



2023-2031

***Housing Element & Safety Element
Updates***

Final Environmental Impact Report

SCH# 2022060021

December 2022





City of Benicia

2023-2031

***HOUSING ELEMENT &
SAFETY ELEMENT UPDATES
FINAL ENVIRONMENTAL
IMPACT REPORT***

SCH# 2022060021

Final EIR | December 2022



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December 2022 | Final Environmental Impact Report
State Clearinghouse No. 2022060021

2023-2031 HOUSING ELEMENT AND SAFETY ELEMENT UPDATES

City of Benicia

Prepared for:

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1. Introduction

1.1 INTRODUCTION

This Final Environmental Impact Report (FEIR) has been prepared in accordance with the California Environmental Quality Act (CEQA) as amended (Public Resources Code § 21000 *et seq.*) and CEQA Guidelines (California Code of Regulations § 15000 *et seq.*).

According to the CEQA Guidelines, Section 15132, the FEIR shall consist of:

- (a) The Draft Environmental Impact Report (DEIR) or a revision of the Draft;
- (b) Comments and recommendations received on the DEIR either verbatim or in summary;
- (c) A list of persons, organizations, and public agencies comments on the DEIR;
- (d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process; and
- (e) Any other information added by the Lead Agency.

This document contains responses to comments received on the DEIR for the 2023-2031 Housing Element and Safety Element Updates during the public review period, which began November 04, 2022, and closed December 19, 2022. This document has been prepared in accordance with the CEQA Guidelines and represents the independent judgment of the City of Benicia. This document and the circulated DEIR comprise the FEIR, in accordance with CEQA Guidelines, Section 15132.

1.2 FORMAT OF THE FEIR

This document is organized as follows:

Section 1, Introduction. This section describes CEQA requirements and content of this FEIR.

Section 2, Response to Comments. This section provides a list of agencies and interested persons commenting on the DEIR; copies of comment letters received during the public review period, and individual responses to written comments. To facilitate review of the responses, each comment letter has been reproduced and assigned a number (Letters A through C for agencies and organizations, Letters 1 through 18 for members of the public). Individual comments have been numbered for each letter and the letter is followed by responses with references to the corresponding comment number.

1. Introduction

Section 3. Revisions to the Draft EIR. This section contains revisions to the DEIR text and figures as a result of the comments received by agencies and interested persons as described in Section 2, and/or errors and omissions discovered subsequent to release of the DEIR for public review.

The responses to comments contain material and revisions that will be added to the text of the FEIR. The City staff has reviewed this material and determined that none of this material constitutes the type of significant new information that requires recirculation of the DEIR for further public comment under CEQA Guidelines Section 15088.5. None of this new material indicates that the project will result in a significant new environmental impact not previously disclosed in the DEIR. Additionally, none of this material indicates that there would be a substantial increase in the severity of a previously identified environmental impact that will not be mitigated, or that there would be any of the other circumstances requiring recirculation described in Section 15088.5.

1.3 CEQA REQUIREMENTS REGARDING COMMENTS AND RESPONSES

CEQA Guidelines Section 15204 (a) outlines parameters for submitting comments and reminds persons and public agencies that the focus of review and comment of DEIRs should be “on the sufficiency of the document in identifying and analyzing possible impacts on the environment and ways in which significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible. ...CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.”

CEQA Guidelines Section 15204 (c) further advises, “Reviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence.” Section 15204 (d) also states, “Each responsible agency and trustee agency shall focus its comments on environmental information germane to that agency’s statutory responsibility.” Section 15204 (e) states, “This section shall not be used to restrict the ability of reviewers to comment on the general adequacy of a document or of the lead agency to reject comments not focused as recommended by this section.”

In accordance with CEQA, Public Resources Code Section 21092.5, copies of the written responses to public agencies will be forwarded to those agencies at least 10 days prior to certifying the environmental impact report. The responses will be forwarded with copies of this FEIR, as permitted by CEQA, and will conform to the legal standards established for response to comments on DEIRs.

2. Response to Comments

Section 15088 of the CEQA Guidelines requires the Lead Agency (City of Benicia) to evaluate comments on environmental issues received from public agencies and interested parties who reviewed the DEIR and prepare written responses.

This section provides all written responses received on the DEIR and the City's responses to each comment.

A public hearing to receive verbal comments on the DEIR was held at the City of Benicia Joint City Council and Special Planning Commission meeting held on Tuesday, December 13, 2022. This FEIR includes a summary of oral comments received at the public hearing and individual comments raised during the public hearing are identified as commenters 2 through 12.

Comment letters and specific comments are given letters and numbers for reference purposes. Where sections of the DEIR are excerpted in this document, the sections are shown indented. Changes to the DEIR text are shown in underlined text for additions and ~~strikeout~~ for deletions.

The following is a list of agencies and persons that submitted comments on the DEIR during the public review period.

Number Reference	Commenting Person/Agency	Date of Comment	Page No.
Agencies & Organizations			
A	Mark Leong, California Department of Transportation District 4	December 19, 2022	2-4
B	Eric Chappell, California Department of Fish and Wildlife	December 19, 2022	2-10
C	Belinda Smith, Benicia Historical Society	December 19, 2022	2-32
Residents			
1	Karen Massey	December 10, 2022	2-38
City Council/Planning Commission Hearing			
2	Marilyn Bardet	December 13, 2022	2-42
3	Karen Massey	December 13, 2022	2-48
4	Steven Goetz	December 13, 2022	2-52
5	Steve Young, Mayor	December 13, 2022	2-56
6	Tom Campbell, Council Member	December 13, 2022	2-61
7	Kyle Ochendusko	December 13, 2022	2-65
8	Kathleen Catton, Planning Commissioner	December 13, 2022	2-69
9	Trevor Macenski, Council Member	December 13, 2022	2-73
10	Belinda Smith	December 13, 2022	2-79
11	Michael Hayes	December 13, 2022	2-83
12	Kathy Kerridge	December 13, 2022	2-87
Written Comments			
13	Kate Moriarty	December 14, 2022	2-91

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Number Reference	Commenting Person/Agency	Date of Comment	Page No.
14	Steven Goetz	December 19, 2022	2-95
15	Natalie Macris	December 19, 2022	2-111
16	Donald Dean	December 19, 2022	2-119
17	Marilyn Bardet	December 19, 2022	2-130
18	Trevor Macenski, Council Member	December 19, 2022	2-168

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LETTER A – Mark Leong, California Department of Transportation (2 pages)

CALIFORNIA STATE TRANSPORTATION AGENCY

GAVIN NEWSOM, GOVERNOR

California Department of Transportation

DISTRICT 4
OFFICE OF REGIONAL AND COMMUNITY PLANNING
P.O. BOX 23660, MS-10D | OAKLAND, CA 94623-0660
www.dot.ca.gov



December 19, 2022

SCH #: 2022060021
GTS #: 04-SOL-2022-00259
GTS ID: 26702
Co/Rt/Pm: SOL/VAR/VAR

Jason Hade, Planning Manager
City of Benicia
250 East L Street
Benicia, CA 94510

Re: City of Benicia 2023-2031 Housing Element and Safety Element Updates + Draft Environmental Impact Report (DEIR)

Dear Jason Hade:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the City of Benicia 2023-2031 Housing Element and Safety Element Updates. We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system. The following comments are based on our review of the November 2022 DEIR.

A-1

Project Understanding

The City of Benicia is proposing updates to the General Plan's Housing Element and Safety Element. The Housing Element identifies 73 potential housing opportunity sites made up of 117 acres. It contains a program that the city would redesignate and rezone parcels to meet the Regional Housing Needs Allocation (RHNA). As part of this effort the Safety Element will also be updated to reflect current science and to address climate change-related hazards. The city is accessible via I-780 and I-680.

A-2

Vehicle Miles Traveled (VMT) Mitigation

With the enactment of Senate Bill (SB) 743, Caltrans is focused on maximizing efficient development patterns, innovative travel demand reduction strategies, and multimodal improvements. Caltrans recognizes that the DEIR has proposed Mitigation Measure TRANS-1 to reduce VMT. Caltrans recommends that the proposed VMT mitigation program be transparent and equitable that could encourage participation and take into account of all dwelling types included in the 2023-2030 Housing Element Update.

A-3

"Provide a safe and reliable transportation network that serves all people and respects the environment"

3. Revisions to the Draft EIR

Jason Hade, Planning Manager
December 19, 2022
Page 2

Lead Agency

As the Lead Agency, the City of Benicia is responsible for all project mitigation, including any needed improvements to the State Transportation Network (STN). The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

A-4

Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, or for future notifications and requests for review of new projects, please email LDR-D4@dot.ca.gov.

Sincerely,



MARK LEONG
District Branch Chief
Local Development Review

c: State Clearinghouse

"Provide a safe and reliable transportation network that serves all people and respects the environment"

3. Revisions to the Draft EIR

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A Response to Comments from Mark Leong, CAL TRANS, dated December 19, 2022.

A-1 Commenter thanks the lead agency for the opportunity to participate in the environmental review process for the proposed project. Commenter further states that the California Department of Transportation is committed to ensuring that impacts to the State's transportation system and natural environment are identified and mitigated.

Commenter's statement is noted.

A-2 Commenter summarizes the project as containing 73 housing sites comprising 117 acres and notes that the City is accessible via roadways Interstate 780 and Interstate 680.

Commenter's understanding of the project is consistent with the project description (page 3-5, Chapter 3, *Project Description*, of the DEIR).

A-3 Commenter states the DEIR has proposed Mitigation Measure TRANS-1 to reduce Vehicle Miles Traveled (VMT) and recommends that the mitigation program be transparent, equitable and account for all dwelling types identified in the Housing Element.

Commenter references Mitigation Measure TRANS-1, found on page 4.14-13 in Section 4.14, *Transportation*, of the DEIR. TRANS-1 requires that projects under the Housing Element that do not screen out from VMT analysis provide a quantitative VMT analysis consistent with the methodology in the City of Benicia Local Guidelines for CEQA Review (Guidelines). Should the significant impacts be identified, the project shall implement VMT mitigation consistent with the City's Guidelines. This mitigation measure lists three mitigation options found in the City CEQA Guidelines that would be implemented by individual development projects as applicable or feasible, providing flexibility that accounts for all project types.

The proposed project has been analyzed programmatically as the details regarding future development projects and the specific VMT mitigation requirements that they may be required to implement are not yet known. Documentation of the specific VMT mitigation implemented by individual development projects would be required to comply with TRANS-1. All documentation and analysis pursuant to TRANS-1 is public record and would be available for review at City Hall.

A-4 Commenter states that the City of Benicia is responsible for all project mitigation including improvements to the State Transportation Network. Commenter further states that the project's fair share contribution, financing, scheduling, implementation responsibilities and monitoring should be discussed for all proposed mitigation measures.

The proposed project does not propose any development and the specifics regarding the fair share contribution, financing, scheduling, and implementation responsibilities of each individual project that is accommodated under the Housing Element is not yet known. As

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a programmatic analysis, this specific information cannot be fully provided during this stage of the environmental review.

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LETTER B – Eric Chappell, California Department of Fish and Wildlife (CDFW) (15 pages)

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State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



December 19, 2022

Jason Hade, Planning Manager
City of Benicia
250 East L Street
Benicia, CA 94510
jhade@ci.benicia.ca.us

Subject: City of Benicia 2023-2031 Housing Element & Safety Element Updates,
Draft Environmental Impact Report, SCH No. 2022060021, City of Benicia,
Solano County

Dear Mr. Hade:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (DEIR) from the City of Benicia (City) for the City of Benicia 2023-2031 Housing Element & Safety Element Updates (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW previously submitted comments in response to the Notice of Preparation of the DEIR.

CDFW is submitting comments on the DEIR to inform the City, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

B-1

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), the Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

The Project would update the Housing Element within the City's General Plan. The Housing Element Update (Update) would be applicable citywide from 2023 through 2030. The Update identifies 73 parcels on approximately 117 acres as opportunity sites for a maximum of 2,963 future housing units, which would require rezoning or redesignation for residential use. An additional 107 parcels on 39.65 acres already zoned for residential development are identified in the Update for informational purposes but are not evaluated in the DEIR. The Update also includes a new overlay zone, which would increase allowable density of dwelling units per parcel, as well as different land use categories. Additional zoning changes are included in the Update to address state law and local objectives.

B-2

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. **The Project has the potential to impact Swainson's hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*), CESA listed as threatened species.** Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a

B-3

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Conserving California's Wildlife Since 1870

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mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, & 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the project proponent's obligation to comply with CESA.

B-3
(cont'd)

Lake and Streambed Alteration

CDFW requires a LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to LSA Notification requirements. CDFW would consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

B-4

Raptors and Other Nesting Birds

CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

B-5

Fully Protected Species

The Project has the potential to impact the following Fully Protected species: salt marsh harvest mouse (*Reithrodontomys raviventris*), California Ridgeway's rail (*Rallus obsoletus obsoletus*), California black rail (*Laterallus jamaicensis coturniculus*), white-tailed kite (*Elanus leucurus*), and golden eagle (*Aquila chrysaetos*). Fully Protected species may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, & 5515) except for collecting these species for necessary scientific research, relocation of the bird species for the protection of livestock, or if they are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan. The DEIR should include mitigation measures to ensure avoidance of the abovementioned species, as further described below.

B-6

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends in Attachment B, CDFW concludes that an Environmental Impact Report is appropriate for the Project.

B-7

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I. Subsequent Project CEQA Evaluation

COMMENT 1: The DEIR identifies that "individual projects may require more detailed evaluations of biological resources and formation of mitigation measures by a qualified biologist" (DEIR, page 4.3-6). CDFW provided comments on the NOP for the DEIR in a letter dated June 20, 2022 and recommended providing a clear checklist or procedure for evaluating subsequent Project impacts and clearly citing the portions of the DEIR, including page and section references, containing the analysis of the subsequent Project activities' potentially significant effects. The DEIR does not include the checklist and CDFW strongly recommends that the DEIR include a procedure or checklist for subsequent projects in an appendix to ensure subsequent project impacts to fish and wildlife resources are appropriately evaluated in compliance with CEQA and impacts are mitigated to less-than-significant.

B-7
(cont'd)

II. Mitigation Measures and Related Impact Shortcomings

Mandatory Findings of Significance: Does the Project have the potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?

And,

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or U.S Fish and Wildlife Service (USFWS)?

COMMENT 2: Deferred Mitigation

Issue, specific impacts, why they may occur and be potentially significant: CDFW previously commented on the NOP, informing the City that fully protected, threatened, endangered, candidate, and other special-status species that are known to occur, or have the potential to occur in or near the Project site, include but are not limited to those listed in **Attachment 1**. The DEIR does not evaluate potential impacts to the species on that list, nor any other species, though it does state a "record search indicates several plant and animal species with special status in the City" (Page 4.3-5).

B-8

Mitigation Measure (MM) BIO-1 proposes to mitigate impacts to special-status species by requiring that "all projects provide documentation that the site does not include special status species", conduction of focused surveys "if the species are found on the site", and development of a mitigation plan approved by the City if special-status species are found on the site (DEIR page 4.3-7).

CDFW does not consider requiring documentation regarding presence of special-status species (MM BIO-1) and subsequent preparation of a mitigation plan (MM BIO-2) to be mitigation measures under CEQA, as mitigation measures must be included in the CEQA environmental document, in this case the DEIR (CEQA Guidelines, §§ 15126.4). CEQA Guidelines section 15126.4, subdivision (b) states: "The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review provided that the agency **(1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure.** Compliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards."

B-9

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MM BIO-1 and MM BIO-2 do not adopt specific performance standards, nor identify types of actions that could meet these standards.

B-9
(cont'd)

Further, the City reviewing documentation for subsequent Projects does not provide certainty that impacts to special-status species would be reduced to the level of less-than-significant. MM BIO-1 states that a mitigation plan will need to be approved by the City if special-status species are found on the site, but there is no requirement that any action would be taken. Similarly, Mitigation Measure BIO-2 states a mitigation plan shall be prepared prior to ground disturbance, but does not require implementation of the plan.

A potential outcome based on the text of Mitigation Measures BIO-1 and BIO-2 is that subsequent Project impacts to state and federally listed species, such as Swainson's hawk and salt-marsh harvest mouse, or other special-status species, would not be appropriately evaluated or identified in the biological resources site assessment, and appropriate mitigation measures to reduce impacts to less-than-significant would not be implemented.

B-10

Without specific performance standards, CDFW considers impacts to special-status species as potentially significant (CEQA Guidelines, §§ 15065, 15380).

Recommendation: To reduce potential impacts to special-status species to less-than-significant, CDFW recommends the DEIR evaluate potential Project impacts and include specific mitigation measures, such as those included in **Attachment 2**, for foreseeable potentially significant impacts. Where future site-specific impacts may not be presently foreseeable based on the Project's broad scope, the checklist discussed in Comment 1 above should be used to determine if a future CEQA environmental document is required. CDFW would appreciate the opportunity to review the revised DEIR and may have further comments once more specific species information is provided.

B-11

For example, CDFW recommends including the below mitigation measure in the DEIR:

Swainson's Hawk Surveys and Avoidance. If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to August 31), prior to beginning work on this Project, a Qualified Biologist shall survey for Swainson's hawk nesting activity. The survey area shall include a 0.5-mile radius surrounding the Project site, unless otherwise approved in writing by CDFW. The Qualified Biologist shall conduct surveys according to the *Recommended timing and methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*. Survey results shall be submitted to CDFW for review and written acceptance prior to starting Project activities. If the Qualified Biologist identifies nesting Swainson's hawks, then Project activities shall be prohibited within 0.5 miles of the nest between March 1 and August 31, unless otherwise approved in writing by CDFW, which may include consultation pursuant to CESA and the Permittee obtaining a CESA Incidental Take Permit, or a Qualified Biologist determining that the nest is no longer active.

B-12

Additional measures CDFW recommends including in the DEIR are listed in Attachment 2.

COMMENT 3: Presence of Special-Status Species in the Vicinity of the Project

Issue: MM BIO-1 references what steps may be taken if a special-status species is found on-site (page 4.3-7). However, species that are within the vicinity of the Project may still be significantly impacted by the Project via auditory and visual disturbance, reduced connectivity between suitable habitats, etc. For example, impacts to Swainson's hawk should be considered within a 0.25 mile of the Project site in urban areas and 0.5 mile of the Project site in rural areas.

B-13

Recommendation: CDFW recommends clarifying that the Project site *and the nearby vicinity* will be evaluated for the suitability of special-status plants and animals that have the potential to occur on or near the Project site. Additionally, mitigation measures

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should address potential impacts to species that could occur on the Project site, as well as the vicinity of the Project site.

B-13
(cont'd)

COMMENT 4: Nesting Birds

Issue, specific impacts, why they may occur and be potentially significant: Birds that are California Species of Special Concern and common bird species have the potential to occur in the vicinity of the Project, such as northern harrier (*Circus hudsonius*), saltmarsh common yellowthroat (*Geothlypis trichas sinuosa*), and Suisun song sparrow (*Melospiza melodia maxillaris*).

MM BIO-4 (pages 4.3-10-11) is insufficient to reduce potential impacts to nesting birds to less than significant. The measure states that the nesting season starts March 15, however, CDFW considers the nesting season to start February 1. Furthermore, the measure does not indicate when surveys will be conducted relative to the start of construction, nor if they will be repeated in the event there is a lapse of construction.

B-14

If construction occurs early in the nesting season and surveys are not conducted when nesting birds could be present as early as February 1, and appropriate buffer zones are not established, nesting birds could be disturbed by Project activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young. Additionally, nest building can be completed rapidly and the time from nest initiation to egg laying can occur in a matter of days. If additional surveys are not conducted when there has been a one week lapse in construction, there is an increased risk that nests may become established and be disturbed by Project activities. Given these concerns, the Project may have significant impacts on nesting birds.

Recommendation: The DEIR should evaluate impacts for all special-status birds that have the potential to occur within the vicinity of the Project, including those listed in Attachment 1.

Furthermore, CDFW recommends replacing MM BIO-4 with the following language:

Mitigation Measure BIO-4: Nesting Bird Avoidance: Active nests occurring at or near the Project site shall be avoided. Permittee is responsible for complying with Fish and Game Code section 3503 et seq. and the Migratory Bird Treaty Act of 1918.

- a. **Nesting Bird Surveys.** If construction, grading, vegetation removal, or other Project-related activities are scheduled during the nesting season, February 1 to August 31, a focused survey for active nests shall be conducted by a Qualified Biologist within 7 days prior to the beginning of Project-related activities. If an active nest is found, Permittee shall consult with CDFW regarding appropriate action to comply with Fish and Game Code. **If a lapse in Project-related work of 7 days or longer occurs**, another focused survey and, if needed, consultation with CDFW, shall be required before Project work can be reinitiated.
- b. **Active Nest Buffers.** If an active nest is found during surveys, the Project shall consult with CDFW regarding appropriate action to comply with state and federal laws. Active nest sites shall be designated as "Ecologically Sensitive Areas" (ESA) and protected (while occupied) during Project work by demarking a "No Work Zone" around each nest site.
 - Buffer distances for bird nests shall be site-specific and an appropriate distance, as determined by a Qualified Biologist. The buffer distances shall be specified to protect the bird's normal behavior to prevent nesting failure or abandonment. The buffer distance recommendation shall be developed after field investigations that evaluate the bird(s) apparent distress in the presence of people or equipment at various distances. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards Project personnel, standing up from a

B-15

3. Revisions to the Draft EIR

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brooding position, and flying away from the nest. The Qualified Biologist shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.

- The Qualified Biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by project work. Nest monitoring shall continue during Project work until the young have fully fledged (have completely left the nest site and are no longer being fed by the parents), as determined by the Qualified Biologist. Any reduction in monitoring active nests must be approved in writing by CDFW.

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- c. Nesting Habitat Removal or Modification. No habitat removal or modification shall occur within the ESA-marked nest zone until the young have fully fledged and will no longer be adversely affected by the Project, as determined by a Qualified Biologist.

Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by CDFW or the USFWS?

