table to decision-makers and frustrating the legal requirement that EIRs be as concise as possible (*CEQA Guidelines* section

15141). Policies not adopted for environmental protection are not germane to the environmental review of the proposed project. Refer to Response to Comment C2-4 for additional discussion about the focus of the policy table on policies adopted for environmental protection.

- E6-4: This comment introduces the commenter's claim that eight of the General Plan policies cited in the Draft EIR are inapplicable to the project. Each cited policy is discussed in detail in the following responses.
- E6-5: The comment suggests that Policy 2.2.1 is not applicable to the project because the associated goal (Goal 2.2, which seeks to maintain lands near Lake Herman Road as open space) is not applicable to the project. We disagree with the comment and have found no evidence in the language of the General Plan that indicates that Goal 2.2 is not applicable to the project site. The project site is clearly planned for commercial and industrial development in the General Plan, as indicated in the Draft EIR. However, the development of a commercial/industrial business park on the site does not automatically preclude the preservation of certain lands within the project site (including lands along Lake Herman Road) as permanent open space. Indeed, the project as currently proposed includes approximately 180 acres of land that would be permanently preserved as open space, including a buffer along Lake Herman Road. This buffer is explicitly mentioned in the consistency discussion of Goal 2.2 ("An open space buffer would be preserved at the project site immediately to the south of Lake Herman Road.") Therefore, Goal 2.2 reasonably applies to the project, although it should be analyzed in the context of the land being designated for developed uses. This is accomplished in Table IV.A-1 in the Draft EIR.

Policy 2.2.1 is applicable to the project, considering that all the natural features listed in the policy (agricultural and rural land uses, hillsides, two-lane curving roads, watersheds, riparian corridors, and upland grasslands) are located in the project site. The preservation of some or all of these features is not incompatible with development of the project site with commercial and industrial uses. As indicated in Table IV.A-1, the project is substantially inconsistent with this policy because the project would modify or remove all but one of the existing drainages on the site and substantially grade the existing hillsides.

- E6-6: Here the comment claims that a number of policies are not applicable to the project because they fall under Goal 3.15 ("Provide buffers throughout the community."). A buffer is a concept used in land use planning typically to separate incompatible uses (e.g., to separate industrial from residential uses), but also to protect natural resources. For instance, the City of Benicia (Zoning Ordinance Section 17.70.340) requires that all development provide a buffer of at least 25 feet from the top of bank of seasonal and perennial streams and ravines. There is no language in the General Plan that would indicate the buffer planning concept should not apply to the proposed project, while numerous goals, policies and programs suggest that buffers should be provided around features in the site, including existing scenic vistas (Policy 3.15.2), view corridors (Program 3.15.D), and natural and man-made hazards (Policy 3.15.4).

As noted in the Draft EIR on pages 70 and 79, and as shown in Figure III-3, the proposed project provides buffers in certain locations (notably along Lake Herman Road and around a major drainage within the project site). However, the project would result in the removal of three of the four intermittent drainages on the site, in direct conflict with Zoning Ordinance Section 17.70.340. No buffers would be provided around these intermittent streams. Policy 3.15.3 (avoid difficult-to-use residual open space), Policy 3.15.5 (encourage the landscaping of open spaces with native plants), Policy 3.15.6 (restore and maintain natural landscapes in a natural manner) are all applicable to the project because they pertain to resources that are located within the project site or design features that would be part of the proposed project.

E6-7: This comment claims that Goal 3.17 and associated Policy 3.17.1 do not pertain to the proposed project because the project site is not located between regional and/or local open spaces, and could not be used to link such spaces. This claim is untrue: the project site is bordered to the north by lands designated for open space/agricultural uses in the General Plan and Zoning Ordinance; on the west by open space surrounding Sulfur Springs Creek, and on the northwest by Lake Herman Park. In addition, the designation of the site for commercial and industrial uses does not preclude the provision of connections between these open spaces within the project site. Therefore, Policy 3.17.1 (attempt to link existing regional and local open spaces using trails and open space corridors) is applicable to the proposed project. As indicated in Table IV.A-1, the proposed project is inconsistent with both Goal 3.17 and Policy 3.17.1.

E6-8: In this comment and the following five comments, the commenter claims that the Draft EIR wrongly concludes that the project is inconsistent with six separate General Plan policies. Each cited policy is discussed in detail in this and the following responses.

The comment states that a conclusion that the project would be consistent should be made in regard to Policy 2.21.1 (provide and promote a range of alternatives to the private automobile) since “[t]his project may be conditioned to promote travel alternatives.” Even at a conceptual level of detail, the project is inconsistent with Policy 2.21.1: it includes cul-de-sacs, which discourage walking, and includes only minor provisions for bike access, and no provisions for transit use. Based on the current design, the project would be expected to increase automobile reliance in Benicia and would not promote transportation alternatives. Although bike and pedestrian features may not be compatible with certain industrial development in the site, such features would be compatible with many of the uses proposed as part of the project, including hotel, fitness club, office, movie, retail, restaurant, bank, and research and development uses. The project may be conditioned at a later date to promote alternatives to private automobile use. However, these conditions were not proposed as part of the project analyzed in the Draft EIR. Until such conditions are placed on the project and examined, one cannot draw the suggested conclusion that the project is consistent.

E6-9: This comment claims that, contrary to the text in Table IV.A-1 in the Draft EIR, the project is consistent with Policy 3.21.E (identify, protect, and restore small wetlands) because it is consistent with Goal 3.21 (permanently protect existing wetlands so that there is no net loss of wetlands in the Benicia Planning Area). We disagree with the

comment for multiple reasons. First, there is no language in the General Plan suggesting that if a project is consistent with a goal, it is automatically consistent with the underlying policies and programs. Second, the project is not consistent with Goal 3.21. Out of approximately 7.28 acres of existing coastal valley/freshwater marsh and stream channels on the site, the project would remove approximately 5.26 acres of wetlands (approximately 72 percent of existing wetlands). Goal 3.21 has two discrete but interrelated parts: 1) permanently protect and enhance wetlands to 2) ensure no net loss of wetlands. The project, which would remove almost three-quarters of the existing wetlands on the site, would be inconsistent with this goal regardless of the creation of 12.69 acres of in-kind jurisdictional wetlands. The intent of the goal is to preserve existing wetlands (not to create new ones); therefore, the project is largely inconsistent with Goal 3.21, even though it may comply with the no net loss provision. Lastly, for similar reasons, the project (which would remove approximately 72 percent of existing wetlands on the site) would not be consistent with Program 3.21.E, which seeks to identify, protect, restore, and enhance existing small wetlands.