COMMENT 5: Measures to Reduce Impacts to Sensitive Natural Communities

B-16

Issue, specific impacts, why they may occur and be potentially significant: The DEIR indicates the City includes riparian and wetland habitats and that implementation of MM BIO-1 through MM BIO-3 would reduce impacts to sensitive natural communities to less-than-significant (page 4.3-8). However, the DEIR does not explicitly evaluate whether these habitats could potentially be impacted by the Project. Additionally, MM BIO-1 through MM BIO-3 do not mention sensitive natural communities or impacts to habitat, so it is unclear how these measures would reduce impacts to less-than-significant. MM BIO-2 requires a "detailed mitigation plan" but does not specify what impacts this plan is meant to address. Additionally, the language of the measure does not require implementation of the plan.

B-17

CDFW does not consider preparation of a mitigation plan to be a mitigation measure under CEQA, as outlined in Comment 2. MM BIO-1 and BIO-2 do not identify types of actions that will be taken to mitigate for impacts and specific performance standards are not proposed. MM BIO-3 does propose some actions to be taken if wildlife movement corridors will be impacted by the Project, however, these actions lack a level of detail to ensure impacts would be reduced to less-than-significant. For example, MM BIO-3 states a buffer will be implemented between the Project and sensitive habitats but does not specify how the buffer distance/type will be determined.

B-18

Without specific performance standards CDFW considers impacts to sensitive natural communities, riparian habitat, and wetlands as potentially significant.

Recommendation: The DEIR should include an evaluation of sensitive natural communities, including riparian and wetland habitats, that could be impacted by the Project. Additionally, MM BIO-2 should require restoration on-site or off-site to mitigate temporary or permanent subsequent Project impacts to sensitive natural communities at a minimum 1:1 (restore on-site temporary impacts) or 3:1 (permanent impacts) mitigation to impact ratio for acres of impacts, or habitat compensation including permanent protection of habitat at the same ratio through a conservation easement and preparing and funding implementation of a long-term management plan. MM BIO-2 should also require habitat compensation for permanent wetland impacts and obtaining permits from the Regional Water Quality Control Board and Army Corps of Engineers pursuant to the Clean Water Act.

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Lastly, if the Project could impact sensitive riparian habitat, the DEIR should include a mitigation measure that requires subsequent Projects to submit an LSA notification to CDFW prior to construction and comply with the LSA Agreement, if issued, if the Project may substantially impact a stream or lake.

B-22

III. Editorial Comments and/or Suggestions

COMMENT 6: BIO-1 states that focused surveys shall be done if a special-status species is found on the site. It is unclear how species presence would be determined before surveys are conducted. CDFW recommends revising this language to clarify that surveys shall be conducted if special-status species have the potential to occur at the project site, as determined by a qualified biologist.

B-23

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

B-24

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the City in identifying and mitigating Project impacts on biological resources.

B-25

Questions regarding this letter or further coordination should be directed to Alicia Bird, Environmental Scientist, at (707) 980-5154 or alicia.bird@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or melanie.day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

B-26

Attachment 1: Special-Status Species

Attachment 2: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2022060021)

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Attachment 1: Special-Status Species

Species Name	Common Name	Status
<i>Reithrodontomys raviventris</i>	Salt-marsh harvest mouse	FP, FE
<i>Rallus obsoletus obsoletus</i>	California Ridgeway's rail	FP, FE
<i>Laterallus jamaicensis coturniculus</i>	California black rail	FP
<i>Elanus leucurus</i>	White-tailed kite	FP
<i>Aquila chrysaetos</i>	Golden eagle	FP
<i>Buteo swainsoni</i>	Swainson's hawk	ST
<i>Agelaius tricolor</i>	Tricolored blackbird	ST
<i>Geothlypis trichas sinuosa</i>	Saltmarsh common yellowthroat	SSC
<i>Melospiza melodia maxillaris</i>	Suisun song sparrow	SSC
<i>Circus hudsoniusl</i>	Northern harrier	SSC
<i>Antrozous pallidus</i>	Pallid bat	SSC
<i>Taxidea taxus</i>	American badger	SSC
<i>Corynorhinus townsendii</i>	Townsend's big-eared bat	SSC
<i>Sorex ornatus sinuosus</i>	Suisun shrew	SSC
<i>Bombus occidentalis</i>	Western bumble bee	SC, ICP
<i>Blepharizonia plumosa</i>	Big tarplant	CRPR1B.1
<i>Isocoma arguta</i>	Carquinez goldenbush	CRPR1B.1
<i>Centromadia parryi ssp. congdonii</i>	Congdon's tarplant	CRPR1B.1
<i>Eryngium jepsonii</i>	Jepson's coyote-thistle	CRPR1B.2
<i>Trifolium hydrophilum</i>	Saline clover	CRPR1B.2

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FP = state fully protected under Fish and Game Code; FE = federally listed as endangered under the Endangered Species Act (ESA); FT = federally listed as threatened under ESA; SE = state listed as endangered under CESA; SC = state candidate for listing under California Endangered Species Act (CESA); ICP = California Terrestrial and Vernal Pool Invertebrate of Conservation Priority²; SSC = state Species of Special Concern; CRPR = California Rare Plant Rank³

² The list of California Terrestrial and Vernal Pool Invertebrates of Conservation Priority was collated during CDFW's Scientific Collecting Permit rulemaking process:

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157415&inline>

³ CRPR 1B plants are considered rare, threatened, or endangered in California and elsewhere while further information on CRPR ranks is available in CDFW's *Special Vascular Plants, Bryophytes, and Lichens List* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109383&inline>) and on the California Native Plant Society website (<https://www.cnps.org/rare-plants/cnps-rare-plant-ranks>).

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Attachment 2: Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
MM BIO-2	<p><i>The following language is recommended for incorporation into MM BIO-2:</i></p> <p>Any permanent impacts to sensitive natural communities shall be mitigated for at a 3:1 ratio by acreage and temporary impacts shall be restored on-site at a 1:1 ratio by acreage. Oak trees shall be replaced at the following ratios:</p> <ul style="list-style-type: none"> • 3:1 replacement for trees 5 to 8 inches diameter at breast height (DBH) • 5:1 replacement for trees greater than 8 inches to 16 inches DBH • 10:1 replacement for trees greater than 16-inch DBH, which are considered old-growth oaks 	Within the same year as the project start	Project Applicant
MM BIO-4	<p><i>The following language is recommended for replacement of existing MM BIO-4:</i></p> <p><u>Nesting Bird Avoidance.</u> Active nests occurring at or near the Project site shall be avoided. Permittee is responsible for complying with Fish and Game Code section 3503 et seq. and the Migratory Bird Treaty Act of 1918.</p> <p>a) Nesting Bird Surveys. If construction, grading, vegetation removal, or other Project-related activities are scheduled during the nesting season, February 1 to August 31, a focused survey for active nests shall be conducted by a Qualified Biologist within 7 days prior to the beginning of Project-related activities. If an active nest is found, Permittee shall consult with CDFW regarding appropriate action to comply with Fish and Game Code. If a lapse in Project-related work of 7 days or longer occurs, another focused survey and, if needed, consultation with CDFW, shall be required before Project work can be reinitiated.</p> <p>b) Active Nest Buffers. If an active nest is found during surveys, the Project shall consult with CDFW regarding appropriate action to comply with state and federal laws. Active nest sites shall be designated as "Ecologically Sensitive Areas" (ESA) and protected (while occupied) during Project work by demarking a "No Work Zone" around each nest site.</p> <ul style="list-style-type: none"> • Buffer distances for bird nests shall be site-specific and an appropriate distance, as determined by a Qualified Biologist. The buffer distances shall be specified to protect the bird's normal behavior to prevent nesting failure or abandonment. The buffer distance 	Prior to Ground Disturbance and continuing over the course of the Project	Project Applicant

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	<p>recommendation shall be developed after field investigations that evaluate the bird(s) apparent distress in the presence of people or equipment at various distances. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards Project personnel, standing up from a brooding position, and flying away from the nest. The Qualified Biologist shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.</p> <ul style="list-style-type: none"> The Qualified Biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by project work. Nest monitoring shall continue during Project work until the young have fully fledged (have completely left the nest site and are no longer being fed by the parents), as determined by the Qualified Biologist. Any reduction in monitoring active nests must be approved in writing by CDFW. <p>c) Nesting Habitat Removal or Modification. No habitat removal or modification shall occur within the ESA-marked nest zone until the young have fully fledged and will no longer be adversely affected by the Project, as determined by a Qualified Biologist.</p>		
<p>MM BIO-5</p>	<p>Pre-Project Special-Status Plant Surveys. A Qualified Biologist shall conduct botanical surveys during the appropriate blooming period and conditions for all special-status plants that have the potential to occur prior to the start of construction. More than one year of surveys may be necessary. Surveys shall be conducted following CDFW's Protocol for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants). Survey reports shall be submitted to CDFW for written approval prior to the start of construction. If any special-status plant species are observed, the Project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to Project activities.</p> <p>If special-status plants will be impacted, the Project shall provide mitigation prior to Project start in a form accepted in writing by CDFW which may include on-site restoration pursuant to a restoration plan prepared by the Project and approved by CDFW, off-site habitat preservation at a minimum 3:1 mitigation to impact ratio based on acreage or number of plants as appropriate, unless otherwise approved in writing by CDFW.</p>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>

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MM BIO-6	<p><u>Swainson's Hawk Surveys and Avoidance:</u> If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to August 31), prior to beginning work on this Project, Swainson's hawk surveys shall be conducted by a qualified biologist with experience surveying for and detecting the species pursuant to the <i>Recommended timing and methodology for Swainson's Hawk Nesting Surveys in California's Central Valley Swainson's Hawk</i> (2000) survey protocol, within 0.5 mile of the Project site <u>each year</u> that Project activities occur. Pursuant to the above survey protocol, surveys shall be completed for at least the two survey periods immediately prior to a Project's initiation. For example, if the project is scheduled to begin on June 20, the qualified biologist shall complete three surveys in Period III and three surveys in Period V. It is recommended that surveys be completed in Periods II, III and V. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 1 and August 31 each year. If the qualified biologist identifies nesting Swainson's hawks, the Project shall implement a <u>0.5 mile no disturbance buffer zone</u> around the nest, unless otherwise approved in writing by CDFW. Project activities shall be prohibited within the buffer zone between March 1 and August 31, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP.</p>	Prior to Ground Disturbance and continuing over the course of the Project	Project Applicant
MM-BIO-7	<p><u>Surveys and Avoidance of Fully Protected Raptors.</u> Surveys shall be conducted for fully protected raptors, including white-tailed kite and golden eagle. The survey area shall be determined by a qualified Raptor Biologist in consultation with CDFW based on the species of concern, and if the nest of any fully protected raptor is identified during pre-construction nesting surveys, a biological based justification for the buffer zone, as determined by a qualified Raptor Biologist, shall be submitted to CDFW for review. Project activities shall not proceed between March 1 and August 31 unless CDFW provides written approval of the buffer zone around any nest of a fully protected raptor species.</p>	Prior to Ground Disturbance and continuing over the course of the Project	Project Applicant
MM BIO-8	<p><u>Tricolored Blackbird Avoidance.</u> If nesting tricolored blackbird or evidence of their presence is found, CDFW shall be notified immediately and work shall not occur without written approval from CDFW allowing the Project to proceed. Project activities shall not occur within 500 feet of an active nest unless otherwise approved in writing by CDFW. Presence of nesting tricolored blackbird may require a CESA Incidental Take Permit before Project activities may commence.</p>	Prior to Ground Disturbance and continuing over the course of the Project	Project Applicant
MM BIO-9	<p><u>Special-Status Bee Habitat Assessment and Avoidance:</u> A qualified wildlife biologist shall conduct visual surveys of areas planned for ground disturbance, including but not limited to, installation</p>	Prior to Ground Disturbance and	Project Applicant

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	<p>of water main, new roads, leach fields, and building sites, and within a 100-foot buffer of ground-disturbing activities. Surveys shall be conducted to coincide with the blooming period of locally common nectar sources such as vetch (<i>Vicia</i> spp.) and California poppy (<i>Eschscholzia californica</i>) during the flight season for the western, crotch's, and obscure bumble bee (generally late February through late June). Between two and four evenly spaced surveys shall be conducted for the highest detection probability, including surveys in early spring (late March/early April) and early summer (late June/July). Surveys shall take place when temperatures are above 60°F, preferably on sunny days with low wind speeds (e.g., less than 8 miles per hour) and at least 2 hours after sunrise and 3 hours before sunset. On warm days (e.g., over 85°F), bumble bees will be more active in the mornings and evenings. The qualified biologist shall conduct transect surveys following the <i>Streamlined Bee Monitoring Protocol for Assessing Pollinator Habitat</i> (https://www.xerces.org/sites/default/files/2018-05/14-021_01_XercesSoc_Streamlined-Bee-Monitoring-Protocol_web.pdf), focusing on detection of foraging bumble bees and underground nests using visual aids such as binoculars. If western, crotch's or obscure bumble bee nests are identified within the ground disturbance area or 100-foot buffer area, a plan to protect bumble bee nests and individuals shall be developed and implemented in consultation with CDFW. The plan shall include, but not be limited to: 1) specifications for construction timing and sequencing requirements (e.g., avoidance of raking, mowing, tilling, or other ground disturbance until late March to protect overwintering queens); 2) preconstruction surveys conducted within 30 days and consistent with any current available protocol standards prior to the start of ground-disturbing activities to identify active nests; 3) establishment of appropriate no-disturbance buffers for nest sites and construction monitoring by a qualified biologist to ensure compliance with buffers; 4) restrictions associated with construction practices, equipment, or materials that may harm bumble bees (e.g., avoidance of pesticides/herbicides, measures to minimize the spread of invasive plant species); and 5) prescription of an appropriate restoration seed mix targeted for the bumble bees, including native plant species known to be visited by native bumble bee species and containing a mix of flowering plant species with continual floral availability through the entire active season for bumble bees (March to October).</p> <p>Presence of western bumble bee or crotch's bumble bee may require a CESA Incidental Take Permit before Project activities may commence.</p>	<p>continuing over the course of the Project</p>	
<p>MM BIO-10</p>	<p><u>Bat Tree Habitat Assessment and Surveys</u>. Prior to any tree removal, a Qualified Biologist shall conduct a habitat assessment for bats. The habitat assessment shall be conducted a minimum of 30 to</p>	<p>Prior to Ground Disturbance and</p>	<p>Project Applicant</p>

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	<p>90 days prior to tree removal and shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting species). If suitable habitat trees are found, they shall be flagged or otherwise clearly marked, CDFW shall be notified immediately, and tree trimming or removal shall not proceed without approval in writing from CDFW. Trees may be removed only if: a) presence of bats is presumed, or documented during the surveys described below, in trees with suitable habitat, and removal using the two-step removal process detailed below occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a Qualified Biologist, under prior written approval of the proposed survey methods by CDFW, conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats. Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a Qualified Biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only. Limbs with cavities, crevices, or deep bark fissures shall be avoided, and 2) the second day the entire tree shall be removed.</p>	<p>continuing over the course of the Project</p>	
<p>MM BIO-11</p>	<p><u>Avoidance of Fully Protected Marsh Birds.</u> Project activities within or adjacent to tidal marsh or suitable Ridgway's (California clapper) rail (CCR) or California black rail (CBR) habitat shall be avoided during rail breeding season (January 15 – August 31 for CCR, February 1 – August 31 for CBR) each year unless appropriately timed, yearly protocol level surveys are conducted and survey methodology and results are submitted to and accepted by CDFW. Surveys shall focus on suitable habitat that may be disturbed by project activities during the breeding season to ensure that these species are not nesting in these locations.</p> <p>If breeding rails are determined to be present, no activities, visual disturbance (direct line of sight) and/or an increase in the ambient noise level shall occur within 700 feet of areas where CCR and/or CBR have been detected during the breeding season. If surveys have not been conducted, all work shall be conducted 700 feet from CCR and/or CBR habitat during nesting season. Additionally, no project activities shall occur within 50 feet of suitable habitat during extreme high tide events or when adjacent tidal marsh is flooded. Extreme high tides events are defined as a tide forecast of 6.5 feet or higher measured at the Golden Gate Bridge and adjusted to the timing of local high tides.</p>	<p>Prior to Ground Disturbance and continuing over the course of the Project</p>	<p>Project Applicant</p>
<p>MM BIO-12</p>	<p><u>Avoidance of Fully Protected Salt-Marsh Harvest Mouse.</u> Impacts to salt-marsh harvest mouse shall be fully avoided.</p> <p>a) <u>Habitat Avoidance.</u> No project activities shall</p>	<p>Prior to Ground Disturbance and</p>	<p>Project Applicant</p>

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	<p>occur within 50 feet of suitable tidal marsh habitat for the salt marsh harvest mouse (SMHM) within two (2) hours before and after an extreme high tide event (6.5 feet or higher measured at the Golden Gate Bridge and adjusted to the timing of local high tides) or when adjacent marsh is flooded unless SMHM proof exclusion fencing has been installed around the work area.</p> <p>b) Vegetation Removal. Prior to impacting salt marsh habitat, an approved qualified biologist or biological monitor, familiar with salt marsh harvest mouse (SMHM), shall walk through and inspect suitable habitat prior to vegetation removal and search for signs of harvest mice or other sensitive wildlife and plants. Following inspection, personnel, under the supervision of the qualified biologist, will disturb (e.g., flush) vegetation to force movement of SMHM into adjacent marsh areas. Flushing of vegetation will first occur in the center of the site then progress toward the two sides away from the open water areas or in this case, away from impacted habitat. Immediately following vegetation flushing, personnel, under the supervision of the qualified biologist or biological monitor, will remove vegetation with hand tools (e.g., weed-eater, hoe, rake, trowel, shovel, grazing) so that vegetation is no taller than 2 inches.</p> <p>c) Exclusion Fencing. After vegetation removal, a mouse proof barrier shall be placed along the edge of the area removed of vegetation to further reduce the likelihood of SMHM returning to the area prior to construction. The fence shall be made of a heavy plastic sheeting material that does not allow salt marsh harvest mice to pass through or climb, and the bottom shall be buried to a depth of 4 inches so that salt marsh harvest mouse cannot crawl under the fence. Fence height shall be at least 12 inches higher than the highest adjacent vegetation with a maximum height of 4 feet. All supports for the exclusion fencing shall be placed on the inside of the work area. An approximately 2-foot-wide de-vegetated buffer shall be created along the habitat side of the exclusion fence. The SMHM exclusion fencing shall remain in operating condition throughout the duration of all placement of fill events. The qualified biologist or biological monitor shall daily inspect the integrity of the exclusion fencing to ensure there are no gaps, tears or damage. Maintenance of the fencing shall be conducted as needed. Any necessary repairs to the fencing shall be completed within 24 hours of the initial observance of the damage. Any mice found along or outside the fence shall be closely monitored until they move away from the project area.</p>	<p>continuing over the course of the Project</p>
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MM BIO-13	<u>American Badger Avoidance.</u> A qualified biologist shall conduct a habitat assessment to determine if the Project site or nearby vicinity has suitable habitat for American badger. If suitable habitat is present at the Project site, a qualified biologist shall survey for American badger within the Project site and nearby vicinity prior to construction. If any occupied burrows are discovered the Project shall implement an appropriate buffer from the burrow, as determined by a qualified biologist and approved in writing by CDFW. If the Project cannot avoid impacts to the occupied burrow the Project shall confer with CDFW regarding next steps before proceeding. This make require the Project to prepare and implement a relocation plan, unless otherwise approved in writing by CDFW.	Prior to Ground Disturbance and continuing over the course of the Project	Project Applicant
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B Response to Comments from Eric Chappell, CDFW, dated December 19, 2022.

B-1 Commenter states that the CDFW submitted comments on the Notice of Preparation (NOP) for the proposed project and states that the following letter will respond to significant impacts to biological resources associated with the proposed project. Commenter further states summarizes the role of CDFW as a Trustee and Responsible Agency for the proposed project.

CDFW's comment letter on the NOP was received July 1, 2022 and was summarized in Table 2-1, *NOP Comments*, in Chapter 2, *Introduction*, of the DEIR. The City recognizes the department's role as a Trustee and Responsible Agency for the proposed project.

B-2 Commenter summarizes the proposed project.

Commenter's summary of the project is consistent with the project description (page 3-5, Chapter 3, *Project Description*, of the DEIR).

B-3 Commenter summarizes the regulatory requirements of the California Endangered Species Act (CESA) and states the proposed project has the potential to impact Swainson's hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*), which are CESA listed as threatened species. Commenter further elaborates that if the proposed project would impact a CESA listed species, that significant modification to the proposed project and mitigation measures may be required in order to obtain an incidental take permit. Commenter further states a Lead Agency's Findings of Overriding Consideration do not eliminate the project proponent's obligation to comply with CESA.

Commenter's statements regarding CESA are consistent with the City's understanding of the law. Mitigation Measures BIO-6 and BIO-8 have been incorporated into the EIR to mitigate potential impacts to Swainson's hawk and tricolored black bird. See Section 3.2, *Revisions in Response to Written Comments*, of this FEIR.

B-4 Commenter summarizes the Lake and Streambed Alteration Notification requirements, stating that notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake, or stream.

Commenter's statements regarding Lake and Streambed Alteration Notification are consistent with the City's understanding of the law. No further response is required.

B-5 Commenter summarizes CDFW's jurisdiction over actions that may result in the disturbance or destruction of active nest sites or unauthorized take of birds.

Commenter's statements regarding raptors and other nesting birds are consistent with the City's understanding of the law protecting these birds. Furthermore, Mitigation Measures

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BIO-6 and BIO-8 have been incorporated into the EIR to mitigate potential impacts to Swainson's hawk and tricolored black bird. See Section 3.2, *Revisions in Response to Written Comments*, of this FEIR

- B-6 Commenter states that the proposed project has the potential to impact salt marsh harvest mouse (*Reithrodontomys raviventris*), California Ridgeway's rail (*Rallus obsoletus obsoletus*), California black rail (*Laterallus jamaicensis coturniculus*), white-tailed kite (*Elanus leucurus*), and golden eagle (*Aquila chrysaetos*) which are fully protected species that may not be taken or possessed at any time. Commenter further states the DEIR should include mitigation measures to ensure the avoidance of these species.

Commenter's recommendations have been incorporated into the EIR via the addition of Mitigation Measures BIO-5 through BIO-13. See Section 3.2, *Revisions in Response to Written Comments*, of this FEIR.

- B-7 Commenter strongly recommends that the DEIR include a procedure or checklist for subsequent projects as an appendix to ensure that subsequent project impacts to biological resources are evaluated and mitigated to less than significant.

Evaluation of biological impacts is conducted on a case-by-case basis and documented as part of the development process at City Hall. All records are available for public review. The City may include a checklist for biological analysis to assist in streamlining of subsequent review as recommended by the commenter, however for purposes of the proposed project the City will rely upon the mitigation measures as noted in the DEIR and on the mitigation monitoring and reporting program MMRP. Note too that for projects for which no further CEQA is required, the migratory bird treaty act, wetlands, and raptor protection, and other CDFW regulations will still apply.

- B-8 Commenter states that the EIR does not adequately evaluate potential impacts to protected species and recommends that the analysis have incorporated the CDFW's list of fully protected, threatened, endangered, candidate, and other special-status species that are known to occur, or have the potential to occur in or near the Plan Area that was provided in the Department's response to the NOP.

The recommendation made in this comment, the inclusion of CDFW's *Attachment 1* list of "fully protected, threatened, endangered, candidate, and other special-status species that are known to occur, or have the potential to occur in or near the Project site" has been incorporated into the EIR. See Section 3.2, *Revisions in Response to Written Comments*, of this FEIR.

- B-9 Commenter summarizes Mitigation Measure BIO-1 and states that these measures do not adopt specific performance standards, nor identify the types of actions that could meet these standards.

3. Revisions to the Draft EIR

Mitigation Measures BIO-1 and BIO-2 have been revised to incorporate CDFW's recommendations. See Section 3.2, *Revisions in Response to Written Comments*, of this FEIR.

- B-10 Commenter states that impacts to state and federally listed species would not be appropriately evaluated or identified in the biological resources site assessment. Commenter further states that the Mitigation Measures BIO-1 and BIO-2 do not ensure that impacts will be mitigated to less than significant as the mitigation measures do not specify that mitigation action is required.

Mitigation Measures BIO-1 and BIO-2 have been revised to incorporate CDFW's recommendations. See Section 3.2, *Revisions in Response to Written Comments*, of this FEIR.

- B-11 Commenter recommends that the proposed project evaluate potential project impacts to special-status species.

The DEIR discusses potential project impacts to sensitive species on page 4.3-6 stating, "any development of vacant or partially vacant land could result in a direct or indirect loss of sensitive plants or wildlife. Indirect impact may include habitat modification, increased human/wildlife interactions, habitat fragmentation, encroachment by invasive weeds, and area-wide changes in surface water flows and general hydrology due to construction of buildings, parking, sidewalks, and other impervious surfaces."

- B-12 Commenter recommends that the EIR include specific mitigation measures and references CDFW's recommended mitigation measures in Attachment 2 of the comment letter. Commenter provides an example of one such mitigation measure regarding Swainson's Hawks.

Commenter's recommendations have been incorporated into the EIR via the addition of Mitigation Measures BIO-5 through BIO-13 and the revision of Mitigation Measure BIO-4. See Section 3.2, *Revisions in Response to Written Comments*, of this FEIR.

- B-13 Commenter states that Mitigation Measure BIO-1 does not account for potential impacts that could occur to special-status species in the vicinity of project sites, elaborating that species in the vicinity could be impacted via auditory and visual disturbance and reduced connectivity between suitable habitats. Commenter recommends that the EIR amend Mitigation Measure BIO-1 and all other mitigation measures to identify and specify these impacts.

Mitigation Measure BIO-1 has been revised to incorporate CDFW's recommendations. See Section 3.2, *Revisions in Response to Written Comments*, of this FEIR.

- B-14 Commenter states that Mitigation Measure BIO-4 does not adequately mitigate all impacts to nesting birds, citing that the mitigation measure does not correctly identify the nesting season of nesting birds or specify the timing of surveys. Commenter further describes why the provisions of BIO-4 would not fully mitigate impacts.

3. Revisions to the Draft EIR

CDFW's recommendations have been incorporated in the EIR through the revision of Mitigation Measure BIO-4. See Section 3.2, *Revisions in Response to Written Comments*, of this FEIR.

- B-15 Commenter provides a recommendation to replace Mitigation Measure BIO-4 including revisions to the nesting season timeframe, provisions for lapses in construction, and a requirement for designating active nest sites as "Ecologically Sensitive Areas" (ESA's) and provisions regarding these ESA's.

See response to Comment B-14.

- B-16 Commenter states that the while the EIR indicates that the City includes riparian and wetland habitats, it does not explicitly evaluate whether these habitats could potentially be impacted by the project.

Revisions regarding the project's impacts on riparian and wetland habitat have been incorporated in the FEIR. See Section 3.2, *Revisions in Response to Written Comments*, of this FEIR. Note that projects where the State of California has precluded future CEQA compliance must still comply with the wetlands protection requirements of state and federal law.

- B-17 Commenter states that Mitigation Measures BIO-1 through BIO-3 do not mention sensitive natural communities or impacts to habitat so it is unclear how these measures reduce impacts to less than significant. Commenter further states that language of Mitigation Measure BIO-2 does not require implementation of its detailed mitigation plan.

Revisions to Mitigation Measures BIO-1 through BIO-3 have been incorporated in the EIR. See Section 3.2, *Revisions in Response to Written Comments*, of this FEIR.

- B-18 Commenter states that Mitigation Measures BIO-1 and BIO-2 do not identify types of actions that will be taken to mitigate for impacts and specific performance standards are not proposed. Commenter further states that the actions listed in Mitigation Measure BIO-3 lack a level of detail to ensure impacts would be reduced to less-than-significant.

Revisions to Mitigation Measures BIO-1 through BIO-3 have been incorporated in the EIR. See Section 3.2, *Revisions in Response to Written Comments*, of this FEIR.

- B-19 Commenter states that without specific performance standards incorporated in the project's mitigation, CDFW considers impacts to sensitive natural communities, riparian habitat, and wetlands as potentially significant. Commenter further provides a recommendation for the EIR including the inclusion of an evaluation of sensitive natural communities that could be impacted by the project.

3. Revisions to the Draft EIR

The DEIR identifies the presence of sensitive natural habitat within Impact BIO-2, Section 4.3, Biological Resources, of the DEIR on page 4.3-8. Revisions to this analysis have been incorporated in Section 3.2, *Revisions in Response to Written Comments*, of this FEIR, to specify the impact. As specific project details are not yet known at this time, it is unclear which specific sensitive natural communities will be impacted by development under the proposed project.

- B-20 Commenter provides an additional recommendation for Mitigation Measure BIO-2, including the requirement for on-site and off-site mitigation and the preparation and funding of a long-term management plan.

Mitigation Measure BIO-2 has been revised to incorporate CDFW's recommendations. See Section 3.2, *Revisions in Response to Written Comments*, of this FEIR.

- B-21 Commenter states that Mitigation Measure BIO-2 should include a requirement for habitat compensation for permanent wetland impacts and obtaining permits from the Regional Water Quality Control Board and Army Corps of Engineers pursuant to the Clean Water Act.

Mitigation Measure BIO-2 has been revised to incorporate CDFW's recommendations. See Section 3.2, *Revisions in Response to Written Comments*, of this FEIR. Note that the amount of compensation is determined by the regulatory agencies at the time of permit and is based on a number of factors such as the quality, type, and location of the habitat subject to compensation. Given the programmatic nature of the proposed project this level of information is unknown and cannot be known until a permit for development is requested and the precise impact determined. Projects where the State of California has precluded future CEQA compliance must still comply with the wetlands protection requirements of state and federal law.

- B-22 Commenter states that if the project could impact sensitive riparian habitat, it should include a mitigation measure that requires subsequent Projects to submit an LSA notification to CDFW prior to construction and comply with the LSA Agreement, if issued, if the Project may substantially impact a stream or lake.

CDFW's recommendation has been incorporated in the EIR through the addition of Mitigation Measure BIO-14. See Section 3.2, *Revisions in Response to Written Comments*, of this FEIR.

- B-23 Commenter states that the language of Mitigation Measure is unclear on how species presence would be determined before surveys are conducted. Commenter recommends revising this language to clarify that surveys shall be conducted if special-status species have the potential to occur at the project site, as determined by a qualified biologist.

3. Revisions to the Draft EIR

CDFW's recommendation has been incorporated in the EIR through the revision of Mitigation Measure BIO-1. See Section 3.2, *Revisions in Response to Written Comments*, of this FEIR.

- B-24 Commenter states that findings regarding special-status species and natural communities detected during Project surveys must be reported to CNDDDB. Commenter further states that filing fees are required to be paid to CDFW.

Findings under the proposed project and subsequent projects under the proposed project will be reported to CNDDDB. Filing fees will be paid to CDFW upon the filing of the Notice of Determination.

- B-25 Commenter appreciates the opportunity to comment on the DEIR and assist the City in identifying and mitigating Project impacts on biological resources.

The City appreciates CDFW's comments and recommendations on this project.

- B-26 Commenter provides two attachments: a table containing the special status species that occur in and near the City and a draft mitigation monitoring and reporting program with CDFW's recommendations for mitigation measures.

The information attached has been incorporated in the EIR. See Section 3.2, *Revisions in Response to Written Comments*, of this FEIR.

3. Revisions to the Draft EIR

LETTER C – Belinda Smith on behalf of Benicia Historical Society (2 pages)

BENICIA HISTORICAL SOCIETY

The Benicia Historical Society
is a non-profit organization
established in 1973.



P.O. Box 2393
Benicia, CA 94510
www.BeniciaHistoricalSociety.org

Tax ID Number
94-2762281

December 19, 2022

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Jason Hade, Planning Manager
Community Development Department
City of Benicia
250 East L Street
Benicia, CA 94510
(sent via email – comdev@ci.benicia.ca.us)

Dear Mr. Hade

Re: Comments on draft Environmental Impact Report for the Housing and Safety
Element Update

The Benicia Historical Society goal is to preserve the history and heritage of City through education, communication and community involvement. The draft Environmental Impact Report identifies significant unavoidable adverse impacts that would be caused by the implementation of the Housing Element. It specifically identifies significant irreversible changes to Benicia's two historic districts.

Therefore, we urge the City to adopt the environmentally superior alternative to the proposed project and remove the 17 sites in the City's Downtown and Arsenal Conservation Districts. As demonstrated in Table 6-2 (page 6-25) Comparison of Alternatives to Project Objectives 6.4 Removal of Sites in Historic District, three project objectives are met and one is met to a lesser extent. This slight reduction in the buffer of available housing sites in comparison to the irreversible loss of the historic integrity and character of Benicia's historic districts is worth it.

Existing Conditions

The EIR identifies Benicia two historic districts, the downtown historic district and the Arsenal historic district. While the EIR discusses the Arsenal Historic District and mentions such things as the former Barracks Parade Ground (Dona Francesca Park), the Storehouses (Camel Barns) and the Military Cemetery it fails to mention Officers' Row (sub-district C) The EIR provides discussion of the environmental setting and provides baseline physical conditions to provide context. District C has both vacant land and historic structures. **Why wasn't sub-district C described in the EIR?** While parcels in District C have received entitlements, no permits have been issued, and there is no guarantee that a project will ever be built. The parcels are vacant

Additionally, the Arsenal Conservation Plan includes the preservation of view sheds specifically from District C (Officers' Row). What impacts do the housing opportunity sites identified on Grant Street have on the protected view sheds from District C.?

C-1

C-2

C-3

3. Revisions to the Draft EIR

BENICIA HISTORICAL SOCIETY

The Benicia Historical Society
is a non-profit organization
established in 1973.



P.O. Box 2393
Benicia, CA 94510
www.BeniciaHistoricalSociety.org

Secretary of Interior Standards

As a Certified Local Government it is incumbent upon the City to utilize The Secretary of Interior's Standards. The applicable standard is the Standards and Guidelines for the Preservation, Rehabilitation, Restoration, and Reconstruction. The Standards and Guidelines provide further guidance by stating "These Standards apply not only to historic buildings but also to a wide variety of historic resource types eligible to be listed in the National Register of Historic Places. This includes buildings, sites, structures, objects and districts."

C-4

There is much discussion in the mitigation measures about the Secretary Standards, but little on how those standards will be applied to infill development in the two Historic Districts. This is especially concerning insofar as this is a program EIR and projects will be evaluated on an individual basis. How can the City ensure the protection of the unifying character and integrity that compose the historic districts? Is there a mitigation measure for infill development in the historic districts that have discretionary review?

Thank you for the opportunity to comment on the EIR.

Sincerely,

Belinda Smith, President
Benicia Historical Society

3. Revisions to the Draft EIR

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3. Revisions to the Draft EIR

C Response to Comments from Belinda Smith, on behalf of Benicia Historical Society dated December 19, 2022.

C-1 The commenter states the DEIR determines a significant and unavoidable adverse impact related to the Benicia; s two historical districts from the implementation of the Housing Element. The commenters urge the City to adopt alternative 6.4 which removes 17 housing sites in the City’s Downtown and Arsenal Historic Conservation Districts. The commenter state that although Alternative 6.4 results in a slight reduction in the buffer of available housing sites it is worth adopting then losing the historic integrity and character of Benicia’s historic districts.

As this comment does not describe any inadequacies to the DEIR, no changes to the DEIR are necessary. This comment will be forwarded to decision makers for their consideration.

C-2 The commenter states the DEIR fails to mention Officer’s Row (sub district C) which has vacant land and historical structures. The commenter asks why sub-district C wasn’t described in the EIR.

The Draft EIR will be revised to include Jefferson Ridge and Officers’ Row description under existing conditions. See Section 3.2, *DEIR Revisions in Response to Written Comments*, of the Final EIR. The text change does not require recirculation of the DEIR because it does not provide significant new information that would give rise to a new significant environmental impact. The DEIR adequately analyzes the potential impact from sites under the HEU on historical resources. The additional text adds to the description of the Arsenal Historic District.

C-3 The commenter asks what impacts the housing opportunity sites identified on Grant Street have on the protected view sheds from District C.

These sites are identified in Table 4.4-2, *Housing Element Sites in the Arsenal Historic District*, on page 4.4-16 of the DEIR. Impacts to viewsheds are discussed under Impact AES-1, in Section 4.1, *Aesthetics*. As stated on page 4.1-7 of the DEIR. housing sites within a historic district, such as sites on Grant Street, would be required to comply with Chapter 17.108, Design Review, of the City’s Municipal Code which requires design review by the Historic Preservation Review Commission or staff on new development projects. Furthermore, applicable housing development in the Arsenal Historic District shall comply with the City’s Objective Planning and Design Standards for Mixed Use Residential and Multi-Family Development which provide specific delineation and objective criteria for protection of views identified in the Arsenal Historic Conservation Plan. Further information regarding these standards and their applicability can be found on the City’s website (<https://www.ci.benicia.ca.us/objectivestandards>).

3. Revisions to the Draft EIR

- C-4 The commenter summarizes and defines the Secretary of Interior’s Standards. The commenter states there is little discussion on how the standards will be applied to infill development in the two historic districts. The commenter finds this concerning considering the document is a program EIR and projects will be evaluated on an individual basis. The commenter asks how the City can ensure the protection of the unifying character and integrity that compose the historic districts and is there a mitigation measure for infill development in the historic districts that have discretionary review.

As stated in Chapter 2, Introduction, the DEIR fulfills the requirements for a Program EIR (programmatic) which is more conceptual than a Project EIR with a more general discussion of impacts, alternatives, and mitigation measures. Use of a Program EIR gives the lead agency an opportunity to consider broad policy alternatives and program-wide mitigation measures, as well as greater flexibility to address project-specific and cumulative environmental impacts on a comprehensive scale. Project level information is not available and the EIR should not engage in speculation about information that may not be known until a later phase, when specific development applications are known. This comment will be forwarded to decision makers for their consideration. All potential future development that is subject to discretionary approval would be required to undergo environmental and design review prior to project approval. SB-35 which the State of California adopted to accelerate the construction of affordable housing by making such project ministerial and therefore not subject to CEQA, does not apply to historic structures placed on a national, state, or city historic register and would therefore require analysis before any construction could occur.

3. Revisions to the Draft EIR

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3. Revisions to the Draft EIR

LETTER 1 – Karen Massey (1 page)

From: Karen Massey <[REDACTED]>
Sent: Saturday, December 10, 2022 10:54 AM
To: Suzanne Thorsen <SThorsen@ci.benicia.ca.us>; Jason Hade <JHade@ci.benicia.ca.us>
Cc: Sean Finn <[REDACTED]>; Randy Figueiredo <[REDACTED]>
Subject: Housing Element Update & Draft EIR - Corrections Related to 1043 Grant Street

Good Morning Suzanne & Jason,
Thank you for your continuing work on the HEU and Draft EIR.

We are in the process of reviewing the November version of the revised HEU and the Draft EIR and identified a few discrepancies in the information as it relates to the site at 1043 Grant Street, as follows:

- Table 3-3 of the Draft EIR 1-1
 - o Current GPLUD is incorrect; it should be Mixed Use Lower Arsenal (not Office Commercial)
 - o Current Zoning is incorrect; it should be General Commercial (Not Office Commercial)
 - o Proposed GPLUD is incorrect; no GPA is planned, it should be Mixed Use Lower Arsenal (not Office Commercial)
 - o Maximum density 9 units and realistic capacity 6 units are correct

- November HEU - Site 45 (previously Site 51) & Table B 1-2
 - o Proposed GPLUD is incorrect; no GPA is planned, it should be Mixed Use Lower Arsenal (not Office Commercial)
 - o Realistic capacity is incorrect; it should be 6 units consistent with Draft EIR, July version of the HEU and preliminary yield study we shared with the City

We want to make sure the EIR properly analyzes the full development potential of the site (which it appears it does at max density of 9 units and realistic capacity of 6 units) and that the same is accurately reflected in the HEU so as to avoid any confusion in the future, in particular with the public. 1-3

Please review our concern and let me us know if it would be helpful if these comments were also provided verbally at the joint meeting on December 13th. Thank you for your continuing efforts on this project, I know what a challenge it can be to keep all of this data straight.

Thank you,
Karen

3. Revisions to the Draft EIR

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3. Revisions to the Draft EIR

1. Response to Comments from Karen Massey, dated December 10, 2022.

1-1 The commenter expresses discrepancies in information from Table 3-3 of the Draft EIR regarding proposed housing site at 1043 Grant Street. The commenter states the current general plan land use designation, current zoning, and proposed general plan land use designation is incorrect. The commenter notes maximum density and realistic capacity is correct.

The Draft EIR will be revised to accommodate the commenter's identified discrepancies in Table 3-3. See Section 3.2, *DEIR Revisions in Response to Written Comments*, of the Final EIR. The text change does not require recirculation of the DEIR because it does not provide significant new information that would give rise to a new significant environmental impact. The comment clarifies the existing general plan land use designation, current zoning, and proposed general plan land use designations for the sites.

1-2 The commenter expressed discrepancies for Site 45 (previously Site 51) & Table B from the November Housing Element Update (HEU). The commenter states the proposed GPLUD is incorrect, no GPA is planned and should be Mixed Use Lower Arsenal (not Office Commercial) The commenter states the proposed general plan land use designation and realistic capacity is incorrect.

See response to comment 1-1 for general plan land use designation. The Draft Housing Element was provided to the Department of Housing and Community Development (HCD) for review on August 24, 2022, with additional revisions sent on November 18, 2022. Following HCD's 90-day statutory review period, comments were received on November 22, 2022. The Draft Housing Element is being revised to respond to HCD's comments and will be brought forward for public hearings and adoption in January 2023. The Draft EIR, which evaluates the potential environmental impacts of amendments to the Housing Element, Safety Element and Zoning Ordinance and Zoning Map, was released on November 3, 2022, therefore HCD comments were not incorporated into the Draft EIR. To be conservative, the City has reduced the maximum allowed development to multifamily residential to 77 percent which is the realistic development capacity applied to parcels in the Sites Inventory. Although realistic capacity has changed for sites, the conservative approach does not change the analysis under the DEIR.

1-3 The commenter wants to ensure the EIR properly analyzes the full development potential of the site and that the same is reflected in the HEU. However, the commenter states the max density of 9 units and realistic capacity of 6 units is not accurately reflected in the HEU and the EIR.

See response to comment 1-2.

3. Revisions to the Draft EIR

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3. Revisions to the Draft EIR

LETTER 2 – Marilyn Bardet (2 pages)

Summary of Verbal Comments

2021-2031 Housing Element & Safety Element Updates DEIR

December 13, 2022, Planning Commission Meeting

Marilyn Bardet

- Because the EIR has been produced, we are talking about a revised housing element and I'm wondering whether the EIR has addressed these revisions based on HCD's review. I support questions by Tom and Councilmember Macenski. These are extremely important questions that aren't answered. For example, Daina's comments are a concern...speaking from the East Side if I understand correctly, you have way over the number of necessary parcels identified to cover the minimum requirement. On the east side, gets the preponderance of parcels, both fall inside the East H Street and 1471 Park Road, that site if you looked at the environmental constraints, but as was noted, if that parcel has been vacant and city owned for at least two cycles we could have an SB 35 project committed to that. Look where you are putting people, and according to State law, and our own General Plan advise constraints on low income housing next to active pipelines, freeway, AMPORTS parking lot, traffic and Valero asphalt plant which is a small refinery that emits, on a regular basis, hydrogen sulfite gas. If you talk about allowing a site like that to be developed, it would be shocking to let that happen by fiat. The site on East H, that suddenly becomes available for residential development of a large number of units, then the preponderance of sites – and this addresses Daina's points – is not fair that the east side gets the lion's share of development potential/maximum development especially if one of the parcels could be developed by right. 1471 Park Road should not be developed for housing 2-1
2-2
- this EIR is gargantuan, one of the largest I've read, is very confusing. There are all these tables. I'm very concerned, is the Draft EIR reviewing an existing adopted HE update or is a moving target? Why am I writing comments on an EIR if the revised HEU is not being discussed. Chapter 3.5, collectively all 181 sites that will be used by the city to meet the RHNA will be the Housing Element Sites Inventory. These 180 sites would contribute 2,227 units to mee the RHNA. This EIR also evaluates the conservative possibility that all sites are developed to 100% of their proposed density that would produce a total of (??). I did the math and went through the table, to add up all the sites on the east side under that conservative scenario. Approximately 1,220 units possible development beyond 2031, those figures even if you take into account the desire to have a buffer so that when HCD rejects a few sites we can cover 750 units, what I'm getting at I think is how difficult it is to understand what we are reviewing. There are so many figures about the number of sites, etc. That figure of how many sites on the east side would be...it's at least 1/3 of the total developable sites in the city and we are the smallest geographic area. Now the ?? units are 4X the number of the total sites required for this 8 year housing element cycle. I'm thinking maybe PlaceWorks and city staff are thinking ahead past 2031 and doing a little scenario building while we consider the Safety Element update that is also consider by this DEIR. When you consider all the State and Federal laws that govern these possibilities, what Trevor has said is right on the money. It's an inhibiting factor that we have as many laws as we do to conform to climate adaptability issues restricting GHG and what the previous caller from East I Street said, Michael Hayes, he's right on too. There's no way to avoid net increases in pollution 2-3
2-4
2-5

3. Revisions to the Draft EIR

and everything that each human person contributes to this planet. I don't know what this DEIR is covering. The Revised HEU? Why am I writing comments on this? What is being reviewed?