- E6-10: This comment claims that the project would be consistent with both Goal 3.22 (preserve water bodies) and Policy 3.22.1 (avoid development that will degrade lakes and streams) because mitigation would be required for the culverting and filling-in of three intermittent streams on the site. The mitigation to which the commenter refers is described on pages 194 to 197 of the Draft EIR (Mitigation Measures BIO-2a through BIO-2f). This package of mitigation measures was designed to mitigate a specific impact to biological resources: adverse effects to wetlands under the jurisdiction of the U.S. Army Corps of Engineers. These measures were not designed to mitigate impacts associated with the project's conflicts with Goal 3.22 and Policy 3.22.1. Such a mitigation measure would require the preservation of the existing waterways on the project site, which would require a reconfiguration of land uses on the project site (refer to the three development alternatives in Chapter V, Alternatives, for feasible ways to avoid this impact). Therefore, Mitigation Measures BIO-2a through BIO-2f do not adequately mitigate physical environmental impacts associated with the project's inconsistency with Goal 3.22 and Policy 3.22.1.
- E6-11: This comment makes a similar argument to the one in comment E6-10: that the project is consistent with Goal 3.19 (preserve and enhance native vegetation and habitats) and Policy 3.19.1 (protect essential habitat for special-status plants and animals) because impacts to special-status plants and animals would be mitigated by implementation of the mitigation measures in the Draft EIR. The mitigation measures in the Draft EIR are specifically designed to mitigate impacts to species under the jurisdiction of the California Department of Fish and Game and the United States Fish and Wildlife Service – and they do not specifically address the mandate of the cited goal and policy (*protect* existing habitat). As noted above, the proposed project would remove approximately 72 percent of existing wetland habitat on the site. While the mitigation measures in the Draft EIR require replacement of this habitat according to agency standards, this replacement would not result in the protection of existing habitat.
- E6-12: There are virtually no native grasslands on the site (most of the on-site grassland is non-native) and there are no oak woodlands on the site. The project would remove

three of the four intermittent streams on the site (and associated riparian habitat). Therefore, it would be inconsistent with both Goal 3.20 (protect and enhance native vegetation and habitats) and Policy 3.20.1 (protect native grasslands, oak woodlands, and riparian habitat).

E6-13: See Response to Comment E6-9.

E6-14: The finding in the Draft EIR that the project is inconsistent with numerous policies in the General Plan adopted for environmental protection, and that this inconsistency would result in a significant physical environmental impact is not based on the assumption “that every aspect of [the] proposed project perfectly and precisely conform to each and every goal, program, or policy set forth in the plan.” On the contrary, the determination in the Draft EIR was made after finding that the proposed project was largely inconsistent with over 60 specific goals, policies, and programs adopted for the primary purpose of environmental protection. In many cases, these inconsistencies derive from conflicts with relatively clear policy directives that urge the protection of existing natural resources that would be removed as part of the project. This finding is supported by substantial evidence, including the 7-page policy evaluation (Table IV.A-1) and almost 400 pages of environmental analysis in the Draft EIR.

E6-15: Refer to Response to Comment E5-2.

E6-16: Refer to Response to Comment E5-3.

E6-17: This conclusory comment has been addressed in previous responses. No additional response is required.

Letter E7 (1 of 13)

Letter E7 (2 of 13)

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Letter E7 (13 of 13)

**COMMENTOR E7**  
**Steven Goetz, AICP**  
**August 5, 2007**

- E7-1: This introductory comment is noted.
- E7-2: The comment states that “no information is provided to show that the City requirements or [Mitigation Measure] HYDRO-3 contain standards or criteria that would effectively prevent” slope instability and contamination of waterways by eroded soil. We disagree. Mitigation Measure HYDRO-3 (which requires implementation of Mitigation Measures HYDRO-1 and HYDRO-2) would require the implementation of a comprehensive set of strategies that are specifically designed to ensure slope stability and protect water quality. These strategies include: 1) the establishment of a self-perpetuating drainage system maintenance program that includes annual inspection of sedimentation basins, drainage ditches, and drainage inlets; 2) implementation of best management practices (BMPs) (with “end-of-pipe” sediment control measures like hydroseeding to be used only as a last resort) to reduce soil erosion during the construction period; and 3) implementation of passive, low-maintenance site features such as grassy swales to reduce adverse effects associated with sedimentation and the release of other pollutants during operation of the business park. These measures would be designed in accordance with the “Start at the Source” design manual, which provides widely-accepted erosion control standards. The set of mitigation measures described above comprise erosion-reducing measures generally accepted by the Regional Water Quality Control Board (RWQCB). With these measures, erosion-related impacts would be reduced to a less-than-significant level, even taking into account steep slopes on the site. The mitigation measures include built-in performance standards and multiple opportunities for monitoring to ensure that soil erosion on the site would be reduced to a less-than-significant level.
- E7-3: The comment states that the transportation analysis in the Draft EIR erroneously does not identify pedestrian and vehicle safety impacts along East 2nd Street because the analysis assumes that “all project trips would obey the law and travel at the posted speed limit of 25 miles per hour.” The Draft EIR assumes that if speeding – or other unlawful behavior – occurs on east 2nd Street or other roadways in the vicinity of the project site, additional police enforcement (or design changes made independent of the proposed project) would reduce this problem. Speeding or other unlawful roadway behavior is not considered an impact of the project in and of itself, and therefore was not identified as such in the Draft EIR.

The intersections of East 2nd Street/Rankin Way and East 2nd Street/Seaview Drive did not warrant detailed analysis based upon criteria used by the City of Benicia Public Works Department and the transportation consultant for the project and the following considerations: 1) low side street traffic volumes; 2) low levels of delay; 3) existing acceptable levels of service; and 4) the expectation that the project would not result in a substantial adverse effect on operating conditions at each of these intersections.

- E7-4: Mitigation Measure TRANS-22 in the Draft EIR provides significant flexibility to the City in identifying the portions of I-780 to widen, and does not *mandate* that the entire segment of I-780 between East 2nd Street and Columbus Parkway be widened. If widening of the entire segment were to occur, it is arguable that such a widening would conflict with the Benicia General Plan. The General Plan contains numerous, sometimes-conflicting policies that pertain to I-780, including the one referenced by the commenter that encourages preservation of the existing lane configuration of I-780. However, other policies in the General Plan encourage the adjustment of the circulation system in Benicia to maintain minimum service standards. In addition, even if the entire I-780 segment were to be widened, and if this widening were determined to conflict with the General Plan, it remains arguable that the widening would result in significant environmental effects since it would occur within the existing freeway right-of-way. While the widening could affect wetlands and unidentified archaeological resources, and could require innovative engineering, it is expected that associated impacts would be reduced to a less-than-significant level with implementation of standard City conditions of approval. Therefore, Mitigation Measure TRANS-22 is an appropriate mitigation measure.
- E7-5: The Solano Transportation Authority (STA) projects reflect reasonable assumptions about what transportation projects will be built in the County in the long-term. Considering that the funding environment for large capital projects changes frequently in California, we believe that the STA project list is adequate to provide the reader with a sense of possible future roadway improvements.

Although the I-80/I-680/I-780 corridor project and several other projects, are listed on page 220 of the Draft EIR, they are meant only as a point of information and are not necessarily included in the analysis. As explicitly stated there, the listed projects are "included in the Benicia General Plan" or "Identified in the 2005 CMP Capital Improvement Plan." As discussed in Response to Comment C2-11, only a subset of those projects listed on page 220 that are likely to be implemented by 2030 are included in the Solano/Napa County travel demand model, which is used for the analysis of Cumulative plus Project Conditions.

Of the projects listed on page 220, the following were included in the analysis of future traffic conditions:

- The second Benicia-Martinez span (already in operation);
- Public road connecting through the lower Arsenal and port areas to include Bayshore Road, Adams Street and Oak Street (in final design stages); and
- I-80/I-680/SR 12 improvements (in final design stages).

These improvements were identified as those which could be reasonably assumed to be in place by the time of the cumulative scenario. Thus, while the I-80/I-680 /I-780 Corridor's mid- and long-term improvements and County Local Interchange and Arterial Improvements are listed in the EIR according to their sources, they are not all included in the traffic analysis or the cumulative assumptions.