2-5
CONT'D

3. Revisions to the Draft EIR

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3. Revisions to the Draft EIR

2. Response to Comments from Marilyn Bardet, dated December 13, 2022.

2-1 The commenter raises question regarding if the EIR addresses the revised Housing Element Update based on HCD's review.

See response to comment 1-2.

2-2 The commenter is concerned about the number of sites in the East Side specifically at East H Street and 1471 Park Road considering the environmental constraints and SB 35 project.

As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary.

2-3 The commenter is concerned that sites next to active pipelines, freeway, AMPORT's parking lot, traffic, and Valero plant. The commenter states it is unfair that the east side gets majority of development potential/maximum development especially if one of the parcels can be developed by right. The commenter states 1471 Park Road should not be developed for housing.

As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary.

2-4 The commenter is confused about if the DEIR is analyzing the revised HEU. The commenter explains 180 sites will be used by the City to meet the RHNA of 2,227 units. The commenter found that adding all the sites on east side under the conservative scenario would amount to approximately 1,220 units for possible development beyond 2031. The commenter states that the DEIR is difficult to understand due to many figures about the number of sites.

See response to comment 1-2. Commenter is correct, 2,227 units have been identified in the Housing Element to meet the City's RHNA. This total corresponds to the "realistic unit capacity" that is used in the Housing Element to identify the total number of units that will be counted toward the City's RHNA. While the "realistic" development capacity is identified in the EIR for informational purposes, the primary scenario used to evaluate potential impacts in the EIR is the "maximum" development capacity. This is scenario represents the conservative possibility that all sites are developed to their maximum allowed capacity which would result in a total buildout of 3,584 units.

The analysis in the EIR does not recognize the distinction between different geographic areas of the City, except in such cases where this distinction is relevant to the purposes of CEQA. For example, sites in historic districts are analyzed separately from those outside of these districts in Impact CULT-1 of Section 4.4, *Cultural Resources*. Commenter's separate calculations regarding the number of units in the east side of the City are not relevant to identifying specific CEQA impacts.

3. Revisions to the Draft EIR

2-5 The commenter states that Place Works and the City are thinking ahead past 2031 and doing scenario building for the Safety Element Update (SEU). The commenter states that the amount of State and Federal laws to conform to climate adaptability issues restricting GHG are an inhibiting factor. The commenter states there is no way to avoid net increases in pollution considering everything each person contributes. The commenter reiterates that they are not sure what the DEIR is reviewing.

The purpose of the Community Health and Safety Element is to establish a framework that anticipates these hazards and prepares the community to minimize exposure to these risks. The DEIR identifies significant and unavoidable impacts in regard to Impact AIR-2 despite mitigation measures. See response to comment 1-2.

3. Revisions to the Draft EIR

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3. Revisions to the Draft EIR

LETTER 3 (Comments from December 13, 2022 Public Hearing) – Karen Massey (1 pages)

Summary of Verbal Comments
2021-2031 Housing Element & Safety Element Updates DEIR
December 13, 2022, Planning Commission Meeting

Karen Massey

- Represents 1043 Grant Street. Commend efforts and data. Draft EIR and Draft Housing Element, have been following and understand intent to rezone to CO with overlay. I want to point out a minor inconsistency between November draft Housing Element and Draft EIR. Realistic Capacity is noted as 6 units (consistent with our preliminary yield study) – please review this and correct November version of Housing Element to reflect realistic capacity of 6 units. We would like for this to be addressed to avoid confusion going forward.

3-1

3. Revisions to the Draft EIR

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3. Revisions to the Draft EIR

3. Response to Comments from Karen Massey, dated December 13, 2022.

3-1 The commenter points out inconsistency between November draft Housing Element and Draft EIR. Regarding the realistic capacity for the site on 1043 Grant Street The commenter asks to review and correct November version of Housing Element to reflect realistic capacity of 6 units.

See response to comment 1-2. The realistic development capacity of this site listed in Table 3-3, *Opportunity Sites*, of the DEIR is correct. As this comment concerns potential revisions to the Housing Element and does not identify any deficiencies within the EIR, no further response is necessary.

3. Revisions to the Draft EIR

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3. Revisions to the Draft EIR

LETTER 4 (Comments from December 13, 2022 Public Hearing) – Steven Goetz (1 page)

Summary of Verbal Comments

2021-2031 Housing Element & Safety Element Updates DEIR

December 13, 2022, Planning Commission Meeting

Steven Goetz

- Alternative 6.4 eliminates all significant historic impacts of the project. It says there are 17 sites in the two designated historic districts. Those sites create the significant impacts to historic resources that the project cannot avoid. Alternative 6.4 eliminates those sites and significant impacts to historic resources. The removal of these opportunity sites in historic districts is also the superior alternative and in addition, that alternative meets every objective that the housing element is required to meet. It doesn't give you as big a buffer of housing, but how big a buffer do you need? Is this a moving target? (something I missed). This is very unlike the past Council where there was no choice. The EIR says there is a choice to provide the needed housing and protect historic resources. Past city councils didn't have the backbone to stand up and protect historic resources. Consider adopting alternative 6.4 as the project. Interesting information in project description – identifies 2,277 dwelling units to meet the RHNA numbers which I think are 750. The EIR gets to the issue that the Mayor brought up, that housing must go in the East Side because that's the only place to put it. Show us that you can't eliminate a substantial number of units on the East Side and also meet the RHNA numbers. Tell the public the truth.

4-1

3. Revisions to the Draft EIR

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3. Revisions to the Draft EIR

4. **Response to Comments from Steven Goetz, dated December 13, 2022.**

4-1 The commenter references Alternative 6.4 which eliminates all significant historical impacts of the project by removing 17 sites in the two designated historic districts. The commenter also notes the Alternative 6.4 is the superior alternative, meets every objective however does not provide a big buffer but questions how much of a buffer the City needs. The commenter states the past city council did not have a backbone to protect historic resources. The commenter encourages the council to adopt Alternative 6.4 and not support all housing in the east side of Benicia while also meet the RHNA numbers.

As this comment does not describe any inadequacies to the DEIR, no changes to the DEIR are necessary. This comment will be forwarded to decision makers for their consideration.

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LETTER 5 (Comments from December 13, 2022 Public Hearing) – Mayor Steve Young (1 page)

Summary of Verbal Comments

2021-2031 Housing Element & Safety Element Updates DEIR

December 13, 2022, Planning Commission Meeting

Mayor Steve Young

- Asks which are the 2 sites in the historic district considered for removal? 5-1
- Asks questions of water supply – water rights and if considered in the DEIR. Concerns regarding future housing and water supply considering CA is in drought and how are water sources considered in the DEIR. 5-2
- Asks how is state responding to the question of water supply? We have contracts and access to water – but those are short term answers. We are talking about 8 years, the potential length of the drought. Needs to be asked. Potential domestic sources locally.
- States one of the sites on East H is on the water. May have to build back further from the shoreline and reduce the number of units 5-3
- In Eastern Gateway Study, we have a trailer park owned by Mr. Pedrotti, potentially up to 5 stories of housing right next to the freeway. If there are restrictions, it is on us to let him know and talk to him about that potential challenge. 5-4
- Asks question regarding aesthetics impacts and site 35 from housing sites inventory
- States we don't enforce our view ordinance. May be different in the Arsenal. In the rest of the city, people build in someone's view and we don't enforce. 5-5

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5. Response to Comments from Mayor Steve Young, dated December 13, 2022.

- 5-1 The commenter asks which two sites in the historic district are considered for removal.
- On page 6-10 of the DEIR, Alternative 6.3, Avoidance of Historical Resources Alternative, proposes APN 089-371-020 on 190 East F Street and APN 088-141-060 on 190 East L Street would be removed from the Housing Elements sites inventory.
- 5-2 The commenter asks if water supply and water rights are considered in the DEIR. The commenter has concerns regarding future housing and water supply considering reoccurring drought in CA and asks if this is considered in the DEIR. The commenter asks how is state responding to the question of water supply.
- On page 4.9-11 of the DEIR, under subheading Water Resources provides information regarding the city of Benicia's water supply and water rights to water resources. Page 4.16-10 of the DEIR, under 2020 Urban Water Management Plan subheading provides information about the 2020 Urban Water Management Plan which includes an assessment of the present and future water supply sources and demands within the City's service area and a drought risk assessment through 2045. Page 4.9-11 of the DEIR, under subheading Water Resources provides information regarding the City of Benicia's water supply and water rights to water resources. Page 4.16-10 of the DEIR, under the 2020 Urban Water Management Plan subheading provides information about the 2020 Urban Water Management Plan includes an assessment of the present and future water supply sources and a drought risk assessment contingency plan through 2045. Impact UTIL-5 on page 4.16-19 of the DEIR, determines that based on 2020 UMP reports and the City' water agreements that the HEU's projected 10,085 AFY would not exceed the City's most constrained level (multi-year drought) which is 17,006 AFY.
- 5-3 The commenter states one of the sites on East H is on the water and may have to build back further from the shoreline and reduce the number of units.
- There are a total of nine sites located on East H Street: APN: 0080180050, 0080180150, 0080180110, 0080180130, 0089052290, 0089052160, 0089072170, 0089072160, and 0089072150, none of which are on the water. However, Table 1-2, Sensitive Sites on page 1-28 lists four sites APN: 0080180050, 0080180150, 0080180110, 0080180130 that are within very high or high liquefaction and flood hazard zone (100-year or 500-year floodplain). As this comment does not describe any inadequacies to the DEIR, no changes to the DEIR are necessary.
- 5-4 The commenter states that in Eastern Gateway Study, we have a trailer park owned by Mr. Pedrotti, potentially up to 5 stories of housing right next to the freeway. If there are restrictions, it is on us to let him know and talk to him about that potential challenge.

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As this comment does not describe any inadequacies to the DEIR, no changes to the Draft EIR are necessary.

- 5-5 The commenter asks questions regarding aesthetics impacts in regard to site 35 from the housing sites inventory. The commenter states we don't enforce the view ordinance and may be different in the Arsenal.

Based on Appendix 3-1, City of Benicia Housing Element Update (August 2022), site 35 (APN: 079020360) is located at 2170 Columbus Parkway. site 35 is analyzed for its potential aesthetic impact under Impact AES-1 on pages 4.1-7 of the Draft EIR. As stated in the analysis under Impact AES-1 of the Draft EIR, since site 35 is zoned as General Commercial, the HEU would adopt an overlay allowing for 35 feet of building height. The adoption of the overlay would result in a decrease of potential building heights from 40 feet to 35 feet for Site 35. A reduction of building height would not negatively impact views when compared to the existing condition and Impact AES-1 would remain less than significant.

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LETTER 6 (Comments from December 13, 2022 Public Hearing) – Tom Campbell, Council Member (1 page)

Summary of Verbal Comments

2021-2031 Housing Element & Safety Element Updates DEIR

December 13, 2022, Planning Commission Meeting

Council Member Tom Campbell

- States considering 750 units, how much water does one person use per year and the potential acre feet we are talking about. The second question is what, right now, is our buffer? How close are we to not having enough water for the citizenry as things stand right now? We use a little less than X acre fit, goes to Valero and resident's needs, give or take we are talking about 4000-4500 acre feet of water per year for Benicia's residents. How many acre feet does that set of assumptions add to that and can we have enough excess water to cover it? A drought year, we haven't had a lot of good years, in last 20 years we have had 3 years where we hit average. We are in a constant drought for 15-20 years.
- Asks who does studies on sites for aesthetics impact

6-1

6-2

6-3

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6. Response to Comments from Mayor Steve Young, dated December 13, 2022.

6-1 The commenter asks how much water does one person use per year and the potential acre feet considering 750 units.

Impact UTIL-4 on page 4.16-18 of the Draft EIR uses a conservative approach to calculate acre-feet of water per year under maximum total units (3,584) and realistic total units (2,277) under the HEU. Using the 2020 UWMP's single-family residential indoor per dwelling unit use factor of 0.15-acre feet per year, it is estimated the Housing Element Inventory sites would result in a demand of approximately 538 total acre-feet of water per year (AFY) under maximum capacity and 342 AFY under realistic capacity.

6-2 The commenter has concerns regarding water supply. The commenter states that some water goes to Valero and other to residents therefore how many acre feet does that set for assumptions and if there will be enough excess water to cover it. The commenter also adds that during there have been drought years consecutively.

See response to comment 5-2.

6-2 The commenter asks who does studies in sites for aesthetics impacts.

As this comment does not describe any inadequacies to the DEIR, no changes to the DEIR are necessary. This comment will be forwarded to decision makers for their consideration. The City conducts aesthetic evaluation pursuant to the municipal code as part of a development permit application.

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LETTER 7 (Comments from December 13, 2022 Public Hearing) – Kyle Ochendusko (1 page)

Summary of Verbal Comments

2021-2031 Housing Element & Safety Element Updates DEIR

December 13, 2022, Planning Commission Meeting

Kyle Ochendusko

- States since this is a programmatic EIR, we must respond programmatically. Looking at complete buildout it's 5% of customer base, very small domestic use on top of total use. About 2.5% of city's total use is being contemplated in this programmatic document. We are looking at rounding and hypotheticals. Looking at portfolio, what's being contemplated is very small in light of our portfolio and what we have access to. We have access to a year's worth of water. The water allocation is renewed annually. We return to water availability and water uses, more granularly in the UWMP, but there are adequate water resources to support eventual buildout for the EIR and the discussion tonight

7-1

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7. **Response to Comments from Kyle Ochenduszko dated December 13, 2022.**

7-1 The commenter states about 2.5 percent of the City's total water use are being contemplated in the Draft EIR. The commenter states that what is being contemplated in the EIR is small compared to the City's water portfolio and the City has access to a years' worth of water and is allocation is renewed annually. The commenter believes there are adequate water resources to support the buildout of the Draft EIR for the HEU.

As this comment does not describe any inadequacies to the DEIR, no changes to the DEIR are necessary. This comment will be forwarded to decisionmakers for their consideration.

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LETTER 8 (Comments from December 13, 2022 Public Hearing) – Kathleen Catton (1 page)

Summary of Verbal Comments

2021-2031 Housing Element & Safety Element Updates DEIR

December 13, 2022, Planning Commission Meeting

Planning Commissioner Kathleen Catton

- How does or are flood maps is addressed in the EIR
- Asks on flood maps in EIR, a couple of sites in the 100 map are 1 to 2 to 4 feet of sea level rise. How is that addressed in the EIR and how does it affect those sites?

8-1

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8. Response to Comments from Kathleen Catton, Planning Commissioner, dated December 13, 2022.

8-1 The commenter asks how does or are flood maps addressed in the EIR. The commenter states there are a couple of sites in the 100-year map.

See response to comment 5-3 in regard to sites that are identified to be in flood maps. Impact HYD-4 on page 4.9-28 of the DEIR states that sites identified to be within mapped areas of increased flood hazards would be addressed through design constraints such as reduced capacity. In addition, following City's regulations such as Municipal Code Chapter 15.48, Provisions for Flood Hazard Reduction. Since this is a programmatic level EIR, once development is proposed there is a site or project specific review to more fully address those issues.

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LETTER 9 (Comments from December 13, 2022 Public Hearing) – Trevor Macenski, Council Member (1 page)

Summary of Verbal Comments

2021-2031 Housing Element & Safety Element Updates DEIR

December 13, 2022, Planning Commission Meeting

Council Member Trevor Macenski

- States that if sites qualify for streamlining they will not have a project-level environmental review. I don't want to give the impression that it would not be the case. 9-1
- Want to see a mitigation summary that cross-correlates with the housing sites inventory so that the implications are clear to people. Some mitigations, I don't know if people will realize that those mitigations will impede the use of gas on the project site. Brings into question the feasibility of implementing the mitigation. For example, all residential projects to not utilize gas. I think it's speculative and not feasible because the Council hasn't taken a policy position on that. 9-2
- I also think the mitigation measure to cut gas is a deterrent measure for small projects. A house on a small single-family lot, and developer knows someone wants gas, will they pick that lot or move on? Recommends more information about how the mitigation measure will affect smaller housing projects
- Asks about the why include noise mitigation measure for sites within 200 feet of a rail line in the DEIR. Oversight relative to geographic fact checking. 9-3
- Parcel layouts, development feasibility. BCDC, density. Waterfront sites, we should confirm development assumptions. If square footage is an acre, but half of it falls within the bay, are we being accurate with the amount of units projected? 9-4
- Distance for HCD and siting, we might have missed the mark on operational health risk related to I-780. We know that I-780 is high volume which contributes criteria air emissions. BAAQMD has guidelines for siting, we don't have a mitigation in here that says when adjacent to freeway you must prepare an HRA. If a property owner is looking at this, the real feasibility given sensitive use, should trigger for parcels along the freeway. Suggests creating mitigation measure for sites near and or adjacent to the freeway 9-5
- Concerns about site 35 directly adjacent to state park and states the DEIR should analyze those impacts in order to protect public views. Site 35 must require completion of visual impact evaluation with simulations since it's right next to a State Park. We do in transparency say that buildings can be between 35 and 40 feet. On site 35 is one of the highest points in town and will be very visible. 9-6
- Need to be transparent about the challenges we anticipated. If you need to do an HRA and visual impact analysis, I begin to question the long term feasibility of the sites developing.
- In our community, we have protected view corridors. If you have a protected view corridor and a 45 foot building blocks the view corridor, that could be a significant impact. When you talk about scale, it has the potential to impact. 9-7
- The comment of when CEQA kicks in, when you have a larger project and are contemplating implications, what I'm trying to express are known conditions we know can take place as a result of developing parcels to where there will be challenges. We need to communicate that to the public.

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9. Response to Comments from Trevor Macenski dated December 13, 2022.

9-1 States that if sites qualify for streamlining they will not have a project-level environmental review.

As this comment does not describe any inadequacies in the DEIR, no changes to the DEIR are necessary. SB-35, which was adopted by the state to accelerate the production of affordable housing eliminates CEQA review by declaring certain qualifying housing projects to be ministerial acts. There are also other state laws that exempt certain housing development projects from the application of CEQA. CEQA does not provide any new legislative authority to lead agencies and only reports on the regulations that apply to development.

9-2 The commenter recommends providing a mitigation summary that cross-correlates with housing sites inventory. The commenter also questions mitigation measures that impeded the use of gas on new housing sites. The commenter believes the mitigation measure is speculative and not feasible because the Council hasn't taken a policy position on that.

The DEIR provides Table 1-1, Summary of Impacts and Mitigation Measures, on page 1-9. The mitigation measures the commenter is referring to is Mitigation Measure GHG-1b which requires that new development on Housing Element sites not include natural gas appliances or natural gas plumbing. The DEIR also includes 2022 Building Energy Efficiency Standards which become effective and replace the existing 2019 standards on January 1, 2023. The 2022 standards require mixed-fuel single-family homes to be electric-ready to accommodate replacement of gas appliances with electric appliances.

9-3 The commenter asks why include noise mitigation measure for sites within 200 feet of a rail line in the DEIR and states this is an oversight relative to geographic fact checking.

Upon further review of the project sites and location of the rail line, mitigation measure NOI-2b can be removed as none of the sites are within 200-feet of a rail line. Please see Section 3.2 of this FEIR.

9-4 The commenter states waterfront sites should confirm development assumptions. The commenter asks if square footage is an acre, but half of it falls within the bay, are we being accurate with the number of units projected.

The number of number projected units considers the developable size of parcels that are partially submerged. The acreage listed within the Table 3-4, *Suitably Zoned/ Designated Sites*, in Chapter 3, *Project Description*, shows the entire size of all parcels.

9-5 The commenter states that I-780 is a high-volume area that contributes to criteria air emissions and BAAQMD has guidelines for siting. The commenter suggests creating a

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mitigation measure for sites near and or adjacent to the I-780 freeway such as prepare a Health Risk Assessment (HRA).

Mitigation Measure AIR-2b on page 4.2-45 of the DEIR states that for development projects subject to discretionary review, future applicants shall prepare and submit a technical assessment evaluating potential project- operation-phase-related air quality impacts. If the evaluation determines to have the potential to exceed with the Bay Area Air Quality Management District (BAAQMD) adopted thresholds, then the applicant would need to incorporate mitigation measures to reduce air pollutant emissions during operational activities which could include requiring preparing a health risk assessment (HRA). Moreover, impacts on future residents from vehicle activity on I-780 would constitute environmental impacts on the project and would be outside the scope of a CEQA analysis. Nonetheless, including this mitigation measure would not change the determination that impacts would be significant and unavoidable since operational emissions have the potential to exceed the BAAQMD significance thresholds.

- 9-6 The commenter states concern regarding site 35 which is directly adjacent to a State Park and states the DEIR should analyze those impacts in order to protect public views and require completion of visual impact evaluation.

See response to comment 5-5. Site 35 is currently vacant. The HEU would allow for residential development on the site, which has the potential to impact viewsheds in the surrounding area. However, considering there are surrounding buildings directly adjacent to State Park, Site 35 would have similar building heights to surrounding buildings. In addition, the DEIR states on page 4.1-7, that sites proposed to MU-I, which site 35 is proposed for MU-I, would be required to follow standards set in Chapter 17.26, Mixed Use Districts, of the Municipal Code requiring design standards to streamline development proposals while also ensuring high quality design that fits into the existing context. Therefore site 35 would go under an assessment to ensure that the site is visually compatible with surrounding area. Therefore, the analysis under Impact AES-1 on page 4.1-6 in the DEIR would remain and not change the impact statement. As this comment does not describe any inadequacies of the DEIR, no changes to the DEIR are necessary.

- 9-7 The commenter states the DEIR need to be transparent about the challenges anticipated. The commenter asks if HRA and visual impact analysis is needed for sites then what is the long-term feasibility of the sites developing. The commenter provides an example of the City's protected view corridors and if a 45-foot building blocks the view corridor then impacts would be significant. The commenter expresses the DEIR should report known conditions and potential challenges from developing parcels.

See response to comment 9-5 for HRA and comment 9-6 for visual impact evaluation. In addition, as stated in Chapter 2, Introduction, the DEIR fulfills the requirements for a

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Program EIR (programmatic) which is more conceptual than a Project EIR with a more general discussion of impacts, alternatives, and mitigation measures.

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LETTER 10 (Comments from December 13, 2022 Public Hearing) – Belinda Smith (1 page)

Summary of Verbal Comments

2021-2031 Housing Element & Safety Element Updates DEIR

December 13, 2022, Planning Commission Meeting

Belinda Smith

- A member of the Benicia Historical Society
- Review Table 6.2 on page 6-25. That is the comparison, alternatives to the proposed project. You can see that removing the historic sites allows you to meet your goals, maybe not to the extent that you want. There is an opportunity to prevent devastation of historic resources.
- References table that indicates sites in a historic district which also includes the downtown
- States that infill projects are reducing historical sites/arsenal district

10-1

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10. Response to Comments from Belinda Smith dated December 13, 2022.

10-1 The commenter references Table 6.2 on page 6-25 of the DEIR which compares alternatives to the proposed project. The commenter urges the removal of the housing sites from the City's historical sites. The commenter states by removing the sites would meet goals but maybe not to the full extent. The commenter states that there is an opportunity to prevent losing historic resources and that infill project are reducing the historical sites/arsenal district.

See response to comment C-1 and C-4.

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LETTER 11 (Comments from December 13, 2022 Public Hearing) – Michael Hayes (1 page)

Summary of Verbal Comments

2021-2031 Housing Element & Safety Element Updates DEIR

December 13, 2022, Planning Commission Meeting

Michael Hayes

- Any person who moves to any place or city is a net increase in pollution, energy usage and water usage. There is no way to square that adding population will reduce any of that. To have water as the main focus is irresponsible. We haven't had blackouts. Texas is a pro growth state, very irresponsible and has had massive blackouts recently. Energy viability and importance of reliable supply of energy, especially when I don't see it going away any time soon, the way people use energy now, energy use needs to be elevated to the same level of water supply. Waste disposal is the lost child. No one wants to talk about it but it's every bit as important. Land fills are getting overloaded, there are problems in terms of what you see on the streets. Any person that moves to any given area will increase that. The EIR should elevate those two things on the same level as water. Years ago I lived in Vallejo, I'm a Vallejo native, I've seen the way that city changed over the years and not for the better. I was involved in the early 2000s with a neighborhood group over on Columbus Parkway that was opposing development proposed by a developer. We had a lot of meetings with the city saying we don't want this project, it will change the nature of the neighborhood, it's a nice greenbelt. In the end of the day, the developer waved the money in front of the city's face and they tripped over themselves to take the money. They really didn't care what the residents had to say. Shows the power of money. One of my arguments with the Council members that that time was why would you approve this development with all these homes, at that time there were very few decent jobs, why would you approve all these homes if theres not enough reliable job opportunities for people who are already living there. BY approving homes you are increasing competition in the labor force for a limited supply of jobs. Job availability and future job availability and overall impact on competition in the labor force should also be factored into the EIR. It might be in a minor way. At any rate,that project is getting built right now. I just don't see anything improving, having lived in this area for so long. I remember low flow toilets and thinking it was good for the environment. Had very little to do with the environment and everything to do with building more homes.

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11. Response to Comments from Michael Hayes dated December 13, 2022

11-1 The commenter states that the DEIR should elevate the importance of reliable supply of energy and waste disposal as much as water resources.

Section 4.5, Energy, starting on page 4.5-1 of the DEIR provides information regarding energy use in the City of Benicia as well as analyze the potential impacts the HEU would have on energy use. Section 4.16, Utilities and Service Systems, starting on page 4.16-1 of the DEIR, describes the regulatory framework and existing conditions on the project site related to utilities and service systems, and the potential impacts of the proposed Housing Element. The analysis examines water supply, wastewater, storm drainage, field utilities (water and wastewater) and street maintenance, solid waste, energy supply, and telecommunications. The DEIR evaluates all impacts individually not comparatively, resulting in a determination of no impact, less than significant, less than significant with mitigation, or significant and unavoidable.

11-2 The commenter recalls a similar development project that was occurring in Vallejo and that a neighborhood group opposed the development. The commenter states that although public opposed the project, developers waved money at the city and project was approved.

As this comment does not describe any inadequacies to the DEIR, no changes to the DEIR are necessary. This comment will be forwarded to decisionmakers for their consideration.

11-3 The commenter has concerns about job availability and how that will impacts with growing population especially under the HEU and states the DEIR should evaluate this impact.

Section 4.12, Population and Housing, starting on page 4.12-1 of the DEIR provides information regarding population and housing growth in the City of Benicia as well as analyze the protentional impacts to jobs. In addition, page 5-4 of the DEIR provides discussion of the HEU impact on jobs.

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LETTER 12 (Comments from December 13, 2022 Public Hearing) – Kathy Kerridge (1 page)

Summary of Verbal Comments

2021-2031 Housing Element & Safety Element Updates DEIR

December 13, 2022, Planning Commission Meeting

Kathy Kerridge

- Mitigating ghg by requiring that there be no gas hookups in new homes, the Council hasn't taken that action. Council should move on that immediately, it's the only way to cut short term climate pollutants to get methane out of houses. The Council should get that on track to be in your upcoming legislation. 12-1
- There has been a lot of discussion about water and energy use, we are talking about people living in Benicia and commuting to other places or living in Fairfield or Vacaville. You aren't talking about new water or energy use, just water and energy being used in one place versus another. You save water and energy by high density infill housing. I thought I had raised my hand on the Housing Element session, I have a question – we have to provide 750 and 860. Are we providing more than that, like 1400 units? 12-2
- I think 1400 units is overdoing it. If a site hasn't been developed and is more able to be developed without local restrictions, we are putting parcels at risk if they aren't developed and opening ourselves up. 12-3
- The Historic Arsenal is by major pipelines and is really heavy industry area, if you can pull these units out of that, it does a lot for health and safety 12-4

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12. Response to Comments from Kathy Kerridge dated December 13, 2022

12-1 The commenter encourages the council to approve ghg mitigation that requires no gas hook ups in new homes in order to cut short term climate pollutants and get methane out of houses.

As this comment does not describe any inadequacies to the DEIR, no changes to the DEIR are necessary. This comment will be forwarded to decisionmakers for their consideration.

12-2 The commenter states there have been a lot of discussion about water and energy use, specifically asks if the discussion is about people living in Benicia and commuting to other places or living in Fairfield or Vacaville. The commenter clarifies not talking about new water or energy use, just water and energy being used in one place versus another. The commenter states water and energy are saved through high density infill housing.

The Draft EIR has been prepared to assess the environmental effects associated with implementation of the 2023-2032 Housing Element & Safety Element Updates (proposed project). The proposed project encompasses all properties in the City of Benicia. As this comment does not describe any inadequacies to the DEIR, no changes to the DEIR are necessary. This comment will be forwarded to decision makers for their consideration.

12-3 The commenter asks a question clarifying the number of units. The commenter thinks 1,400 units is overdoing it and if a site hasn't been developed and is able to be developed without local restrictions, we are putting parcels at risk if they aren't developed.

As this comment does not describe any inadequacies to the DEIR, no changes to the DEIR are necessary. This comment will be forwarded to decision makers for their consideration.

12-4 The commenter recommends removing units from the Historical Arsenal considering there are major pipelines and next to a heavy industry area.

As this comment does not describe any inadequacies to the DEIR, no changes to the DEIR are necessary. This comment will be forwarded to decision makers for their consideration. The commenter has been added to the distribution list for the proposed project

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LETTER 13 – Kate Moriarty (1 page)

From: Kate Moriarty [REDACTED]
Sent: Wednesday, December 14, 2022 10:19 AM
To: ComDev <ComDev@ci.benicia.ca.us>; Jason Hade <JHade@ci.benicia.ca.us>
Subject: Comment on Draft EIR for Housing Units in Benicia

Re: [City plan and zone for the construction of 750 housing units at various income limits](#)

We would like to comment on and inquire whether the City includes units for Benicia residents with developmental disabilities.

As of 2018, California shifted away from regional institutions and towards community-based housing for adults with developmental disabilities.

Adults with developmental disabilities include those with Intellectual Disability, Autism, Cerebral Palsy, and Epilepsy.

These persons most often rely on financial supports from federal and state governments which include, but are not limited to, Medi-Cal, Supplemental Security Income (SSI), and In-Home Support Services (IHSS).

To receive these supports, they must qualify based on income, as well as disability. Therefore, some of Benicia's most vulnerable population—persons who require 24-hour supervision and extraordinary care—are low income.

The state of California, through Regional Centers, provides services for individuals with developmental disabilities. But first, there must be a physical structure (a home) in which to provide those services.

There is a need right now in Benicia for homes of up to 4 bedrooms which are wheelchair accessible and ADA compliant, where multiple persons with developmental disabilities can live, while supported by staff.

Persons with a developmental disability who have a low-income housing voucher currently lack such housing options in Benicia.

Thank you for including our comment in your review of Benicia's housing proposal.

Take care and be well,

Kate Moriarty

Assessment Counselor Vendor
North Bay Regional Center
[REDACTED]

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13. Response to Comments from Kate Moriarty dated December 14, 2022.

13-1 The commenter makes comments regarding whether the City of Benicia includes units for Benicia residents with developmental disabilities. The commenter notes that some residents with disabilities rely on financial support from federal and state governments and may be of low-income status. The commenter states persons with developmental disabilities and are of low-income status currently lack housing options in Benicia.

Table 3-1, 2023-2031 Regional Housing Needs Allocation (RHNA) on page 3-3 of the DEIR, shows the Regional Housing Needs Allocation (RHNA) for all housing categories, including housing for very low income and low-income households. In the 2023–2031 Housing Element Cycle (6th cycle), the City of Benicia’s RHNA obligation is a minimum of 750 new housing units. The DEIR includes proposed Housing Element Policies on page 4.12-10, such as Policy 3.0.5 in regard to housing development that meets the special needs of persons with disabilities. As this comment does not describe any inadequacies to the DEIR, no changes to the DEIR are necessary. This comment will be forwarded to decision makers for their consideration.

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LETTER 14 – Steven Goetz (7 pages)



December 19, 2022

Jason Hade, Planning Manager
Community Development Department
City of Benicia
250 East L Street
Benicia, CA 94510
(sent email via comdev@ci.benicia.ca.us)

Dear Mr. Hade:

This letter provides comments on the draft Environmental Impact Report for the Housing and Safety Element Update.

Aesthetics

The Safety Element proposes *Policy 4.17.3: Promote water conservation measures in all public and private development*. To implement this policy the Safety Element proposed Program 4.17.B, which may produce impact aesthetics by encouraging the use of unirrigated landscaping.

The purpose of this program is to promote water conservation measures in all public and private development which will help secure and maintain a sustainable and resilient water supply for Benicia. The state has policies and programs to ensure landscaping promotes a sustainable and resilient water supply for Benicia. The state requires cities to adopt ordinances that provide landscaping requirements for new construction. The ordinances must rely on the use of plant materials listed in the Water Use Classification of Landscape Species (WUCOLS). WUCOLS rates the water use of about 2,700 plant species appropriate for the region that includes Benicia. Only 87 of these plants have their water use rated as “very low”, which is the lowest water use category used by WUCOLS. Very-low water use is defined as needing no irrigation except during years of below average rainfall for the region. No plant species is listed as requiring no irrigation during a drought.

14-1

Has the Safety Element or the Draft EIR evaluated:

- the feasibility of implementing Program 4.17.B to amend local city ordinances, standards, and plans to encourage the use of unirrigated landscaping throughout the city?
- or the impact of landscaping solely with unirrigated plants on the aesthetics resources and values of the city?

Requiring unirrigated landscaping would appear to conflict with several of the State and local regulations that the Draft EIR lists as supporting aesthetic resources and scenic values. In addition, the following General Plan goals not listed in the Draft EIR would also be impacted by a regulation requiring the use of unirrigated landscaping throughout the city:

14-2

- Goal 2.23: Ensure adequate parking while maintaining aesthetic landscape features.
 - Policy 2.23.2: Reduce the visibility of parking lots.
 - Program 2.23.E: Allow future parking to be divided into smaller lots with generous internal and perimeter landscaping.
- Goal 3.11: Enhance the East Side.

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- Policy 3.11.1: Focus public investment toward undergrounding utilities, completing sidewalks, adding walking paths, park amenities, landscaping, and street trees on the East Side.

14-2
CONT'D

The potential impact of Program 4.17.B would appear to exceed the Draft EIRs threshold of significance since the project would conflict with applicable zoning and other regulations governing scenic quality. A mitigation measure for this significant impact would be to revise the Safety Element as follows:

14-3

Program 4.17.B: Amend the zoning ordinance, engineering design standards, and historic conservation plans to encourage the use of drought-tolerant green infrastructure and ~~unirrigated~~, drought-resistant landscaping throughout the city as part of water conservation efforts and cooling strategies in public and private spaces.

The Safety Element proposes Policy 4.14.7: *Promote the use of fire-resistant landscaping in public and private developments.* The purpose of this policy is to reduce the risk and threat from urban and wildland fire hazards. The Safety Element includes Figure 13 which delineates Wildland-Urban Interface Zones in the Benicia. The Safety Element does not define the term fire-resistant landscaping.

14-4

- What is meant by the use of the term fire-resistant landscaping?
- Is fire-resistant landscaping intended to for public and private development throughout the Benicia, or just in the Wildland Urban Interface Zones?

Depending on the definition of “fire-resistant landscaping” and the geographic scope of this landscaping requirement, the Safety Element Update creates a potential significant impact by conflicting with applicable zoning and other regulations and policies governing Benicia’s scenic qualities.

Biological Resources

The Draft EIR states that development of the proposed project could impact sensitive species in the City (Impact BIO-1) and lists this impact as potentially significant. Mitigation measures are proposed that will reduce this impact to a less-than-significant level.

The Draft EIR states that development pursuant to the proposed project could adversely impact wildlife movement in and surrounding the City (Impact BIO-2), and lists this impact as potentially significant. Mitigation measures are proposed that will reduce this impact to a less-than-significant level.

14-5

- How does this project mitigate for development that would be exempt from discretionary review?
- How does this project address potentially significant impacts to sensitive species from projects on vacant parcels that have been included in the land inventories of the 5th and 4th Round Benicia Housing Elements as suitable for lower-income units to address the City’s RHNA allocation that currently require discretionary review, but would become exempt from discretionary view because the City chooses to include these vacant parcels in the proposed Housing Element through Program 1.07?
- How does this project address potentially significant impacts to sensitive species from projects on large sites that the City chooses to make exempt from discretionary review through Program 1.08 of the proposed Housing Element?

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Cultural Resources

Page 4.4-11. The Draft EIR incorrectly states that there are no policies in the Housing Element Update applicable to Cultural Resources or Tribal Cultural Resources. Why the following policies in the Housing Element Update aren't applicable to Cultural Resources? These policies promote sites within the City's Historic Conservation Districts that are subject to discretionary review by the Historic Preservation Review Commission.

14-6

Policy 1.01: To the extent possible and within the City's control, the City shall facilitate the production of housing that is affordable to people with a wide range of incomes.

Policy 1.01 is supported by Program 1.07 which includes vacant parcels in the Housing Element Update that are within the City's Historic Conservation Districts and that have been included in the land inventories of the 5th and 4th Round Benicia Housing Elements as suitable for lower-income units to address the City's RHNA allocation and that currently require discretionary review. Such parcels would become exempt from discretionary review pursuant to State law when the City chooses to include these vacant parcels in the Housing Element Update through Program 1.07.

Policy 1.01 is supported by Program 1.07 which facilitates subdivision of large sites by updating Title 16, Subdivisions, of the Municipal Code to provide objective standards for subdivisions and streamline the parcel maps requirements and review process. The land inventory of the Housing Element Update proposed to include the City-owned 9.41 acre parcel at 1471 Park Road (APN 0080140670) which is located in the Arsenal Historic District and within the purview of the Historic Preservation Review Commission should development be proposed on this site. The City proposes to eliminate discretionary review of the subdivision of this parcel for residential development in the Housing Element Update through Program 1.08.

14-7

The following policy of the Housing Element Update directly impacts the Downtown Historic District:

Policy 2.06: Encourage the development of second- and third-story residential units along First Street in downtown Benicia.

14-8

Page 4.4-12: The Draft EIR's description of the CULT-1 impact to the Downtown Historic District should be expanded as follows:

Given the close proximity of the Housing Element Opportunity Sites listed in Table 4.4-1 to locally designated historic resources, the increase in development intensity under the proposed Housing Element Opportunity Sites Zoning Overlay could produce a substantial adverse change in the significance of an historical resource through the alteration of its surroundings. Significant and unavoidable impacts to historical resources from the proposed project could include: an increase in development intensity which adversely affects cultural sites or landscapes and the introduction of visual, audible, or atmospheric effects that are out of character with the cultural resource or an alteration to its setting when the setting contributes to the resources' significance. As a result, the proposed project would have a significant and unavoidable impact to historic resources in the Arsenal Historic Conservation District.

14-9

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The Draft EIR provides a description for the CULT-1 impact to the Arsenal Historic District, but not to the Downtown Historic District. 14-10

The Draft EIR contains mitigation measures for the significant impacts described as CULT-1, but it is unclear if these mitigation measures actually prevent destruction of the historic resource or merely document the resource prior to its destruction or alternation. Page 6—17 of the Draft EIR states “*Unless otherwise provided by state law, development within the Historic Conservation Districts is subject to design review and approval by the City’s Historic Preservation Review Commission*”. 14-11

Are Mitigation Measures CULT 1 and CULT 2 implemented as a condition of approval for a project or are they implemented as part of the City’s discretionary review procedures prior to approval of a development project within the Historic Conservation Districts? 14-12

The Draft EIR should consider additional feasible and effective mitigation measures for the significant impacts described in CULT-1 since the proposed mitigation measures do not reduce this significant impact to a less-than-significant level. 14-3

If Mitigation Measures CULT- 1 and CULT-2 are conditions of approval, consideration should be given to modifying these mitigation measures to apply prior to discretionary approval by the City. As described in Mitigation Measures CULT-1 and CULT-2, protection of historic resources cannot occur through a cookbook, but requires a public process informed by the interpretation of the Secretary of Interior’s standards by a qualified expert.

Mitigation Measures CULT-1 and CULT-2 apply only to demolition or significant alterations to any structure. A mitigation measure is also needed for infill construction on vacant parcels within the City’s Historic Conservation Districts. The National Park Service, which is the agency responsible for implementing the Secretary of the Interior’s Standards for the Treatment of Historic Properties, has the following description on the appropriate use of the Standards and Guidelines for Preservation, Rehabilitation, Restoration, and Reconstruction:

*“These Standards apply not only to historic buildings but also to a wide variety of historic resource types eligible to be listed in the National Register of Historic Places. This includes buildings, sites, structures, objects and districts.”*¹ 14-14

Consider adding the following mitigation measure to address the significant and unavoidable impacts described as CULT-1:

Mitigation Measure CULT-7: Prior to approval of any project on a vacant parcel in the City’s Historic Conservation Districts, the City shall ensure that a qualified architectural historian who meets the Secretary of Interior’s Professional Qualification Standards provides a report for review by the Historic Preservation Review Commission containing any recommendations for revisions necessary for the project to meet the Secretary of Interior’s Standards for the Treatment of Historic Properties.

¹ <https://www.nps.gov/orgs/1739/secretary-standards-treatment-historic-properties.htm>

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Greenhouse Gas Emissions

Page 4.7-1 explains that the transportation-sector impacts for greenhouse gas emissions (GHG) are based on trip generation and vehicle miles traveled (VMT) provided by Fehr and Peers. Can the Draft EIR provide the report that documents the preparation of this data? 14-15

Page 4.7-10: The Draft EIR refers to the Draft 2022 Scoping Plan Update released by the California Air Resources Board which describes the statewide plan for GHG emissions. This information should be updated with the *2022 Scoping Plan for Achieving Carbon Neutrality* which was adopted by the California Air Resources Board on November 16, 2022. 14-16

The adopted 2022 Scoping Plan summarizes the actions necessary to achieve carbon neutrality in Table 2-1: Actions for the Scoping Plan Scenario. For the Developed Lands sector, actions include increase urban forestry investment by 200% above current levels. The table references AB 2251 (Calderon, Chapter 186, Statutes of 2022) which has the objective to increase the urban tree canopy by 10%.

Appendix D of the adopted 2022 Scoping Plan describes the local actions needed to successfully implement the Scoping Plan. These actions include local urban forestry programs that increase the number of trees and other plants in urban areas, sequester carbon, reduce air pollution and ambient temperatures, help manage stormwater and improve water quality, provide shade to reduce energy demand for cooling buildings (and the associated cost and GHG emissions of that energy), improve aesthetics, foster mental health, and encourage physical activity. 14-17

The Draft EIR should identify feasible and effective mitigations that are available to address the significant unavoidable GHG impacts of the proposed project (GHG-1), and the conflicts between the project and applicable plans.