E7-6: The Cumulative and Cumulative plus Project analyses for local intersections and regional freeways were conducted using different methodologies to more accurately reflect conditions likely to prevail on each portion of the area's transportation system. The Cumulative plus Project volumes for regional freeways were taken directly from the Solano County Travel Demand Forecast Model, modified to include the land use proposed as part of the project. Whereas, to estimate traffic on local area intersections, the model was used to predict a "trip distribution" pattern, and then the project's trip generation (based on Institute of Transportation Engineers (ITE) rates) was manually, incrementally, added on top of existing and cumulative baseline conditions.

The Solano County Travel Demand Forecast Model provides the best estimate for travel conditions on the regional roadway network projected for the year 2030, using land use information, household income, and employment projections compiled by the Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG). The Solano County Travel Demand Forecast Model was modified to incorporate land use and socioeconomic data for the proposed project in the Cumulative plus Project condition. The Travel Demand Forecast Model generates trips based on purpose and type specific to the geographical and demographical characteristics of the greater Bay Area, as land use information contained in the model are consistent with MTC and ABAG projections. For the analysis of freeway segments that involve regional travel patterns, the Travel Demand Forecast Model projections were used (as opposed to the manual trip generation and assignment methodology used to derive volumes for the intersection operations analyses).

The Travel Demand Forecast Model generates, projects, distributes, and assigns vehicle trips based on travel demand, roadway capacity, and socioeconomic characteristics contained in the collected land use information. It is therefore expected that with a large development such as the proposed project, the regional travel patterns on freeway facilities would change accordingly due to changes in land uses in response to future employment and socioeconomic conditions. Therefore, to derive the Cumulative plus Project Conditions freeway volumes, it would not be advisable to use the methodology employed for conducting intersection analyses by using ITE Trip Generation rates and manual trip assignment. The model more accurately reflects trip linkages, passer-by trips and changes in local and regional travel patterns which are brought about by such a large change in the area land use. Because the volumes are pulled directly from the model for this analysis, they do not directly equate to the results of the simple addition of the Cumulative plus Project trip assignment as indicated in the comment. This addition will always overstate traffic volumes on area freeways as it does not account for or reflect the changes in travel patterns discussed above which inevitably occur as a result of a project of this size and type.

In contrast, on the local street system and area intersections, the great majority of project trips will be new and direct additions to existing and cumulative baseline forecasts. For this reason, the local intersection analysis employs the simple trip generation, trip distribution, and trip assignment methodology based on ITE-generated travel demand information. For the intersection analysis, this manual simple incremental addition of project trips without any regional changes in travel behavior or

social-economic patterns is more appropriate. Thus, the simple math employed by the commenter is confirmed in the intersection analyses.

- E7-7: Improvements to Lake Herman Road referenced in the original response refer to the widening of Lake Herman Road from the intersection with A Street to the intersection with I-680 (required as part of Mitigation Measure TRANS-17). Refer to Response to Comment E7-3 regarding identifying unlawful roadway behavior as a significant physical impact. The additional traffic generated by the project on Lake Herman Road would not alter the safety of the roadway such that physical impacts would result.
- E7-8: The project as currently proposed is a conceptual development plan that does not contain many of the site-specific development details that would typically accompany a development project, including diagrams depicting the proposed berm/roadway interface. The environmental analysis in the Draft EIR, including the identification of impacts and mitigation measures, was undertaken based on the level of detail on the proposed project that was provided by the project sponsor. Detailed roadway diagrams would be submitted prior to construction of new or modified roadways. At that time, roadway design would be evaluated for site-specific hazards, similar to those referenced by the commenter. However, at the current conceptual level of detail, it is not likely that the design of any proposed roadways would result in significant physical environmental impacts.
- E7-9: Refer to Response to Comment E7-3. Certain intersections along East 2nd Street were scoped out of detailed analysis due to the expectation on the part of the City of Benicia Public Works Department and the project transportation consultant that the project would not substantially affect these intersections. Queuing analyses were not conducted for these intersections. However, the analysis in the Draft EIR of the intersection of East 2nd Street/I-780 westbound (WB) ramps provides insight as to how the project could result in changes to queuing at the intersections along East 2nd Street. In the Cumulative plus Project Conditions, the East 2nd Street/I-780 WB Ramps intersection is projected to operate at an unacceptable service level. Queuing at the southbound approach to the intersection would spill into upstream intersections. However, implementation of the identified mitigation measure at this intersection would restore acceptable operating conditions, and reduce queuing at the southbound approach to the intersection to an acceptable level. As a result, the queuing from this intersection would not be expected to spill into upstream intersections. Therefore, it can be concluded that at the intersections of East 2nd Street/Rankin Way, East 2nd Street/East Seaview Drive, and East 2nd Street/East Tennys Drive – where low side-street traffic volumes, low levels of delay, and acceptable levels of service can be expected after implementation of recommended mitigation measures – moderate to low levels of queuing would be expected with implementation of the proposed project.
- E7-10: Since the roadway segment north of the East 2nd Street/I-780 Eastbound Off-Ramp intersection is approximately 48 feet wide, as many as four travel lanes could be accommodated (i.e., a southbound left turn lane, a southbound through lane, and two northbound through lanes). Standard lane widths are 12 feet.

Since the study also recommends that the northbound approach to the East 2nd Street/I-780 Westbound Off-Ramp intersection be reconfigured to include a left turn lane, a through lane, and a shared through-right turn lane, no merge lanes would be required for the roadway segment between the East 2nd Street/I-780 Eastbound Off-Ramp and East 2nd Street/I-780 Westbound Off-Ramp intersections.

With a reconfigured I-780 Eastbound Off-Ramp, the traffic signal would require updating. As part of the update, Caltrans standard pedestrian heads for pedestrians crossing in front of the off-ramp would be installed. These pedestrian heads would stop all off-ramp traffic to allow pedestrians to cross safely.

- E7-11: Letter A8 contains comments from the Benicia Public Works Department on the Draft EIR. These comments were addressed satisfactorily in the Response to Comments Document (see Response to Comments A8-1 through A8-10); none of the responses came to the conclusion that the Draft EIR was inadequate. In addition, none of the text changes made in response to these comments would require recirculation of the Draft EIR. Therefore, it is not true that “the existence of this letter casts doubt on the adequacy of the project description and the adequacy of the EIR’s analysis of the project’s environmental effects.” Such a conclusion is at odds with the Public Works Department’s current point of view.
- E7-12: Refer to Response to Comment E7-5.
- E7-13: To mitigate Impact TRANS-23, the project proponent is required to provide all on-site facilities necessary to receive transit service. Area transit service is assumed to continue to be funded in the normal manner, through taxes, to which the project would contribute. Regardless of the tax revenue needed to provide transit service to the project site, requiring the project to provide additional outlays to Benicia Transit would likely exceed constitutional nexus requirements and would be inconsistent with past approaches in Benicia to transit mitigation.
- E7-14: An Intermodal Transit facility on the project site is not required to reduce the transportation impacts of the project. Therefore, the questions raised by the commenter (such as, “Why is a rail connection needed?” and “Does the City currently have a viable site for a rail connection?”) were not investigated in detail as part of the Draft EIR. Although an intermodal facility could increase transit use, this increased transit usage would not be adequate to offset the significant unavoidable contribution to regional pollutants caused by the proposed project. Even with the implementation of trip reduction measures and increased use of transit, Impact AIR-2 would remain significant and unavoidable. This impact is largely a function of the size and type of the project.
- E7-15: Mitigation Measure TRANS-24 requires the project sponsor to provide “pedestrian sidewalks connecting all major buildings and parking areas within the project site.” This provision could be construed to require the connection of cul-de-sacs within the project site. However, the comment’s suggested change would make this provision more clear, and would increase the effectiveness of the mitigation measure in making

the project more pedestrian- and bike-accessible. Mitigation Measure TRANS-24 on page 569 of the Response to Comments Document is therefore revised as follows. This revision clarifies the intent of the mitigation measure in the Draft EIR and would not require recirculation. Mitigation Measure AIR-2 requires the provision of sidewalks and/or paths, connected to adjacent land uses, transit stops, and or community-wide bike and pedestrian facilities. A similar addition to that mitigation measures to specifically require connections between cul-de-sacs would be unnecessary.