Page 4.7-31: The Draft EIR incorrectly finds the Safety Element Update has no significant conflict with applicable plans. The Draft EIR needs to re-evaluate the conflict between the Safety Element Update and the adopted 2022 Scoping Plan. 14-18

The Safety Element Update evaluates potential hazards from Extreme Heat which is caused by excessive GHG emissions and describes how trees and other vegetation can help to lower surface and air temperatures. The Safety Element Update includes the following goal:

Goal 4.18: Protect community members and critical infrastructure from high temperatures.

The significant and unavoidable GHG-1 impacts and the local actions recommended by the adopted 2022 Scoping Plan warrant adding, as mitigation measures, the following policy and programs to the Safety Element Update to support Goal 4.18: 14-19

Policy 4.18.3: Increase Benicia's tree canopy 10% by 2035 to reduce urban surface and air temperatures and sequester carbon.

- *Program 4.18.A: Increase tree planting on city parks, open space, trails, streets and other city property*
- *Program 4.18.B: Develop a program to encourage property owners to plant street trees.*

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- *Program 4.18.C: Implement funding mechanisms and recruit community volunteers to maintain trees in public spaces.*
- *Program 4.18.D: Evaluate and revise the Benicia Municipal Code requirements for landscaping and tree planting to ensure new development and city improvements adequately shade sidewalks, parking and other paved areas.*

14-19
cont'd

Page 4.8-25: The Safety Element Update lists policies applicable to Hazards and Hazardous Materials. Add to the Draft EIR the following policy from the Safety Element Update that is applicable to Hazards and Hazardous Materials:

Policy 4.15.8: Establish buffer zones between sensitive land uses and land uses that involve the significant use, storage, or disposal of hazardous materials, hazardous waste or toxic air contaminants.

Page 4.8-26: A purpose of the Safety Element Update is to protect the public from hazards and hazardous materials. The Safety Element Update would create a significant hazard to the public and environment through inadequate policies to reduce risk through the routine transport, use or disposal of hazardous materials. Policy 4.15.8 does not apply buffer zones between sensitive land uses and land uses that involve **transport** of hazardous materials, hazardous wastes and toxic air contaminants.

14-20

Failure to provide buffer zones between sensitive land uses and land uses that involve transport of hazardous materials, hazardous wastes and toxic air contaminants would create a significant impact due to the location of industrial facilities in Benicia that transport such substances. Pipelines that transport petroleum products between the Valero Benicia Refinery and the Port of Benicia require buffers. Valero's petroleum coke terminal at the Port of Benicia involves the transport of petroleum coke and requires a buffer. Additionally, the Safety Element Update fails to establish siting criteria for facilities that transport hazardous waste, provide for the review of building applications for any proposed transport of hazardous waste, or establish procedures to review the monitoring records for hazardous waste store areas and pipelines.

Project Alternatives

The City Council should adopt the environmentally superior alternative as described in the Draft EIR in lieu of the proposed Housing Element Update. The Draft EIR shows that there are 17 sites in the City's two designated historic districts (i.e. Downtown Historic District and Arsenal Historic District) that are included in the project sites inventory and create a significant adverse impact to historic resources that the project cannot avoid. The Draft EIR provides an alternative to this project that avoids this significant adverse impact, is environmentally superior to the project for other environmental impacts, and meets **all** of the project's objectives.

14-21

Page 6-16 of the Draft EIR describes Alternative 6.4 "*Removal of All Opportunity Sites in a Historic District*" as an alternative to the proposed project (draft Housing Element Update). This alternative removes the 17 sites in the City's two designated historic districts which are responsible for the significant impacts to these historic districts and which the project cannot avoid. The Draft EIR finds that Alternative 6.4 not only eliminates the significant impact to Benicia's historic districts, it also reduces impacts to aesthetic resources, energy, geology and soils, greenhouse gas emissions, hazards and hazardous material, hydrology and water quality, public services, population and housing, and

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transportation when compared to the proposed project, and is therefore environmentally superior to the proposed project (see Table 6-1: Comparison of Project Alternative to the Proposed Project).

The Draft EIR also finds that if the City adopts its environmentally superior alternative, it will meet all of the project objectives as shown in Table 6-2: Comparison of Alternatives to Project Objectives. The Draft EIR states that if the city removes all sites in a historic district it will not provide as much affordable housing, but it fails to quantify this conclusion to understand if this difference is materially significant to the City's responsibilities under State law. The Draft EIR should compare the housing units generated by the sites provided by Alternative 6.4 to meet the RHNA with the sites provided by the proposed project, so the City Council will now how adequately Alternative 6.4 meets the responsibilities of the City under state law.

14-21
cont'd

As stated on Page 155 of the Housing Element Update:

"Given the quality of Benicia's historical and architecturally significant structures, and the contribution of these structures to the image and quality of life in Benicia, the historic preservation policies and regulations are reasonable and appropriate. Regulations are limited to two areas in Benicia, and as such, these regulations do not pose an unreasonable constraint to residential development in Benicia".

Thanks for the opportunity to comment.

Regards,


Steven Goetz

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3. Revisions to the Draft EIR

14. Response to Comments from Steven Goetz dated December 19, 2022

14-1 Commenter states that Program 4.17.B of the draft Safety Element could produce aesthetic impacts by encouraging the use of unirrigated landscaping. Commenter states the requirements of the California Model Water Efficient Landscape Ordinance (MWELo) and its requirement to use plant materials listed in the Water Use Classification of Landscape Species (WUCOLS). Commenter states that all plant species suitable for Benicia listed in the WUCOLS would require irrigation during a drought, such that there are no viable species that could survive unirrigated during a drought. Commenter asks if the Safety Element or the Draft EIR evaluates the feasibility of implementing the program to amend local city ordinances, standards, and plans, and furthermore, whether these documents evaluate the impacts of landscaping with unirrigated plants on aesthetics resources.

Note that the labeling of the referenced policy and program have been amended since the publishing of the DEIR and its Appendix 3-2 containing the draft policies and programs of the Safety Element Update. Former Policy 3.3 regarding water conservation measures is now listed as Policy 4.17.3 and former Program 3.3.1 is now listed as Program 4.17.B, as stated by Commenter.

The feasibility of implementing Program 4.17.B is not an issue relevant to CEQA and is not further analyzed within the DEIR, nor does it appear to conflict with regulations such as MWELo. As stated in Program 4.17.B, the possible amendments to the City's zoning ordinance, engineering design standards, and historic conservation plans would seek to encourage drought-tolerant landscaping and green-tolerant infrastructure. This Program does not present any requirement that all or any future landscaping in the City be unirrigated. Furthermore, while Commenter implies that the use of unirrigated landscaping would conflict with WUCOLS standards, Commenter does not state why the addition of unirrigated landscaping in public and private spaces could potentially impact aesthetic resources. As no changes have yet been made to the City's regulations and standards, no potential impact can be evaluated.

14-2 The commenter states that requiring unirrigated landscaping would conflict with several regulations that the Draft EIR lists as supporting aesthetic resources. The commenter also states that Goal 2.23, Goal 3.11, and Policy 3.11.1 from the City's General Plan would be impacted by a regulation that requires the use of unirrigated landscaping throughout the City.

See response to comment 14-1. Commenter does not elaborate as to why Program 4.17.B would conflict with the listed General Plan goals, policies and program. Program 4.17.B would not require the use unirrigated landscaping nor is such landscaping expected to reduce visibility in parking lots, affect the landscaping within and on perimeter of parking lots, or conflict with public investment in the East Side of Benicia.

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- 14-3 The commenter states that Program 4.17.B would appear to exceed the DEIR's threshold of significance since the project would conflict with applicable zoning and other regulations governing scenic quality and proposes as mitigation measure to revise the Safety Element program.

Program 4.17.B directs the City to amend its landscape ordinance and design standards to include all types of water conservation elements. As this is a City directed change in standards compliance with other provisions of the General Plan and municipal code must be considered at the time of revision. There is nothing in Program 4.17.B that mandates a specific change in the Historic District design standards, or the provisions of Benicia Municipal Code § 17.70.190 Landscaping, Irrigation, and hydroseeding, only that the revisions include a description of irrigated and non-irrigated space. This is already a requirement for preparation of landscaping plans within the City with specific guidance on the type of materials considered acceptable. (§ 17.70.190 D) The recommended change to the Policy would have no effect on the findings of the DEIR, and could therefore be made by the decisionmakers at the time of consideration.

- 14-4 The commenter states Policy 4.14.7 which promotes the use of fire-resistant landscaping in public and private developments. The commenter asks what is meant by the use of the term fire-resistant landscaping and if it is intended for public and private development throughout the City or just in the Wildland Urban Interface (WUI) Zones. The commenter states depending on the definition of fire-resistant landscaping, the Safety Element Update creates a potential significant impact to the City's scenic resources.

Note that referenced Policy has been included in the draft Safety Element following the release of the DEIR and is therefore not included within Appendix 3-2 of the DEIR. Fire-resistant landscaping refers to a variety of landscaping practices that are used to resist and slow the spread of fire in a landscaped area. For example, this could include the selection of specific plants with fire resistant qualities including high-moisture plants that grow close to the ground and have a low sap or resin content; fire-retardant plant species that resist ignition such as rockrose, ice plant and aloe; and trees with low-flammability such as hardwood, maple, poplar and cherry trees. However, these practices also include plant placement, vegetation maintenance, and the use of firebreaks. Please see the California Department of Forestry and Fire Protection's webpage regarding Fire Smart Landscaping for more details: <https://www.readyforwildfire.org/prepare-for-wildfire/get-ready/fire-smart-landscaping/>.

This Policy does not require the use of fire-resistant landscaping in either WUI Zones or in other areas of the City. However, the intention of this Policy is to promote fire resistance in any area of the City that could potentially be impacted by wildfire. As Commenter does not identify a specific reason as why this Policy may impact aesthetic resources, no revisions to the EIR are necessary.

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- 14-5 The commenter states DEIR impact determination for Impact BIO-1 and BIO-2. The commenter asks how the project mitigates for development that would be exempt from discretionary review. The commenter asks how the project address potentially significant impact to sensitive species from projects on vacant parcels that have been included in the land inventories of the 5th and 4th round of Benicia Housing Element and would be exempt from discretionary review through program 1.07. The commenter also asks how this project addresses potentially significant impacts to sensitive species from projects on large sites that the City chooses to make exempt from discretionary review through Program 1.07.

Impacts BIO-1 and BIO-2 analyze impacts that could occur to biological resources from the proposed Housing Element and Safety Element at a programmatic level. With respect to housing development projects that are exempt from discretionary review, SB-35, which was adopted by the state to accelerate the production of affordable housing eliminates CEQA review by declaring certain qualifying housing projects to be ministerial acts.. SB-35 does require compliance with the City's objective standards. See also changes to the biological measures recommended by CDFW in Section 3.2. DEIR Revisions in response to written comments in this FEIR.

- 14-6 The commenter states the DEIR incorrectly states that there are no policies in the HEU applicable to Cultural Resources or Tribal Resources specifically Policy 1.01. The commenter states Policy 1.01 is supported by Program 1.07 which includes vacant parcels in the HEU that are within the City's Historic Conservation Districts.

Policy 1.01 does not allude to protecting or preserving historical or cultural resources rather the Policy aims to increase affordable housing in the City. Although Program 1.07 supports Policy 1.01 and may include vacant historical resources, the statement made in the DEIR on page 4.4-11 regarding no applicable policies to Cultural Resources or Tribal Cultural Resources is correct.

- 14-7 The commenter states that Policy 1.01 is supported by Program 1.07 which facilitates subdivision of large sites by updating Title 16, Subdivisions, of the Municipal Code. The commenter states the land inventory of the HEU includes the City-owned 9.41-acre parcel at 1471 Park Road (APN 0080140670) which is in the Arsenal Historic District and within the purview of the Historic Preservation Review Commission. The City proposes to eliminate discretionary review of the subdivision of this parcel for residential development in the Housing Element Update through Program 1.08.

See response to comment 14-6. Page 4.4-15 of the DEIR analyzes APN 0080140670 and states that development within the Arsenal Historic Conservation District is subject to the design review process of the Arsenal Historic Conservation Plan which ensures that modifications within the Benicia Arsenal Plan Area will continue to maintain the historic

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integrity of the district. In addition, the City's Objective Planning Standards incorporate the objective requirements of the Arsenal Historic Conservation Plan.

- 14-8 The commenter states that Policy 2.06 of the Housing Element Update directly impacts the Downtown Historic Districts.

As stated, Policy 2.06 of the Housing Element Update encourages but does not require second and third floor residential and SB-35 limitations on demolition of historic structures would remain. Impact CULT-1, Section 4.4.5, Environmental Impacts, of Section 4.4, Cultural Resources on pages 4.4-12 through 4.4-17 of the Draft EIR discuss the impacts of the development on all proposed housing sites in the City's Historic Districts.

- 14-9 The commenter recommends revisions to the DEIR's analysis of the CULT-1 impact to the Downtown Historic District on page 4.4-12.

Commenter does not propose any changes that would affect the conclusions made in the DEIR. Impacts would remain significant and unavoidable with regard to historic resources in both historic districts.

- 14-10 The commenter states the DEIR provides a description for the CULT-1 impact to the Arsenal Historic District but not to the Downtown District.

The discussion of impacts in the Downtown District is provided on pages 4.4-12 and 4.4-13 of the DEIR.

- 14-11 The commenter asks for clarity regarding Mitigation Measure CULT-1 if it prevents destruction of the historic resources or document the resources prior to destruction or alteration.

The DEIR states on page 4.4-16 that Mitigation Measures CULT-1 and CULT-2 would ensure that any unknown/unevaluated buildings or structures 45 years or older on the Housing Element inventory are evaluated for potential historic significance. Mitigation Measure CULT-3 requires documentation before alternation or demolition. The mitigation measures under Impact CULT-1 would not stop demolition or alteration from potentially occurring but does require evaluation before this can occur. In addition, SB-35 is not applicable to a proposed development that would require the demolition of a historic structure that was placed on a national, state, or local historic register.

- 14-12 The commenter asks if the Mitigation Measures CULT-1 and CULT-2 serve as a condition of approval for a project or are implemented as part of the City's discretionary review procedures prior to approval of a development project within the Historic Conservation Districts

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Mitigation measures link to conditions of approval and are reviewed by the commission during discretionary review. As mitigation measures they will also apply to any development application. As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary.

- 14-13 The commenter states the DEIR should include additional mitigation measures under Impact CULT-1 since the proposed mitigation measures do not reduce the impact to a less than significant level. The commenter recommends modifying mitigation measures prior to discretionary approval by the City.

The DEIR discloses on page 4.4-17, the development, redevelopment, or alterations of sites identified in the Housing Element could adversely impact historic resources even with the implementation of mitigation measures. There are no additional mitigation measures that could be proposed to reduce impacts under CULT-1 since the Housing Element Update proposes sites within the historic districts there is a potential for these resources to be impacted.

- 14-14 The commenter recommends a mitigation measure for in fill construction on vacant parcels within the City's Historic Conservation Districts. The commenter provides a description on the appropriate use of the Standards and Standards and Guidelines for Preservation, Rehabilitation, Restoration, and Reconstruction defined by the National Park Service. The commenter provides own mitigation measure to address the significant and unavoidable impacts described in Impact CULT-1.

The Draft EIR will be revised to include the recommended mitigation measure provided by the commenter with the addition that it applies to discretionary projects. See Section 3.2, *DEIR Revisions in Response to Written Comments*, of the Final EIR. Housing development projects that are not subject to discretionary review must still comply with the City's Objective Planning Standards. The text change does not require recirculation of the DEIR because it does not provide significant new information that would give rise to a new significant environmental impact. The DEIR adequately analyzes the potential impact from sites under the HEU on historical resources. The additional text adds to the description of the Arsenal Historic District.

- 14-15 The commenter asks the DEIR to provide the VMT and greenhouse gas tech reports done by Fehr and Peers.

The Fehr and Peers technical reports were attached as Appendix 4.14-1 City of Benicia Housing Element Update - VMT Analysis of the DEIR and were made available for the public on November 4, 2022 on the City's website: <https://www.ci.benicia.ca.us/housingelement>.

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- 14-16 The commenter recommends updating the DEIR to include information from the 2022 Scoping Plan for Achieving Carbon Neutrality which was adopted by the California Air Resources Board on November 16, 2022.

As the DEIR was made available for public review on November 4, 2022 and the final 2022 Scoping Plan for Achieving Carbon Neutrality was adopted on November 16, 2022, this information was not available at the time of drafting the DEIR. As CEQA Guidelines Section 15125 provides that the description of the environmental conditions (or setting, or baseline) shall be as they exist at the time the Notice of Preparation is published, or if no NOP is published, at the time environmental analysis is commenced. In addition, the DEIR does call out the 2022 Scoping Plan for Achieving Carbon Neutrality on page 4.7-9 of the DEIR under state regulations.

- 14-17 The commenter summarizes the local actions in Appendix D of the adopted 2022 Scoping Plan. The commenter recommends the Draft EIR identify mitigations that are available to address the significant unavoidable GHG impacts of the proposed project (GHG-1), and the conflicts between the project and applicable plans.

See response to comment 14-16. In addition, the DEIR states on page 4.7-28 that while mitigation measure GHG-1a and GHG-1b would ensure that development of the Housing Element sites would provide the necessary design elements that would help achieve carbon neutrality by 2045, GHG emissions associated with the project are conservatively considered significant because individual housing project consistent with the Housing Element update would have the potential to exceed net zero emissions.

- 14-18 The commenter states the DEIR incorrectly finds the Safety Element Update no significant conflict with applicable plans and recommends the Draft EIR re-evaluate the conflict between the Safety Element Update and the adopted 2022 Scoping Plan.

See response to comment 14-16.

- 14-19 The commenter states the significant and unavoidable GHG-1 impacts and the local actions recommended by the adopted 2022 Scoping Plan warrant adding, as mitigation measures. The commenter lists policy and program to support Safety Element Update Goal 4.18.

See response to comment 14-17.

- 14-20 The commenter states the DEIR should be revised to add a policy from the Safety Element Update regarding hazardous materials. The commenter criticizes Safety Element Policy 4.15.8 for not including the transport of hazardous materials in the language of the policy. The commenter states that failing to include a buffer between sensitive land uses and land uses that involve transport of hazardous materials would create a significant

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impact. The commenter adds that the Safety Element Update fails to establish siting criteria, review of buildings, and monitoring records for hazardous waste.

Note that referenced Policy has been included in the draft Safety Element following the release of the DEIR and is therefore not included within Appendix 3-2 of the DEIR. Commenter's recommendations regarding the inclusion of buffers during the transport of hazardous materials shall be forwarded to decision-makers for further consideration. However, the issue described by the commenter is considered an existing condition within the environment and cannot be attributed to the proposed project. No component of the proposed project would worsen this condition, creating a significant impact on the environment, therefore no revisions are necessary to the EIR.

- 14-21 The commenter urges the City council to adopt the environmentally superior alternative as described in the Draft EIR. The commenter refers to Alternative 6.4, Removal of All Opportunity Sites in a Historic District as an alternative to the proposed project which removes the 17 sites in the City's two designated historic districts. The commenter recommends the DEIR compare the housing units generated by the sites provided by Alternative 6.4 to meet the RHNA with the sites provided by the proposed project.

See response to comment C-1. Page 6-24 of the DEIR states Alternative would reduce the amount of developable housing units in the City's Housing Element Sites Inventory by a maximum of 321 units, 99 of which are very low-income or low-income designated units, this subtraction would not reduce the amount of units in the City's inventory to a level below either the total RHNA share of 750 units or the required number of low-income and very low-income units.

The Housing Element must comply with Affirmatively Furthering Fair Housing (AB 686) that requires the City include a land inventory analysis demonstrating whether sites identified to meet the regional housing needs allocation (RHNA) are distributed throughout the community in a manner that affirmatively furthers fair housing. Sites in the historic district were included in the draft Housing Element and reviewed by the State Department of Housing and Community Development (HCD). The element currently states that sites to meet the City's regional housing needs allocation have been distributed through the city to address this requirement. Removal of these sites would change the fair housing findings and have the potential to exacerbate fair housing issues and not be found in compliance by HCD. This is a policy decision to be made by the decision makers after balancing the whole of the project and the project objectives at the time of consideration.

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LETTER 15 – Natalie Macris (2 pages)

December 19, 2022

Planning Division
City of Benicia
250 East L Street
Benicia, CA 94510

RE: Benicia Housing Element and Safety Element Updates Draft Environmental Impact Report (EIR)

Dear Planning Division staff:

Please consider the following comments on the November 2022 Public Review Draft EIR.

Approach to Analysis of Project and Cumulative Impacts. To meet the City’s Regional Housing Needs Allocation, the draft Housing Element relies on sites that are already suitably zoned for housing, as well as “opportunity sites” that require redesignation and/or rezoning to allow housing. The Draft EIR, however, only analyzes the environmental impacts of housing development on the “opportunity sites”; it does not address the impacts of development on the sites already suitably zoned for housing (see Draft EIR page 3-5). Development on these “suitably zoned sites” is not even evaluated as a cumulative impact. In fact, while the Draft EIR (page 4-2) claims to address cumulative impacts for each environmental topic, the analysis in Draft EIR Chapter 4 fails to address cumulative impacts for most topics. 15-1

This approach underestimates environmental impacts and fails to give decision-makers a complete understanding of their decision. The draft Housing Element is not a simple General Plan amendment to add new housing sites; it is a comprehensive update of the entire Housing Element. The update process includes revisiting and revising existing Housing Element provisions, and potentially redesignating “suitably zoned sites” for uses other than housing. For that reason, the Draft EIR should analyze the impacts of housing development on these sites. 15-2

The omission of the “suitably zoned sites” from the analysis is especially significant because, under state law, some sites that were included in previously adopted Housing Elements may have special development privileges if they remain in the new Housing Element. Moreover, environmental conditions may have changed in the 8 years since the last Housing Element was adopted—another reason why the Draft EIR should evaluate the impacts of development on “suitably zoned sites” as well as “opportunity sites.” 15-3

Ideally, the Draft EIR would be comprehensively revised so that the project description and the analysis of each environmental topic cover not just the “opportunity sites,” but the “suitably zoned sites” as well. At minimum, the Draft EIR should be revised to explain (1) the legal basis for excluding the “suitably zoned sites,” and (2) the conclusions from previous analyses that addressed environmental impacts of development on the “suitably zoned sites,” so that decision-makers can better understand the analysis and the full implications of their decision. 15-4

Alternatives. Like the project description, the Draft EIR’s alternatives analysis deals only with the “opportunity sites,” again giving decision-makers an incomplete picture of their options and the corresponding environmental impacts. 15-5

15-6

3. Revisions to the Draft EIR

The problem is most significant in the analysis of Alternative 6.4, Removal of All Opportunity Sites in Historic Districts. This alternative would remove “opportunity sites” in the Downtown and Arsenal historic districts from consideration for housing but would retain the “suitably zoned sites.” Because the Draft EIR fails to analyze impacts of development on the “suitably zoned sites,” its evaluation of Alternative 6.4’s impacts is narrow, incomplete, and potentially faulty. 15-7

To cite just one example, the Draft EIR (page 6-18) states the following regarding Alternative 6.4’s impact on cultural resources in the Downtown and Arsenal historic districts:

By removing all [opportunity] sites in these districts, no land use changes would occur in these districts and the historic character/context of the districts would remain largely consistent with their current development pattern. This alternative would therefore reduce impacts to cultural resources to less than significant. 15-8

This statement is not true. In the Arsenal historic district, for example, housing development could proceed on the “suitably zoned sites” on Jefferson Ridge, potentially destroying the historic character of this key part of the district, which has not only local but state and national significance. While the City recently approved two Senate Bill (SB) 35 projects on these sites, these projects have not been built and their future is uncertain, as the approvals are currently subject to legal challenge. Removal of these “suitably zoned sites” from the Housing Element—an opportunity that decision-makers could still consider—would “reduce impacts to cultural resources to less than significant.” This Draft EIR conclusion is questionable if the “suitably zoned sites” are not removed from the Housing Element. 15-9

The Draft EIR correctly identifies Alternative 6.4 as the environmentally superior alternative, but its conclusions about the alternative’s effectiveness in reducing environmental impacts are misleading at best. The analysis would be more defensible, and more useful to decision-makers and the public, if Alternative 6.4 were revised to remove not just the “opportunity sites” but also the “suitably zoned sites” in the two historic districts. 15-10

Thank you for considering these comments.

Sincerely,



Natalie Macris

3. Revisions to the Draft EIR

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3. Revisions to the Draft EIR

15. Response to Comments from Natalie Macris dated December 19, 2022.

15-1 Commenter summarizes the method of analysis used in the EIR that differentiates between sites that are “suitably zoned” and “opportunity sites”. Commenter claims that suitably zoned sites are not evaluated in the EIR cumulatively or otherwise.

While the commenter’s assessment of the project description is correct in that direct physical impacts of the “suitably zoned sites” were not evaluated in the DEIR, the DEIR does evaluate cumulative impacts of all sites in the Housing Element’s Sites Inventory including the suitably zoned sites. As a Programmatic EIR that assesses changes to the environment that would occur across a span of eight years, all analysis in this EIR is inherently cumulative. Furthermore, maximum buildout of all Housing Element sites is assumed which encapsulates the majority residential growth that could feasibly occur in the City in the long-term. For example, Section 4.12, Population and Housing; Section 4.13, Public Services and Recreation; and Section 4.16, Utilities and Service Systems evaluates the impacts of the projected population increases from all sites in the sites inventory. As stated in the methodology of the greenhouse gas emissions quantification on page 4.7-25, of Section 4.7, Greenhouse Gas Emissions, the emissions modeling performed for the proposed project evaluates the emissions from both sets of sites to establish the cumulative emissions impact. Impacts of geologic, flooding, and hazardous materials hazards on future development on both opportunity sites and suitably zoned sites are identified in the respective sections (4.6, Geology and Soils; 4.9, Hydrology and Water Quality; and 4.8, Hazards and Hazardous Materials) and are summarized in Table 1-2, *Sensitive Sites*, in Chapter 1, *Executive Summary*.

15-2 Commenter states that the analysis in Chapter 4 of the DEIR fails to address cumulative impacts for most topics.

See response to Comment 15-1. The analysis included throughout Chapter 4 of the EIR is an analysis of cumulative conditions.

15-3 Commenter states that the approach used in the DEIR underestimates the scale of the environmental impacts of the proposed project. Commenter further states that “suitably zoned” sites may potentially be redesignated for non-residential uses and that the DEIR should evaluate the impacts of these sites for that reason.

See response to Comment 15-1. The potential for suitably zoned sites to be redesignated for non-residential uses is speculative and outside of the purview of the proposed project. Furthermore, it should be noted that the proposed project does not propose any new development. The actions proposed by the City to meet the requirements of this Housing Element Update are land use changes associated with 73 sites (the opportunity sites), which have the potential to produce environment impacts due to their proposed increases in density. The suitably zoned sites are a part of the Housing Element’s Sites Inventory

3. Revisions to the Draft EIR

but because their current General Plan land use designations and zonings do not require any change to accommodate additional housing units to meet the City's RHNA, there is no action proposed and no physical impacts as a result of the proposed project, with regard to these sites. As stated in response to Comment 15-1, impacts that would result from the population growth associated with all sites in the inventory was evaluated in the DEIR. Hazardous conditions that could produce an impact on the development of all sites was also evaluated.

- 15-4 Commenter further elaborates on why "suitably zoned" sites should be evaluated within the EIR including because some sites may have special development privileges and that environmental conditions may have changed since the last Housing Element was adopted.

The suitably zoned sites could be developed today without the proposed project. As CEQA evaluates change, there is no change associated with these sites, and including them in the proposed Housing Element is acknowledgement of an existing condition, not a proposed change.

This DEIR evaluates the environmental impacts are associated with adopting the City's Housing Element and Safety Element updates and any associated changes. To meet the requirements of state law, the City must rezone land to meet its RHNA, which would allow increased or newly allowed residential density on 73 sites within the City. This action could produce environmental impacts and these impacts are evaluated through Chapters 4 through 7 of the DEIR. However, as a cumulative analysis, this DEIR identifies the impacts that maximum development of all sites in the Housing Element sites inventory could produce on the environment. Mitigation Measures would apply to all actions taken in compliance with the Housing and Safety Elements.

- 15-5 Commenter states that the DEIR should be revised to analyze the "suitably zoned" sites or at minimum be revised to state the legal basis for excluding the suitably zoned sites and provide previous analyses that addresses the environmental impacts of development of the suitably zoned sites.

See responses to Comments 15-1 through 15-4. Page 3-5 in the Chapter 3, Project Description, states: "the Housing Element Update also identified 107 additional parcels on 39.65 acres that are suitably zoned for residential development and do not require any designation or zone changes." While as discussed, these sites are not wholly excluded from the analysis in the DEIR, the legal basis for the way that they are treated in the DEIR is that proposed project does not include any action associated with these sites that would produce an impact on the environment.

- 15-6 Commenter states that the DEIR does not evaluate alternatives associated with the "suitably zoned" sites. Commenter further states that this does not allow decision-makers a full scope of options to consider.

3. Revisions to the Draft EIR

Commenter is correct in their statement that the discussion of all Alternatives in Chapter 7, Alternatives, does not discuss the suitably zoned sites in the Housing Element Sites Inventory. CEQA's intent regarding the discussion of alternatives is to describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project and evaluate the comparative merits of the alternatives. This discussion, however, is not required to consider alternatives which are infeasible.

While the Housing Element's sites inventory identifies the suitably zoned sites as sites that can be used to meet the City's RHNA, it does not propose any land use changes associated with these sites. Under the consideration of project alternatives, the lead agency can remove and add sites from the Housing Element sites inventory that would reduce environmental impacts associated with the proposed project. The action proposed by the project that would create environmental impacts are the increases in residential densities for the opportunity sites. An Alternative that would consider removing suitably zoned sites from the inventory would not reduce environmental impacts because the proposed project does not involve any actions to these sites that would result in environmental impacts. Furthermore, because these sites are currently designated and zoned appropriately for their use that is intended under the Housing Element, removing them from the inventory would not reduce any impacts that could occur outside of the scope of the proposed project, including their development.

- 15-7 Commenter states the most significant lack in the Alternatives analysis occurs in the discussion of Alternative, 6.4, Removal of All Opportunity Sites in Historic Districts. Commenter further states that the evaluation of impacts is narrow, incomplete and potentially faulty because this Alternative does not consider development on the "suitably zoned" sites.

As noted previously, the scope of the proposed project includes land use changes to the 73 opportunity sites. Therefore, the analysis of the EIR is required to evaluate the impacts of these changes. Development of the suitably zoned sites is not a component of the proposed project and analysis regarding these sites' contribution to cumulative impacts is included for informational purposes.

- 15-8 Commenter quotes a section of the discussion of Alternative 6.4, *Removal of All Opportunity Sites in Historic Districts*, that refers to how impacts would be reduced to less than significant for historical resources under this alternative. Commenter states that this would not be true and that the development of the suitably zoned sites in the Arsenal District on Jefferson Ridge would incur significant impacts to the historic character of the District. Commenter further elaborates that the development of these two sites would occur pursuant to SB 35.

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See response to Comment 15-7. This proposed project does not involve the development of these sites, nor does it propose any actions that would induce the development of these sites. The physical environmental impacts associated with the development of these sites are therefore not required to be evaluated under this project. SB-35 which the State of California adopted to accelerate the construction of affordable housing by making such project ministerial and therefore not subject to CEQA. In addition, while SB-35 is not applicable to a proposed development that would require the demolition of a historic structure that was placed on a national, state, or local historic register it does not exempt properties that are not included on such a register but are in an historic district from its streamlined discretionary review and approval requirements.

- 15-9 Commenter states that removal of the Jefferson Ridge “suitably zoned” sites would reduce impacts to historic resources to less than significant.

See response to Comments 15-6 through 15-8.

- 15-10 Commenter states that the DEIR correctly identifies Alternative 6.4 as the environmentally superior alternative. However, for this Alternative to be more defensible, “suitably zoned” sites in historic districts should also be removed.

See response to Comments 15-6 through 15-8.

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LETTER 16 - Donald Dean (5 pages)

December 19, 2022

Jason R. Hade, AICP, Planning Manager
City of Benicia
Community Development Department
250 East L Street
Benicia, CA 94510

Email: JHade@ci.benicia.ca.us

RE: Comments for the Benicia Housing Element and Safety Element Update EIR

Dear Mr. Hade:

I am submitting the following comments on the Benicia Housing Element and Safety Element Draft EIR. My main concern is the evaluation of the City's historic resources, and in particular the historic Benicia Arsenal, Subdistrict C.

16-1

All Housing Sites Must Be Evaluated

The focus of the EIR is on the housing opportunity sites, that is, the new housing sites identified as part of the current 2023-2031 housing cycle. Other than listing the previous sites from the 2015-2023 Housing Element as "suitably zoned" sites, there is no mention of, or environmental evaluation of, the previously listed sites.

16-2

The current Housing Element is a "program" under the California Environmental Quality Act (CEQA) that includes both opportunity sites and previously identified sites. It will be adopted by the City Council as one program. However, the EIR evaluates only the new "opportunity sites." Discussion of the housing sites identified in the 2015-2023 Housing Element is minimal or nonexistent. There is no indication that the suitably zoned sites were environmentally evaluated in the previous cycle and no references to such an evaluation. Doesn't the EIR need to evaluate all the sites in the program? To do less would represent only a partial evaluation of the program and segmentation of the program under CEQA. In addition, buildout of the Housing Element could produce cumulative impacts in numerous areas. There is no cumulative impacts analysis in the EIR, though the Notice of Preparation (June 2022) stated it would be done, and it is one of the required sections in EIR as mandated by CEQA Guidelines 15130. The EIR must adequately and equally evaluate all sites on the housing list, whether they are opportunity sites or long-standing sites.

16-3

16-4

Status of Historic District C Properties Should be Clarified

Please clarify the status of the Jefferson Ridge Project and the 1451 Park Road Project, which were approved by the city under Senate Bill (SB) 35 in August 2022. They are listed in Table 3-4 of the Draft EIR and shown on Figure 3-1e of the EIR as "Suitably Zoned/Designated Sites." These properties are also included in Table 3.1 (High Density Site Analysis) of the EIR in the

16-5

3. Revisions to the Draft EIR

<p>“Built” category. A note to the table indicates that the projects were “approved” as opposed to constructed or under construction. Neither of these projects has broken ground. Financial, market, and other realities may prevent project construction, something that has occurred with other projects in Benicia. Have these sites been removed from the Housing Element? If so, would failure to complete the projects put these properties back on the list of Housing Element sites? Until these projects are built out, the impacts of development on these sites should be evaluated as part of the EIR analysis. The standard for CEQA evaluation is the difference between existing conditions (vacant sites) and the 138 housing units included in the Jefferson Ridge Project and the 1451 Park Road Project.</p>	<p>16-5 (cont'd)</p>
<p>Impacts on Historic Resources Must Be Evaluated</p>	
<p>Benicia has two historic districts (and subdistricts) and multiple historic structures. Impacts on <i>all</i> the City’s historic resources should be thoroughly evaluated consistent with CEQA Guidelines Section 15064.5. The EIR makes the false assumption that “Known or future historic sites or resources listed in the national, California, or local registers maintained by the City would be protected through state and federal regulations restricting alteration, relocation, and demolition of historical resources. Compliance with the state and federal regulations would ensure that development would not result in adverse impacts to identified historic and cultural resources.” Benicia’s experience with the approved SB 35 projects shows that cultural resource protections do not always apply.</p>	<p>16-7</p>
<p>Figure 1 and Figure 2 (attached) were provided at my request to illustrate the impact that development on Jefferson Ridge could have on the Arsenal historic district. Figure 1 presents an overview of the approved developments (approved development in yellow, historic structures in blue) in the Historic District C, showing how the developments isolate the historic structures from each other and eliminate the visual unity that is one of the principal features of the historic district. Figure 2 is a massing diagram viewed from a point above the Commanding Officer’s Quarters looking west along Jefferson Street. It illustrates how the scale of the approved developments would overwhelm the district.</p>	<p>16-8</p>
<p>Implementation of any project on the Jefferson Ridge sites (current approved projects or future unrelated projects) would have profound impacts on the viability of the National Register Historic District and would likely lead to the delisting of this valuable national historic asset. This is a potential impact that should be evaluated and acknowledged in the Housing Element EIR.</p>	<p>16-9</p>
<p>There is no mitigation that would reduce this impact to a less-than-significant-level for the loss of a National Register District. It would be a significant, unavoidable impact, and the Planning Commission and City Council would need to make findings of overriding consideration to that effect. What would be the City’s justification for a such a finding when the Housing Element has more than enough sites to meet the Regional Housing Needs Allocation?</p>	<p>16-10</p>
	<p>16-11</p>
	<p>16-12</p>

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Alternative with No Historic Sites or Districts Should Be Evaluated

CEQA requires alternatives that avoid or minimize impacts. The Draft EIR contains Alternative 6.4, "Removal of All Opportunity Sites in Historic Districts." Alternative 6.4 should be revised to remove all historic sites from the Housing Element, including opportunity sites and "suitably zoned" sites.

16-13

Thank you for consideration of these comments.

Sincerely,



Donald Dean

Attachments: Figure 1- Site Map
Figure 2- Massing Diagram

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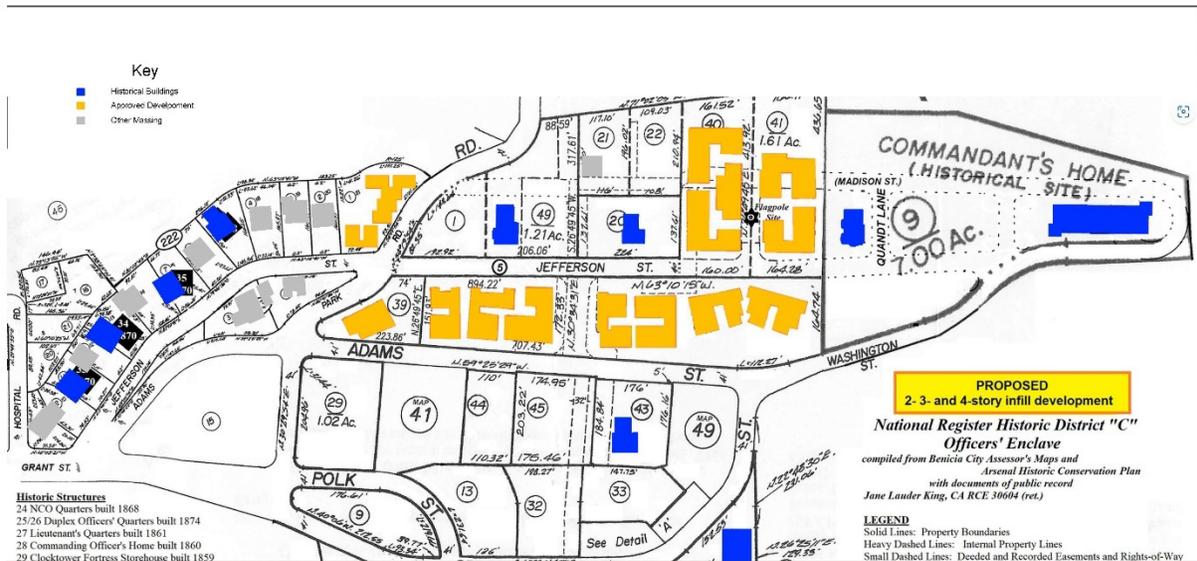
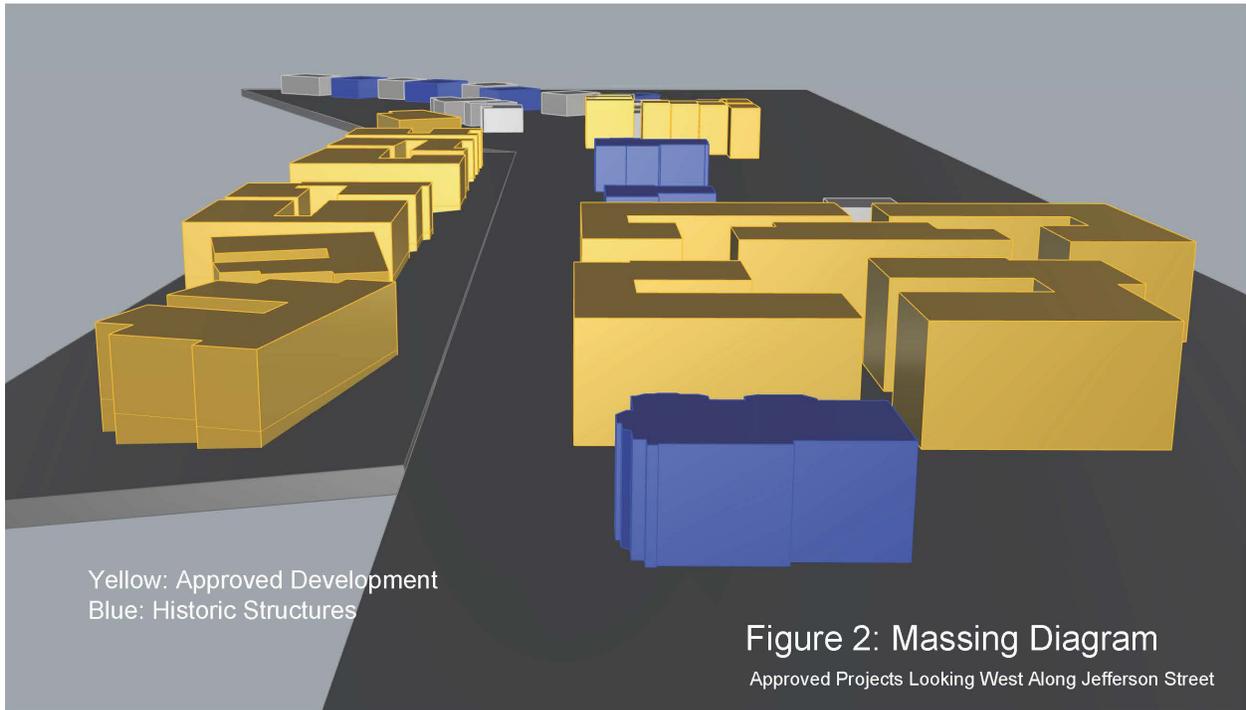


Figure 1: Site Map

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16. Response to Comments from Donald Dean dated December 19, 2022.

16-1 Commenter states that their particular concern with the DEIR is with the City's historic resources in the Arsenal Historic District.

No further response is required.

16-2 Commenter states that the DEIR does not evaluate the sites listed on the previous Housing Element's sites inventory.

The proposed project is evaluating the potential for environmental impacts associated with the land use changes that have been proposed to allow the City to meet their current RHNA for the 2023-2031 Housing Element Update. No change is proposed for either "suitably zoned" sites or previous sites used in the City's previous Housing Element nor does the proposed Housing Element include any development proposals. As no change would occur regarding these parcels, there is no environmental impact to evaluate.

16-3 Commenter states that the EIR is obligated to evaluate all sites in the Housing Element Sites Inventory including all suitably zoned sites. Commenter further states that EIR has completed a partial evaluation of the Housing Element program.

The sites used in the previous 2015-2023 Housing Element were evaluated in an [Initial Study/Negative Declaration adopted on August 27, 2014](#). As explained in the response to Comment 16-2, this EIR must evaluate changes to the environment that are proposed as part of the Housing Element. While these sites are a part of the proposed Housing Element, no land use changes are proposed for these sites and they can be developed today consistent with the existing regulations. Therefore, there are no potential impacts associated with these sites that are also a part of the proposed project.

16-4 Commenter states that no cumulative analysis was included in the EIR.