Mitigation Measure TRANS-24: The project sponsor shall incorporate the following design elements and services into the proposed development plans to minimize potential pedestrian and bicycle facility impacts. Bicycle facilities would be developed along East 2nd Street and Industrial Way as part of the project.

- Pedestrian sidewalks connecting all major buildings and parking areas within the project site;
- Pedestrian routes between cul-de-sacs and adjacent parcels;
- Crosswalks at all areas where there may be potential pedestrian/vehicular conflicts;
- Bicycle racks at all building entrances;
- Incentives for individual buildings to contain showers and lockers, and secure indoor bicycle lockers;
- Sidewalks along East 2nd Street, A Street, and Industrial Way;
- Sidewalks along Lake Herman Road (between A Street and East 2nd Street);  
~~and~~
- Class I/II Bikeway along Lake Herman Road (between A Street and I-680);
- Class II/III Bikeway along Lake Herman Road (between Industrial Way and A Street);
- Class I Bikeway between East 2nd Street and Lake Herman Road in the project site;
- Class I Bikeway between Channel Road and East 2nd Street; and
- Parking and building leases at the Business Park shall be “unbundled” (i.e., rents for building space and parking lots shall be separate). Businesses at the Business Park that have 50 or more employees and provide employee parking on a free or subsidized basis shall provide financial compensation to those employees who commute by means other than private automobile, in accordance with CA Health and Safety Code §43845.

E7-16: Mitigation Measure AIR-1 would impose on the project stringent construction-period air quality control measures promulgated by the Bay Area Air Quality Management District (BAAQMD). These measures would reduce air pollutants generated by the project during the construction period. As noted in Table IV.H-9 on page 573 of the Response to Comments Document, unnecessary diesel idling is prohibited by the BAAQMD. The State has regulatory authority over mobile source emissions such as those from construction equipment. Future emission reduction requirements are being

implemented at the State level and will contribute to lower construction emissions over the life of this project. The package of air control measures in Mitigation Measure AIR-1 would reduce construction-period emissions to a less-than-significant level. The City of Benicia does not maintain additional diesel-control measures that could be imposed on the project. Mitigation Measure AIR-1 represents the best available construction-period air quality controls.

- E7-17: The comment claims that the expected carbon monoxide (CO) concentrations at the intersection of East 2nd Street and Rose Drive are not indicative of expected CO concentrations at the intersection of East 2nd Street and the I-780 westbound (WB) ramps. We disagree. Both intersections would experience similar traffic volumes in the cumulative condition (traffic volumes differ by approximately 350 trips in the AM and PM peak hours, but these differences in trip volumes would not have a significant effect on CO concentrations at the respective intersections). In addition, based on adherence to State CO evaluation protocol, each carbon monoxide hot spot was analyzed approximately 12 feet from the analyzed intersection. Therefore, the expected CO concentrations at East 2nd Street and Rose Drive would be approximately the same as those 12 feet away from the East 2nd Street/I-780 WB ramps. In addition, Robert Semple Elementary School is not located 0 feet from the East 2nd Street/I-780 WB ramps intersection. In fact, the school playing fields are located over 100 feet east of the intersection, meaning that CO concentrations would likely be similar to or lower than those reported for the East 2nd Street/Rose Drive intersection.
- E7-18: In the absence of adopted City standards for exposure of schools to vehicle-related emissions, the analysis of potential air quality impacts to schools around the project site relied on the best available standards – those of the California Environmental Protection Agency and the California Air Resources Board. Based on the standards of these agencies, the project would not expose schools in the vicinity of the project site to hazardous levels of vehicle emissions, including emissions of carbon monoxide (CO) and particulate matter.
- E7-19: Substantially reducing the size of the project to avoid significant noise and air quality impacts is not considered to be a feasible mitigation measure because it would require a substantial redesign of the project. Mitigation Measure NOISE-2c provides two options for reducing noise along East 2nd Street from I-780 to Rose Drive: 1) construction of a sound barrier or 2) resurfacing the roadway segment with rubberized asphalt. If the City deems the first option unacceptable due to General Plan considerations, the second option would be an effective alternate measure. In Sacramento, rubberized asphalt has been used effectively to reduce vehicle noise generation, and is considered a long-term solution if maintained properly. Therefore, such a mitigation measure could also be effective in Benicia.
- E7-20: The preparers of the Draft EIR acknowledge that there is a fine line between identifying impacts to scenic vistas and identifying impacts to the visual character of the site. As described on page 291 of the Draft EIR, we identified a significant impact to scenic vistas in part because “the proposed project would affect the visual quality of areas within the I-680 and Lake Herman Road viewsheds.” However, the impact to

scenic vistas focuses not on the visual character of the entire site, but on the visual character of select corridors, from certain viewpoints. While the project's impacts on the visual character of the entire site cannot be reduced to a less-than-significant level without a substantial reconfiguration of the project (including the removal or relocation of certain buildings), impacts to scenic vistas could be reduced with implementation of a detailed landscape plan. A landscape plan would be an effective mitigation measure for impacts to scenic vistas (but not visual character of the overall site) because: 1) proposed buildings would not totally obstruct scenic views; 2) landscaping would screen buildings seen from scenic vistas, maintaining the natural character of the viewshed; and 3) scenic vistas (but not overall visual character of the site) can be preserved to a large extent even in the face of substantial land development. Therefore, removal of buildings from the project is not a necessary mitigation to preserve scenic vistas.

- E7-21: This comment, which pertains to the merits of the project and not the adequacy of the Draft EIR, is noted. No additional response is needed.
- E7-22: This comment suggests that the four project alternatives in the Draft EIR would reduce or avoid the significant environmental impacts of the project, and expresses support for the environmentally superior alternative identified in the Draft EIR (the Hillside/Upland Preservation alternative). No additional response is needed.
- E7-23: This comment discusses how environmental review could proceed for a project alternative to be approved by the City. No additional response is necessary.
- E7-24: This comment suggests findings that could be made by City Council to reject the proposed project and approve the environmentally superior alternative. No additional response is needed.

Letter E8 (1 of 4)

Letter E8 (2 of 4)

Letter E8 (3 of 4)

Letter E8 (4 of 4)

## COMMENTOR E8

**Marilyn Bardet**

**August 6, 2007**

E8-1: This comment introduces the subsequent ones.

E8-2: Pages 372 to 374 of the Draft EIR identify the project's two significant irreversible changes, as required by *CEQA Guidelines* 15126.2(c): 1) changes in land use which would commit future generations and 2) consumption of nonrenewable resources, namely through increased automobile dependence. These significant irreversible changes are adequately described and are sufficient to allow the City Council to make an informed decision about the long-term environmental impacts of the proposed project.

As noted in Response to Comment C1-15, *CEQA Guidelines* section 15126.6 requires that an EIR "include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. . . [and that] the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed." The level of detail provided for each of the project alternatives discussed in Chapter V of the Draft EIR is consistent with the level of detail provided by the project sponsor of the proposed project. Therefore, the alternatives provide acreage numbers for various land uses, but not detailed building designs or plans illustrating site layout. Because site design could play a substantial role in reducing the impacts of each of these alternatives, the impact analysis of each alternative is purposely qualitative in nature – and focuses on the relative level of impacts that would result from each alternative compared to the proposed project. No quantitative air quality, traffic, or noise modeling was conducted for the alternatives because a qualitative analysis (indicating the comparative level of impacts compared to the proposed project) is adequate to allow decision makers and the public to engage in meaningful consideration of the various alternatives.

If an alternative is approved by the City instead of the proposed project, this alternative would undergo review to support findings that mitigation measures in the Final EIR would avoid or substantially lessen the significant impacts of the alternative, if feasible.

E8-3: Refer to Response to Comment C1-8. The various models and plans listed by the commenter (a 3-D model of the project's grading plans, detailed plans of new roads, simulations along the entire length of East 2nd Street from I-680 to Industrial Way, and visual simulations of proposed mitigation measures) would expand the public's understanding of the project's impacts, but such expanded analyses and presentations are not necessary to identify project impacts and appropriate mitigation measures to reduce the significance of these impacts. The information provided by the project sponsor and included in the Draft EIR is adequate to determine the potential extent and severity of project-related impacts. This approach is consistent with *CEQA Guidelines* section 15151: "An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environ-

mental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible.”

LSA Associates, Inc. (LSA) did not introduce new material, including graphic representations of the project, at the August 7 hearing. New graphic materials were introduced by the project sponsor. However, these materials would not change the impact analysis in the Draft EIR. Refer to the previous response for a discussion of the level of detail provided in the alternatives analysis.

- E8-4: The comment raises the issue of competing policy directives: namely policies in the General Plan that urge the management of congestion on roadways in Benicia and policies that seek to preserve Lake Herman Road as a rural two-lane route. The environmental analysis in the Draft EIR rightly considers these competing policies to reach a conclusion that changes to Lake Herman Road would not compromise the scenic character of the road such that a significant environmental impact would result. The reconciliation of the various competing General Plan policies could allow improvements to Lake Herman Road in the vicinity of I-680 to maintain the level of service standard in the General Plan. These improvements would be appropriate at the eastern end of Lake Herman Road (where the road meets the freeway) but may not be appropriate farther to the west, where rural land uses predominate. Refer to Response to Comment C6-47 for additional discussion on this issue.
- E8-5: A proposal to widen the entire length of Lake Herman Road could face community opposition and environmental constraints. These constraints lead to the conclusion that the widening of Lake Herman Road is not reasonably foreseeable. However, even if Lake Herman Road were to be widened, such a widening would not necessarily increase the project’s growth-inducing impacts. As discussed in Response to Comment B5-2, there are significant constraints to substantial population growth in Benicia and currently-undeveloped land around the project site, including: 1) lack of infrastructure to serve future development on the outskirts of Benicia; 2) the existence of policy and political constraints, including the City’s existing Urban Growth Boundary, and zoning for open space uses; and 3) lack of housing in Benicia and surrounding areas (and the limited amount of land zoned for residential uses). In addition, commercial and Industrial development on the project site is consistent with the General Plan land use designations for the site. Therefore, the EIR does not conclude that the project would result in significant adverse population growth.
- E8-6: The air quality analysis in the Draft EIR follows the standards and methods set forth by the U.S. Environmental Protection Agency (EPA) and the Bay Area Air Quality Management District (BAAQMD) for establishing existing air quality conditions; it follows the standards and methods set forth by the U.S. EPA and the California Department of Transportation for establishing background CO concentrations. The air quality monitoring station locations are chosen by the State to adequately represent regional air quality conditions. Air quality conditions within an air basin are generally similar. The air quality monitoring data are used to establish the general regional air quality conditions. The monitoring station located in Vallejo is the closest air quality monitoring station to the project site with monitored data for the majority of regulated air pollutants, includ-

ing CO concentrations, and represents the project site because it is located in the same air basin as Benicia. Small differences in existing air quality between Benicia and the Vallejo monitoring station would not change the findings of the Draft EIR in regard to the *project's* air quality impacts.

- E8-7: The *Air Quality and Land Use Handbook: A Community Health Perspective*, April 2005, by the California EPA and ARB, establishes guidelines for siting sensitive land uses near air pollutant sources. This handbook references the study *Traffic-Related Air Pollution and Respiratory Health: East Bay Children's Respiratory Health Study* by Kim, J., et al, 2004, for establishing these guidelines. State law restricts the siting of new schools within 500 feet of a freeway, urban roadways with 100,000 vehicles/day, or rural roadways with 50,000 vehicles/day, with some exceptions. The handbook recommends that new sensitive land uses not be sited within these boundaries. The modeled future plus project Average Daily Trips (ADT) would be 37,900 along East 2nd Street and 55,000 ADT on I-780. These traffic volumes are below the threshold set by the California Environmental Protection Agency (EPA) and Air Resources Board (ARB) for locating schools near busy roadways. Therefore, the project would not expose sensitive receptors – including elementary school children at Robert Semple School – to hazardous levels of vehicle emissions, including cumulative emissions of CO and particulate matter.
- E8-8: Refer to Response to Comment E8-6. The focus of the air quality analysis in the Draft EIR is on the *net change* of air pollutants that would be emitted as a result of project implementation. This net change would be the same no matter what air quality baseline data are used. In addition, no data suggest that the air quality in Benicia is substantially worse than air quality at the pollutant monitoring station in Vallejo. The nature of nearly all air pollutants is that they disperse widely and quickly from their sources. They are regional, spilling across the entire air basin, rather than being limited to a given community. Therefore, Benicia-specific air quality data were not collected and analyzed as part of the analysis in the Draft EIR.
- E8-9: Mitigation Measure NOISE-2c provides two options for reducing noise along East 2nd Street from I-780 to Rose Drive: 1) construction of a sound barrier or 2) resurfacing the roadway segment with rubberized asphalt. If the City deems the first option unacceptable due to General Plan considerations, the second option would be an effective alternate measure. In Sacramento rubberized asphalt it has been used effectively to reduce vehicle noise generation, and is considered a long-term solution if maintained properly. Therefore, we believe that such a mitigation measure would also be effective in Benicia. Cumulative noise levels (with and without the proposed project) are summarized in Tables IV.I-9 and IV.I-10 of the Draft EIR.
- E8-10: Response to Comments C2-20 is revised as follows:

The evaluation of traffic impacts includes the East 2nd Street / Military East Street intersection. As stated in the Draft EIR, the distribution of project traffic was determined based on a select link analysis using the latest available Solano/ Napa County Travel Demand Model. According to the results of the select link analysis,

project trips are not projected to occur along East 2nd Street south to Military East Street. These revisions to the Draft EIR are minor and do not identify new environmental impacts or require new mitigation measures. Therefore, recirculation of the Draft EIR would not be required

This is an example of a traffic model missing fine-grained trip distribution patterns. In fact, a relatively small number of project trips would occur along East 2nd Street south to Military East Street (and beyond). A reassignment of traffic was made to reflect project traffic that would use this route. A review of the origins, destinations and land uses south of this location suggests that approximately 40 PM peak hour project trips may originate or have destinations through the intersection of East 2nd Street/Military East Street, and the analysis has been revised accordingly. The adjusted project trip distribution is illustrated in Figure IV.G-6. The adjusted traffic volumes for the East 2nd Street/Military East Street intersection are shown in Figures IV.G-7, IV.G-9, and IV.G-10. The resulting changes in delay and level of service are shown below:

No.	Intersection	Traffic Control	Peak Hour	Existing		Existing plus Project		2030		2030 plus Project	
				LOS	Delay	LOS	Delay	LOS	Delay	LOS	Delay
6	East Second Street / Military East Street	Signal	AM	B	18.5	B	18.8	C	20.7	C	21.2
			PM	C	27.4	C	28.1	D	53.3	D	54.9

Source: DMJM Harris, 2007.

As shown, the East 2nd Street/Military East Street intersection would continue to operate at acceptable conditions under all analysis scenarios with this reassignment. Therefore, the proposed project would not have a significant adverse effect on the operation of this intersection. No mitigation would be required.

E8-11: This comment summarizes previous ones included in this letter. The Draft EIR is adequate and meets or exceeds the review requirements of the California Environmental Quality Act (CEQA).

Figure IV.G-6

Figure IV.G-7

Figure IV.G-9

Figure IV.G-10

Letter E9 (1 of 5)

Letter E9 (2 of 5)

Letter E9 (3 of 5)

Letter E9 (4 of 5)

Letter E9 (5 of 5)

## COMMENTOR E9

**Marilyn Bardet**

**August 15, 2007**

- E9-1: A Mitigation Monitoring and Reporting Program (MMRP) for the mitigation measures included in the Final EIR would be prepared if the project is advanced forward toward approval. This MMRP would provide a comprehensive list of all the mitigation measures in the Final EIR and describe the implementation procedure, monitoring responsibility, monitoring and reporting actions, monitoring schedule, possible non-compliance sanctions, and mitigation completion and monitoring verifications for all of the measures. In their current form, all mitigation measures identified in the EIR meet the requirements of the *CEQA Guidelines* (section 15126.4): 1) they are fully enforceable through legally-binding instruments; 2) they are consistent with Constitutional requirements, including nexus and proportionality requirements; and 3) they would reduce significant environmental impacts to a less-than-significant level, where feasible. The remaining points in this comment pertain to the merits of the project. No additional response is required.
- E9-2: If an alternative is approved by the City instead of the proposed project, this alternative would undergo review to support findings that mitigation measures in the Final EIR would avoid or substantially lessen the significant impacts of the alternative, if feasible.
- E9-3: Refer to Response to Comment E8-2 regarding the level of detail provided in the Draft EIR alternatives analysis. As a point of clarification, although the development alternatives show that land designated for residential and commercial development would extend up to Lake Herman Road, impacts to the visual character of Lake Herman Road could be substantially reduced through innovative design, residential clustering, or screening. If one of the project alternatives is approved in favor of the proposed project, additional site design would be conducted for the alternative and the alternative would undergo review to support findings that mitigation measures in the Final EIR would avoid or substantially lessen the significant impacts of the alternative, if feasible.
- E9-4: This comment addresses the City Council's consideration of the proposed project and its associated environmental impacts. No additional response is required.
- E9-5: This comment pertains to the merits of the project, and not to the adequacy of the environmental review. No additional response is required.
- E9-6: Mitigation Measure DECAF-1 (see revisions made to the mitigation measure in Response to Comment E3-1) would require a review by the City of any changes to the proposed commercial tenant composition of the business park. The review would focus specifically on whether any changes to the commercial tenant mix would increase the potential for urban decay, including decay in Downtown Benicia. If such a finding is made, the project sponsor would be required to prepare an updated economic analysis that includes a determination regarding the project's potential to result in urban decay. This analysis would be made available to the public. If the new tenant mix would result

in urban decay, the City and project sponsor would be required to develop measures to reduce this impact to a less-than-significant level.

E9-7: Refer to Response to Comment E8-10.

E9-8: Refer to Response to Comment E8-10.

E9-9: Refer to Response to Comment E8-5.

E9-10: The addition of auxiliary lanes in both directions of I-780 would be accomplished within the existing freeway right-of-way. The Benicia General Plan indicates that sensitive biological resources are present around the Military West interchange, identified as a riparian area requiring evaluation and appropriate mitigation to offset potential construction impacts. As with most of the area on the perimeter of the Carquinez Straight and Suisun Bay, the area traversed by the freeway is subject to potential liquefaction, lateral spreading and settlement hazards that would need to be addressed in the engineering design. The development of auxiliary lanes on I-780, like similar transportation projects, would be required to undergo independent environmental and engineering review. However, it is expected that the environmental impacts of this project – including potential increases in noise, traffic volumes, and air pollutants – could be reduced to a less-than-significant level. Refer to Response to Comment E8-6 for a discussion of the use of local air quality data.

E9-11: The first and last bullet points in this comment pertain to the merits of the project. The second bullet point suggests that the project's greenhouse gas impacts are inadequately analyzed. We disagree. Response to Comment C1-18 contains a discussion of the project's impacts on global climate change. This analysis determines the consistency of the proposed project with greenhouse gas emission reduction strategies identified by the California Environmental Protection Agency Climate Action Team. These strategies were identified pursuant to State Executive Order S-3-05 (announced on June 1, 2005), which sets greenhouse gas emission targets in California through 2050. A comparison of the proposed project to the greenhouse gas emissions strategies of the Climate Action Team represents an effective way of analyzing the project's climate change impacts, in the absence of adopted local or State standards for determining the significance of greenhouse gas emissions on a project-specific basis.

E9-12: This comment pertains to the merits of the project, not to the adequacy of the environmental review. Therefore, no additional response is required.

E9-13: Refer to Response to Comment E8-2 regarding the level of detail provided in the Draft EIR alternatives analysis. The final paragraph comments on the merits of the project. No additional response is required.

Letter E10 page 1 of 1

## **COMMENTOR E10**

**Andrew F. Siri**

**July 10, 2007**

- E10-1: The drainage plan for the proposed project includes on-site flow routing and detention so that post-project flows to Sulphur Springs Creek and other downstream drainages would not exceed those that occur in the existing condition. Within each sub-watershed area, operation-phase storm water discharge rates would actually be reduced relative to the existing condition.
- E10-2: The potential for a downstream flooding impact was identified in the Draft EIR and a mitigation measure included that would ensure implementation of the drainage design, as proposed. Additional information regarding anticipated flow rates and runoff volumes is provided in the Stetson Engineers Technical Memorandum of 2004, which is available for public review at the City Planning Department. The three strategies proposed in the drainage plan to mitigate downstream flooding impacts would be incorporated into the project as a condition of approval and would require the implementation of the measures included in the drainage plan. These three measures are: 1) an upstream detention basin; 2) downstream detention basins; and 3) a storm water drainage network design. Prior to final approval of the refined, site-specific grading and drainage plan, the City of Benicia Planning Department and/or Public Works Department would review and, if necessary, require modifications to the plan to ensure that it complies with City drainage requirements and specifications; the review would include an evaluation of whether detention basins and conveyances are adequately-sized. The mitigation in the Draft EIR would ensure that the proposed project would not result in a significant contribution to flooding along Sulphur Springs Creek.

Letter E11 (1 of 9)

Letter E11 (2 of 9)

Letter E11 (3 of 9)

Letter E11 (4 of 9)

Letter E11 (5 of 9)

Letter E11 (6 of 9)

Letter E11 (7 of 9)

Letter E11 (8 of 9)

Letter E11 (9 of 9)

**COMMENTOR E11**  
**City Council Hearing**  
**August 7, 2007**

- E11-1: These commenters spoke in support of certifying the EIR. No additional response is required.
- E11-2: Here the commenter stated that the Draft EIR “grossly underestimates impacts.” This general point is addressed in the responses to Mr. Goetz’s August 5, 2007 letter (letter E7). The commenter also urged the City Council to certify the EIR and approve the environmentally superior alternative identified in the Draft EIR.
- E11-3: These commenters expressed support for or opposition to the proposed project and/or expressed support for the City Council making a finding of EIR adequacy. No additional response is required.
- E11-4: The issues of traffic and air quality impacts, and the adequacy of the cumulative analysis in the EIR raised by the commenter are addressed in the responses to Ms. Bardet’s August 6, 2007 and August 15, 2007 letters (letters E8 and E9). The commenter also expressed support for a project resembling the Hillside/Upland Preservation alternative (the environmentally superior development alternative identified in the Draft EIR).
- E11-5: The commenter expressed opposition to the introduction of new project materials by the project sponsor in the middle of the environmental review process. It should be noted that the introduction of such materials is not explicitly prohibited by the California Environmental Quality Act (CEQA). The commenter also claimed that the Draft EIR does not adequately address cumulative impacts. We disagree. The cumulative effects of the project are discussed in Section VI, CEQA-Required Assessment Conclusions, on pages 374 to 377 of the Draft EIR. This cumulative analysis comprehensively addresses all the environmental topics discussed in detail in the Draft EIR. The cumulative analysis is adequate in that it enables decision-makers to understand the physical impacts of the proposed project in the context of other planned and foreseeable projects in Benicia. The commenter also expressed support for the Hillside/Upland Preservation alternative but noted that more detail needs to be disclosed about the alternative. If one of the project alternatives is approved instead of the proposed project, additional site design would be conducted for the alternative and the alternative would undergo review to support findings that mitigation measures in the Final EIR would avoid or substantially lessen the significant impacts of the alternative, if feasible. Refer to Response to Comment E8-2 for additional detail. Lastly, the commenter claimed that the air quality analysis in the Draft EIR was flawed because it relied on data from the Vallejo monitoring station, and not Benicia-specific data. This comment is addressed in detail in Response to Comment E8-6.
- E11-6: The commenter expressed support for language in the staff report that stated that certification of the Draft EIR would not automatically result in approval of the

proposed project. His other comments pertained to the merits of the project. No additional response is required.

E11-7: These comments pertained to the merits of the project. No additional response is required.

E11-8: The commenter stated that the Draft EIR lacked specific information about the project and included deferred mitigation, but that the document was “adequate from a legal standpoint.” Regarding the commenter’s statement about the lack of detail in the project description and deferred mitigation, the project as currently proposed is a conceptual development plan that does not contain many of the site-specific development details that would typically accompany a development project. The environmental analysis in the Draft EIR, including the identification of impacts and mitigation measures, was undertaken based on the level of detail on the proposed project that was provided by the project sponsor.

Although the EIR preparers did not have access to certain information about the project (including detailed diagrams of cut and fill, site cross sections, architectural design for individual buildings, or a circulation plan with street sections), the project information that was available was adequate to identify the project’s anticipated environmental impacts. Some mitigation measures in the Draft EIR require the preparation of additional technical reports (e.g., geotechnical report, hydraulic analysis, and focused biological studies) at the time that sufficient project details are specified and reviewed by the City to ensure that they are adequate. In all cases, the mitigation measures set forth in the Draft EIR specify performance criteria that the City reviewers must use to determine if the subsequent analyses are adequate and provide effective mitigation for the potential impact at issue. Therefore, these mitigations do not represent inappropriate deferral.

E11-9: These two commenters discussed the merits of the project, and not the adequacy of the environmental review. No additional response is required.

E11-10: These comments pertained to a discussion of the City’s Council actions as described in the staff report for the project, and a decision to open up a new public comment period on the EIR that would extend to August 20th. No additional response is required.

E11-11: The issues raised by the commenter have been addressed in the Response to Comments document released in July 2007, and this Supplemental Response to Comments Document. Comments regarding air quality impacts around Robert Semple Elementary School are addressed on Response to Comments A7-1, E8-7, and E7-17. Comments regarding the use of local air quality data are addressed in Response to Comment E8-6. Concerns about impacts to pedestrian circulation along East 2nd Street, including around Robert Semple Elementary School, are addressed in numerous responses. The most comprehensive responses on this topic are Response to Comments A6-1 and C2-16. Comments about the environmental impacts

associated with the addition of auxiliary lanes on I-780 are addressed in Response to Comment E9-10.

The responses that have been provided are intended to meet the requirements of *CEQA Guidelines* section 15088 in that they: 1) describe the disposition of significant environmental issues raised by commenters; 2) provide a detailed rationale for why the City does not agree with certain comments; 3) provide a good-faith, reasoned analysis that takes into account conflicting views; and 4) are supported by factual evidence. *CEQA Guidelines* section 15151 states that: “Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts.” The responses to public and agency comments – both in the initial Response to Comments document (July 20, 2007) and this supplemental Response to Comment document – meet this standard.

- E11-12: Adam Weinstein of LSA Associates responded verbally to this comment at the public hearing. Also refer to Response to Comment E11-5.
- E11-13: Much of this comment pertains to the merits of the project. Comments about the environmental impacts associated with the addition of auxiliary lanes on I-780 are addressed in Response to Comment E9-10. The commenter also requested inclusion in the EIR of creative mitigation measures to promote sustainability principles, and suggested that the project Master Plan be used to implement and monitor these mitigation measures.

A Mitigation Monitoring and Reporting Program (MMRP), which would be prepared if the project advances forward toward approval, is the vehicle to ensure the satisfactory implementation of the mitigation measures included in the EIR. The MMRP would provide a comprehensive list of all the mitigation measures in the Final EIR and describe the implementation procedure, monitoring responsibility, monitoring and reporting actions, monitoring schedule, possible non-compliance sanctions, and mitigation completion and monitoring verifications for all of the measures.

The MMRP would represent a collaboration between the City's environmental consultant (LSA Associates) and City staff, and monitoring could be streamlined with implementation of the Master Plan.

Regarding the use of creative mitigation ideas to advance sustainability principles, we believe that sustainability is an increasingly important principle in environmental planning and development, especially in light of concerns about global climate change, urban sprawl, and environmental justice. However, we do not believe that the mitigation measures in the EIR are an appropriate vehicle for the promotion of sustainability beyond that needed to mitigate the physical impacts of the project. The mitigation measures in the EIR are subject to a number of limitations, which are discussed in *CEQA Guidelines* section 15126. According to this section: 1) mitigation measures in an EIR are not required for effects which are not found to be

significant; 2) there must be an essential nexus between the project's impact and the mitigation measure; and 3) there must be a reasonable relationship between a project's impact and the mitigation measure.

We believe that the mitigation measures in the EIR would be effective at reducing the impacts of the project. In certain cases, no feasible mitigation measures exist to reduce the project's impacts to a less-than-significant level. While requiring sustainability measures to be implemented as part of the project could reduce the significance of these impacts, they would not be effective at reducing the impacts of the project to a less-than-significant level, and in many cases would not be enforceable through legally-binding instruments, or would result in such dramatic changes to the project that the revised project would be required to undergo independent CEQA review as a "new" project. Sustainability measures may be imposed on the project via an agreement that is presumably exempt from the nexus requirement (e.g., a Development Agreement); however, the inclusion of these measures when adequate mitigation for physical environmental impacts is already in place would not be legally defensible.

- E11-14: This comment pertains to the City Council's action on the Draft EIR and the merits of the project. No additional response is required.
- E11-15: Refer to Response to Comment E8-10.
- E11-16: This comment pertains to the merits of the project. No additional response is required.
- E11-17: These comments pertain to the resolution considered for adoption by City Council and not the adequacy of the EIR. No additional response is required.

## E. TEXT CORRECTIONS

The following section includes minor adjustments to certain responses in the Response to Comments Document and mitigation measures in the EIR, per the request of City staff. These changes clarify – and do not substantially change – the existing responses and mitigation measures. Added text is shown with underlining. Deleted text is shown with the ~~strikeout~~ feature.

- A8-2: This comment expresses support for Mitigation Measure UTIL-1 in the Draft EIR, which requires the project sponsor to fund and install one of the stand-alone wastewater collection alternatives identified by Brown and Caldwell in a 2006 report. This mitigation measure, in combination with Mitigation Measure UTIL-3 and UTIL-4, would reduce the impacts of the project on wastewater collection capacity to a less-than-significant level.

A separate analysis was prepared by Stetson Engineers, dated September 27, 2006, which identified two alternative pipeline alignments (Alternatives A and B) for the off-site sewer system to serve this project. The City has reviewed these alignments and determined that Alternative B would be acceptable. Alternative A ~~is not supported~~ was rejected by the City of Benicia Public Works Department due to significant identified problems that include: as being unsuitable, and was not included as mitigation for impacts to the wastewater collection system that would result from implementation of the proposed project. Problems identified with the alternative include: topographical variations (two hills on Park Road and on at East 7<sup>th</sup> Street) that would potentially require the installation of an additional pump station; the need for acquisition of additional right-of-way; the need to cross an existing drainage channel; and land use incompatibility issues associated with construction of major sewer facilities an additional pump station in a residential neighborhood; the need for acquisition of additional right-of-way; and the need to cross an existing drainage channel. However, it is expected that environmental impacts associated with the development and operation of Alternative A would not be significant and unavoidable with implementation of standard City conditions of approval and the acquisition of appropriate permits from regulatory agencies.

- B3-13: *CEQA Guidelines* Section 15382 notes that a substantial effect on the environment means “a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the proposed project, including land, air, water, minerals, flora, ambient noise, and objects of historic or aesthetic significance.” The Draft EIR identifies several environmental impacts of the project that would result from pre-existing conditions (among them, Impact GEO-5: exposure of persons on the project site to accidental overflows from the Water Treatment Plant).

Identification of impacts resulting from pre-existing conditions is wholly within the realm of environmental review required by CEQA, and is consistent with *CEQA Guidelines* Section 15382. In the case of Impact GEO-5, the “adverse change” in the environment is not potential flooding created by the Water Treatment Plant – the pre-existing condition – but the development of business park uses in an area subject to flooding from the Water Treatment Plant, and the potential flood zone and lack of a design strategy to address this potential ~~these~~ hazards. Other topical areas in which

impacts from existing conditions could be properly said to result include hazards and hazardous materials (in which existing site contamination could increase the health risks to a proposed project's employees or residents) or noise (in which adjacent or nearby noise conditions make a given site too loud for sensitive land use like a school or hospital).

- B3-35: See Response to Comment B3-3 for a general discussion of the consistency of proposed mitigation measures in the Draft EIR with the nexus and reasonable relationship tests set forth by the U.S. Supreme Court. The proposed project is one of the largest development projects in the history of Benicia, and would result in the development of 4,443,000 square feet of industrial uses, 857,000 square feet of commercial uses, 180 acres of open space, two 1,000,000-gallon water tanks, and a new roadway network on the project site. As described on pages 326 and 327 of the Draft EIR, the proposed project would substantially increase demand for fire protection and emergency medical services, law enforcement services, and maintenance and operation services (due to increased maintenance of roads and other infrastructure). This conclusion was reached after an analysis of the net change in demand for services resulting from the proposed project. This analysis was conducted by the City of Benicia Public Works Department and Community Development Department, the City of Benicia Fire Department, and the City of Benicia Police Department, in collaboration with LSA Associates. Therefore, there is a nexus between the impact of the project on public services (a substantially increased demand) and Mitigation Measure PUB-1a, which requires the project sponsor to set aside a parcel that would accommodate the construction of a new Fire Department sub-station facility, 200 to 400 square feet of Police Department office space, and development of an auxiliary corporation yard.

The City of Benicia Corporation Yard has exceeded its reliable capacity to house its Public Works and Parks maintenance staffs. The corporation yard was relocated to its present site in the early 1970s to accommodate the growth of the Southampton development. With the completion of that development, the present site cannot handle any further incremental increase in personnel, vehicles, equipment or material storage, all of which would occur with the development of the Benicia Business Park. Parking originally reserved for public visitors is being used for maintenance staff; services provided to the public, such as cardboard recycling and household hazardous waste drop-off, have inadequate space allocations; and storage areas to decant and store trench waste, which are required by water quality regulations, compete with outside areas needed for the storage of mowing equipment (which is unable to fit inside the existing buildings). Unusable embankment slopes reduce the approximately 10-acre site by 40 percent, precluding further expansion of the storage areas or the buildings.

The services and infrastructure that would be provided to the Benicia Business Park (water and sewer systems, storm drainage, street paving, signage, traffic signals, landscaping, vehicle storage/maintenance) and the additional maintenance personnel to support the service delivery cannot be adequately accommodated within the existing Corporation Yard site. The project's fair-share contribution towards mitigating this impact on public services would be the provision of a 10- to 12-acre parcel suitable for use for maintenance facilities and material/equipment storage. The actual fair-share

apportionment (a set-aside between 10 and 12 acres) would be agreed to by the City and the project sponsor.

This set-aside would accommodate buildings required to provide the *net increase* in demand for public services that would result from implementation of the proposed project. Therefore, Mitigation Measure PUB-1a would meet the “rough proportionality” standard imposed by *Dolan v. City of Tigard*.

C1-15: If an alternative is approved by the City instead of the proposed project, this alternative would undergo review to support findings that mitigation measures in the Final EIR would avoid or substantially lessen the environmental impacts of the alternative, if feasible. Additional site design would also be conducted. ~~detailed CEQA review (likely in the form of an Addendum to the Draft EIR or a Supplemental/Subsequent EIR). This CEQA review would include a detailed description and analysis of the alternative (including detailed modeling of anticipated air quality, traffic, and noise effects).~~

Mitigation Measure GEO-5:

Mitigation Measure GEO-5: The project shall be designed ~~so to ensure that the~~ proposed development will accommodate the potential ~~would not be subject to~~ flooding associated with accidental or earthquake-induced release of water from ~~rupture at~~ the Water Treatment Plant or water tank reservoirs. Prior to issuance of a building or grading permit, the project sponsor shall retain a hydrologist to review final project grading and drainage plans to ensure that flooding would not endanger human health or property on the project site. The hydrologist’s findings shall be reviewed and approved by the City of Benicia Public Works Department.

Mitigation Measure UTIL-1:

Mitigation Measure UTIL-1: Construction of water supply infrastructure shall be subject to the following measures:

- The main ~~All~~ water storage and pumping facilities as required by the Benicia Public Works Department to provide domestic and fire service ~~serve the proposed project~~ shall be constructed and operational before the first phase of development begins. The main connections shall be sized to serve the whole development and not upsized with each phase.
- All on-site water infrastructure improvements required to serve each phase of development shall be constructed in the initial year of development of that phase.
- The sponsor shall obtain City approval for each phase of development, including development of individual projects. Development plans for individual projects shall only be approved when a dependable and adequate water supply is available to serve new development.

- The two new tanks shown on the project plans are located at different elevations, which would require two separate pressure zones. Pressure-reducing valve stations and zone valves shall be required to allow the new zones to connect to the City's existing Zone 1 system in an emergency.