See response to Comment 15-1. The analysis in the EIR is inherently cumulative and identifies impacts that would occur as a result of developing all sites in the Housing Element's sites inventory, which includes both categories of sites "suitably zoned" and "opportunity sites". All analyses in the EIR consider impacts from and to development on all sites programmatically and cumulatively. However, as clarified in the DEIR on page 3-5, Chapter 3, Project Description, suitably zoned sites are included in the analysis for informational purposes, as no land use changes are proposed for these sites that would result in an environmental impact. The EIR considers the cumulative impacts of developing all sites in the inventory while focusing on the how the specific land use changes that have been proposed to meet the RHNA could result in physical impacts on the environment.

3. Revisions to the Draft EIR

- 16-5 Commenter asks for clarification regarding the proposed Jefferson Ridge and 1451 Park Road developments. Commenter further asks if the sites of these proposed developments will remain in the Housing Element and whether failure to complete the projects on these sites would put the properties back on the Housing Element sites inventory.

These developments are not part of the change being evaluated as part of this Housing Element EIR. The status of the Jefferson Ridge project is documented on the City's website; information for this development application and related project materials can be found at [this address](#). The application for Jefferson Ridge was conditionally approved on August 26, 2022 and no further updates have been made at the time of posting this FEIR. The status of the 1451 Park Road development can be found [here](#) on the City's website. This project was also conditionally approved on August 26, 2022 and no further updates have been made. California Government Code Section 65913.4(m) provides that whether an application for a development is subject to streamlined ministerial approval under SB 35 is not a "project" as defined in Section 21065 of the Public Resources Code. Therefore, CEQA does not apply to projects that are eligible for SB 35 streamlined approval. In addition, projects that have received approvals after June 30, 2022 are listed in the 6th Cycle Housing Element and may be counted towards the 6th cycle RHNA.

- 16-6 Commenter states that impacts from development of the sites (the parcels that encompass the Jefferson Ridge project and 1451 Park Road) should be evaluated in the EIR.

See response to Comment 16-5. In addition, as discussed in the response to Comments 16-2, 16-3, and 16-4, these sites are part of the "suitably zoned" sites category where no land use changes are proposed. Development on these sites is not a part of the proposed project. However, the impacts of development on these sites in addition to all others in the Housing Element sites inventory has been analyzed both programmatically and cumulatively throughout the EIR.

- 16-7 Commenter states that impacts on all of the City's historic resources should be thoroughly evaluated in the EIR.

Impact CULT-1, Section 4.4.5, Environmental Impacts, of Section 4.4, Cultural Resources on pages 4.4-12 through 4.4-17 of the Draft EIR discuss the impacts of the development on all sites in the City's Historic Districts would have on the City's historic resources. The determination made in this section of the DEIR is that the proposed project would have significant and unavoidable impacts on historic resources. Specifically, this determination was made on the basis that the close proximity of the Housing Element Opportunity Sites to locally designated historic resources and the increase in development intensity under the proposed Housing Element Opportunity Sites Zoning Overlay could produce a substantial adverse change in the significance of an historical resource through the alteration of its surroundings. In addition, this scenario is highly conservative as it is unlikely that 100 percent of sites would be developed at 100 percent of their capacity.

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Significant and unavoidable impacts to historical resources from the proposed project could include: an increase in development intensity which adversely affects cultural sites or landscapes and the introduction of visual, audible, or atmospheric effects that are out of character with the cultural resource or an alteration to its setting when the setting contributes to the resources' significance. While the specific impacts identified in this section are associated with the land use changes of the "opportunity sites", cumulatively all development in the City's historic districts would be significant and unavoidable.

- 16-8 Commenter quotes a section of Section 4.4, Cultural Resources that states that known or future historic sites or resources would be protected through state and federal regulations and that compliance with the state and federal regulations would ensure that development would not result in adverse impacts to identified historic and cultural resources. Commenter further states that "Benicia's experience with SB 35 projects shows that cultural resource protections do not always apply".

Commenter is quoting a section of paragraph on page 4.4-16 of the Draft EIR. After this statement reads: "While the regulations provide a process for recognizing historic buildings and places, they do not prevent the reuse or modification of them. As such, impacts would be potentially significant." Commenter's statement regarding the efficacy of the existing historic resources regulatory protections is acknowledged in the DEIR. The City also maintains objective design standards for residential development that provides guidance on how future projects can comply with the historic district plans, including the types of materials used. The objective standards apply to all projects in the City. Even with compliance with the objective design standards it is possible that one or more changes to a building or character of a historic district may occur therefore the significant and unavoidable conclusion on page 4.4-18 of the DEIR is correct. See response to comment C-4 in regard to SB 35 projects and their relation with cultural resources.

- 16-9 Commenter references a visual analysis of the Jefferson proposed development (Figures 1 and 2 attached to letter 16) and describes the impacts that the development would have on the visual unity of the Arsenal District. Commenter claims that this development would overwhelm the district.

See response to Comment 16-5. The Jefferson Ridge development is not a component of the proposed project. The site is included in a list of sites that could be developed to contain housing, and is conditionally approved in accordance with the City's adopted objective planning and design standards; however, no specific action is proposed by the Housing Element to develop this site. While the theoretical development of this site among all others in the Arsenal District would produce a significant and unavoidable cumulative impact on the District's historic resources, the individual impacts of developing these sites are not considered in the EIR since no land use changes would occur at these sites as a result of the proposed project.

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- 16-10 Commenter states that the development of any project on the Jefferson Ridge sites would lead to the delisting of the Arsenal District from the National Register. Commenter further states that this impact should be analyzed in the EIR.

See response to Comment 16-5. The possibility of the District's delisting from the National Register cannot be determined. As stated in Impact CULT-1 of Section 4.4, *Cultural Resources*, of the DEIR, impacts to historic resources in the Arsenal District as evaluated in the EIR. While specific projects are not explicitly analyzed in this DEIR, the DEIR does conclude that significant and unavoidable impacts would occur to the historical resources in the Arsenal District under the condition of cumulative buildout of all sites in the Arsenal Historic District.

- 16-11 Commenter states that no mitigation would reduce impacts to the Arsenal District's historic resources to a less-than-significant-level and states that the City would be required to make findings of overriding consideration for this significant and unavoidable impact.

Commenter's statement is correct. The City would need to adopt a statement of overriding consideration for this impact and the other impacts determined to be significant and unavoidable in the DEIR.

- 16-12 Commenter inquires as to what the City's justification is for this finding.

The Statement of Overriding Considerations will be available as part of the findings associated with consideration of the DEIR. The Statement of Overriding Considerations will be posted on the City's webpage (<https://www.ci.benicia.ca.us/housingelement>).

The Housing Element must comply with Affirmatively Furthering Fair Housing (AB 686) that requires the City include a land inventory analysis demonstrating whether sites identified to meet the regional housing needs allocation (RHNA) are distributed throughout the community in a manner that affirmatively furthers fair housing. Sites in the historic district were included in the draft Housing Element and reviewed by the State Department of Housing and Community Development (HCD). The element currently states that sites to meet the City's regional housing needs allocation have been distributed through the city to address this requirement. Removal of these sites would change the fair housing findings and have the potential to exacerbate fair housing issues and not be found in compliance by HCD. This is a policy decision to be made by the decision makers after balancing the whole of the project and the project objectives at the time of consideration.

- 16-13 Commenter states that Alternative 6.4 should be revised to remove all sites in historic districts including "suitably zoned" sites.

See response to Comments 15-6 and 15-7.

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LETTER 17 – Marilyn Bardet (19 pages)

Marilyn J. Bardet



December 19, 2022

Suzanne Thorsen, Community Development Director
City of Benicia, 250 East L Street, Benicia 94510 —sent via email: Dec., 2022

**SUBJECT: My Comments: Draft Program Environmental Impact Report, for
Housing Element & Safety Element Updates SCH#2022060021,
dated November 2022**

Dear Suzanne,

The gargantuan length of the Draft Program EIR [DPEIR] and its four Appendices, with the obvious organizational difficulties of presenting complex information full of charts, figures, and regulatory framework—and incorporating the work of the East 5th St Corridor "Gateway" project, the two SB35 projects slated for the Arsenal Historic District, as well as the Safety Element Update – ALL to be wrested and reviewed in a comprehensible, if not comprehensive text – speaks to the exhausting labor and decision-making, done over the last two years, by your planning staff, (which suffered attritions), and by the Placeworks' team who, under your guidance, assisted in developing the 5th Street Gateway Project, the Housing Element Update [HEU] as well as the Safety Element Update [SEU], while also preparing the DPEIR for public review, which is finally under public consideration and evaluation at the tail end of a long year.

17-1

My long sentence above illustrates the difficulty of evaluating so many qualifiers in the DPEIR, in whole and in parts, inclusive of the HEU and SEU which are separate documents found in the Appendices.

It would be virtually impossible – a Herculean voluntary task – to do a thorough review of the DPEIR and meet the deadline of the official 45 day public comment period, December 19, 5 pm (the start of Hanukkah and 6 days before Christmas). In any case, certification of the DPEIR seems likely to be a slam-dunk, given the dearth of comments or critiques offered by either planning commissioners or City Council members at their last joint hearing on the DPEIR, held Dec 13th. In fact, hardly more than a few questions were raised. Is this surprising at this time of year? The documents seem to be taken as gospel.

17-2

My comments will attempt to shed light on deficiencies and gaps in the DPEIR's descriptions, impact evaluations and assumptions, and how use of vague terminology and generalities substitutes for real description and obscures important environmental conditions, and therefore denies the public the "full picture" of what portends to be put at

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greater risk, if 100% of the proposed sites were to be developed: environmental quality, cultural and environmental resources and current and future residents' health and safety.

17-2
(cont'd)

I hereby incorporate in this Comment Letter all those comments I've formerly submitted in writing and also through oral testimony given at particular hearings on the HEU, SEU, the Gateway Project, SB35 housing projects slated for the Arsenal Historic District, and on the scoping of this Draft Program EIR, as well as emails sent to city officials with photographs I'd taken of environmental conditions related to industrial uses in the lower Arsenal and port area. Similarly, I also incorporate by reference, all comments made in writing and/or given in oral testimony by Don Dean, Natalie Macris, Steve Goetz, Belinda Smith, Jane Lauder King and Michael Hayes.

17-3

* * *

INTRODUCTION

It's my understanding that the purpose of this Draft Program EIR is fundamentally to make clear to the public how the state's requirement that cities increase their total available housing stock "across all income categories" [revised HEU, p 3, 1.2 Regional Housing Needs] would impact the City and community of Benicia overall, especially in regard the General Plan's overarching goal for sustainability – balancing social, environmental and economic needs — and the policy recommendations of the Safety Element Update [SEU].

17-4

Given our City's assigned Regional Housing Needs Allocation [RHNA], the impacts of developing a total of 750 new units would seem fairly modest. However, the DPEIR actually accounts for a staggering number of developable units – a total of 3,584 units – that could be accommodated by changes in land use and zoning. The DPEIR is therefore obligated to address significant and cumulative impacts of a potential 100% development scenario, and thus, portray the outlines of a "big picture" expansion of housing in Benicia. I do not believe the DPEIR effectively succeeds in portraying and describing that big picture, nor its irreversible impacts.

17-5

Because state law requires that cities update the Housing Element of their general plans every eight years, Benicia's Revised HEU, dated Nov 2022, addresses the upcoming 8-year cycle, 2023 to 2031, which represents the 6th Housing Element. By the end of 2031, another HEU will be required. The current SEU was drafted to be in synch with the current draft HEU, along with many other laws, rules, regs, and General Plan policies. The SEU recommends new policies that would condition infill housing development plans with respect to global warming impacts, community resilience and recommended policies for climate adaptation. As I stated in my scoping comments, I believe that other policies

17-6

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should be included in the Safety Element that would further delineate community values for protecting human health and safety. | 17-6 (cont'd)

To comply with RHNA, the City is obligated to propose various zoning changes, as necessary, that in the aggregate would encourage new infill development at increased densities, and in a fair range of affordability commensurate with state laws and Solano County income distribution statistics, to accommodate those 750 new units. | 17-7

The state's push for more housing to tackle the "affordability crisis" is explained by the growing economic disparity across California's diverse populations—the sticking problem that won't be resolved without major structural changes in the way we live and work, as the climate crisis attests; the DPEIR reflects the magnitude of change in state housing policy. So, by the end of 2031, we can expect another tranche of parcels to be identified to accommodate another RHNA figure, taking our community into mid-century when economic and social conditions of climate adaptation efforts will become ever more pressing and the issue of sustainability will have become paramount. | 17-8

To be expected under state mandates, the expansive "build-out" of Benicia will continue, perhaps relying on individual project reviews under CEQA, *or not*, in cases where, purposefully and efficiently, SB35 streamlining with CEQA exemption is implemented, and/or development "by right", justifying 20% "affordable" units to be included in a high density project for a parcel that has remained vacant for two consecutive Housing Element update cycles. | 17-9

In the DPEIR's Chapter 4, in 16 sections providing enviro analyses, there's a Bible's worth of cited federal, state, county, and local laws, including goals and policies of our General Plan, and proposed policies of the SEU, all intended to guide land use decisions and future residential development. A reader might reasonably conclude that there would be no cause for concern If all laws, regs and guidance cited were enforced. So, presuming that all laws, regs, codes, and all existing and currently proposed General Plan goals and policies will be enforced,"what's the problem?" | 17-10

Studying the HEU, SEU, and reading the DPEIR between the lines, I've tried to picture how the city will come to feel and "look" to current residents and to future prospective residents through 2031 and beyond. We truly need more affordable housing; however, my concern is about the totality of what the HEU and DPEIR propose, should ALL parcels listed in the Sites Inventory List were to be developed, and under what review protocol—public or ministerial— of any particular housing project application. | 17-11

As the Revised HEU states, [1.2 Regional Housing Needs; p.4]:

"750 units does not exceed Benicia's build-out projection anticipated in the Community Development and Sustainability Chapter of the General Plan. However, in 2022 there was | 17-12

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not adequate zoning to facilitate this magnitude of residential development, nor was it at a density that could reasonably result in the construction of affordable units." [underlining is my emphasis]

17-12
(cont'd)

Again, I do not believe the DPEIR does an adequate job of accurately and visually portraying the cumulative impacts of housing expansions at the DPEIR's projected magnitude at 100% full development of 3, 584 units.

I value and support the following assessment of the housing need and crisis expressed in the HEU's Chapter 1, Introduction, p.1]. I quote it in full:

"Reliable shelter is a basic need shared by everyone. In Solano County, 397 individuals did not have reliable housing in 2021, 2.3 percent of households were considered overcrowded in 2019, and 34.3 percent of households were overpaying for housing in 2019. Average rental costs have increased by 44% in the past six years, disproportionately impacting lower-income and fixed-income households. It is commonly noted by community members that their grown children cannot afford to live in Benicia due to the cost of living and that many current homeowners could not afford to rent or buy in Benicia if they moved here today. . . . Housing is the most significant monthly cost for most households, and it informs individuals' choices about where to live, where to work, and more. In order for our City to promote the long-term viability of our businesses, we must promote the provision of housing affordable at these income levels. The availability of housing affordable to all income levels will also affect the City's ability to welcome future residents, families, business owners, and community members. "

17-13

GENERAL COMMENTS

ISSUE #1 : DPEIR Organization

The online versions of the DPEIR and associated documents (HEU, SEU and Appendices) do not provide a search function for efficiently locating a chosen topic element.

Example of difficulty of reviewing online documents: to evaluate DPEIR's descriptions and analyses requires constant comparison to the text of the actual HEU and to the Appendices. When working on a laptop, a reader is forced to jump back and forth between "open windows" of the complete revised draft of the HEU in Appendix 3-1, as well as Appendix D, the Housing Element Sites Inventory List, which is not listed in the DPEIR's Table of Contents. Even with two screens, the tasks online involved in reviewing and cross referencing texts is extremely cumbersome, difficult and time-consuming. Repeatedly having to scroll through huge numbers of pages of Appendices to find a single reference, a reader wastes precious time.

17-14

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There is nowhere in the DPEIR where a reader can see/visualize a parcel's precise physical location without going into the HEU, Appendix 3-1, where a drone photo of each parcel's location, with address and zoning information provided. With so many parcels being considered for rezone to accommodate the maximum potential number of 3,584 developable units, the tables that list parcels *only* by their APN numbers are virtually inscrutable except to experts.

17-15

The most important Sites Inventory List is in Appendix D, where parcels are identified by their address, with info about acreage, zoning changes recommended, maximum units allowable, etc. should be in the DPEIR's main text. Having to shift back and forth between the HEU and Appendix D for the Sites Inventory List, one tries to grasp the totality of the housing expansion project, but this is next to impossible. Plan view maps that divide the city into 5 sectors [Figures 3.1.A - 3.1.5] locate parcels by colors indicating zoning conditions; however those maps do not provide street addresses, only numbers attached to parcels without a key to their meaning, the key apparently located elsewhere.

17-16

ISSUE #2 : Total number of units proposed by the DPEIR to meet RHNA target:

The DPEIR must evaluate potential significant impacts associated to a 100% full development scenario of the **total of 3,584 units**. Why doesn't the Project Summary include that total figure? It is buried in a complicated text in the Project Description. [See full quote below]. Yet, this important number, for which parcels have been identified, is *four times greater* than the 750 units required by RHNA for 2023 - 2031. Despite the DPEIR's ponderous accounting in the Project Description, it remains unclear why it was apparently necessary to so greatly overshoot the actual allocation figure beyond a reasonable 15 - 20% buffer, and "back up".

17-17

The HEU [Table 1.1 - City of Benicia RHNA, June 30, 2022 - Dec 15, 2030; p. 4,] shows that of the total 750 units needed, at least 212 must be Very Low-Income, 127 Low-Income, 123 Moderate-Income, and 288 at Above Moderate-Income, adding up to 750 units. Of that number, 339 would have to serve Very Low to Low income.

17-18

From the DPEIR, Project Summary - Housing Element, p 1-7:

Pursuant to state requirements, the City has identified 73 parcels on approximately 117 acres as opportunity sites (refer to Table B in Appendix D of the Housing Element, Appendix 3-1). The opportunity sites are parcels that the City is proposing to redesignate and/or rezone to accommodate residential or increased residential development. These sites are shown in Table 3-3, Opportunity Sites. If all sites are developed at 100 percent of their proposed maximum allowable density, they would contribute 2,963 units to the City's housing stock.

17-19

The Housing Element Update also identified 107 additional parcels on 39.65 acres that are suitably zoned for residential development and do not require any designation or

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zone changes (refer to Table A in Appendix D of the Housing Element, Appendix 3-1). If all sites are developed at 100 percent of their proposed maximum allowable density, they would contribute 621 units to the City's housing stock.

17-19
(cont'd)

The text of the Project Description, & Table 3-3, p. 3-5, 3-6, quoted below gives a highly complicated presentation of facts involving numbers of units, parcels listed, and zoning; yet, it fails to simply explain the City's reason for greatly exceeding the required RHNA for the 2023-2031 cycle.

"Of that total of 3,584 units cited, 2,963 are associated to parcels listed in the category of "Opportunity Sites" that require rezoning or up-zoning, and/or an increase in allowable density in existing residential zoning, and "up to 30 units per acres for all residential land use categories, Community Commercial, Business and Professional Offices, Public and Quasi Public".

"If all sites are developed at 100 percent of their proposed maximum allowable density, they would contribute 2,963 units to the City's housing stock. The Housing Element Update also identified 107 additional parcels on 39.65 acres that are suitably zoned for residential development and do not require any designation or zone changes (refer to Table A in Appendix D of the Housing Element, Appendix 3-1). If all sites are developed at 100 percent of their proposed maximum allowable density, they would contribute 635 units to the City's housing stock. These sites are shown in Table 3-4, Suitably Designated/ Zoned Sites. These sites are included here for informational purposes but will not be evaluated in this EIR as there is no change in land use designation or zone district. . .Collectively, all 181 sites that will be used by the City to meet its RHNA, will be referred to as the Housing Element Sites Inventory. These 180 sites would contribute a total of 2,277 units to meet the City's RHNA. This EIR also evaluates the conservative possibility that all sites are developed to 100 percent of their allowed density which would produce a total of 3,584 units. [underlining and bold added for emphasis] The location of all sites labeled by the categories described here, are shown on Figures 3-1a, Benicia Housing Element Inventory Sites #1, 3-1b, Benicia Housing Element Inventory Sites #2, 3-1c, Benicia Housing Element Inventory Sites #3, 3-1d, Benicia Housing Element Inventory Sites #4, and 3-1e, Benicia Housing Element Inventory Sites #5. For purposes of this EIR, only sites that require a change in the General Plan Land Use Designation and/or Zone District will be evaluated."

17-20

Footnote #4, of Table 3-3 Opportunity Sites, further states:

"Realistic units" refers to the development capacity that is used in the Housing Element for the purposes of calculating the City's RHNA. It is based on allowed the density and historic residential development trends in the City and corresponds to 77 percent of the development capacity of each site in the inventory.

17-21

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Doing the math, I figured: **77% of 3,584 units = 2,760 "realistic units"** (rounded off). That figure is still 1,909 units above an allotted 15% buffer above 750 units. | 17-22

From the DPEIR, Table 3-4, Suitably Designated/Zoned Sites, [p.3-12] the total number of realistic units that would be feasible for development where zoning is *currently* appropriate, is 447; whereas, the Maximum Allowable Units would be 621. Both of those figures are below the RHNA figure, which must *partially explain* why the City had to identify more parcels for rezones.

From the Revised HEU 3.1.6 Site Selection Methodology p. 32
"As described in detail in Section 3.1.6 and displayed in Table 3.5, the opportunity sites provide enough land to accommodate at least 1,649 net new units, including 694 net new lower-income units. Combined with the existing land that can accommodate residential development, Benicia's RHNA of 750 new units can be met and exceeded with inclusion of these sites." [underlining, my emphasis] | 17-23

ISSUE #3 : Distribution across the community of high density infill:

Growing pressure to build more affordable, maximum density infill housing in Benicia has raised public alarm, such as when neighbors along Hastings Drive wrote letters and lobbied to protect open space bordering Southampton Rd. As a result, those prime parcels in close proximity to Southampton shopping center were removed from the Sites Inventory List. | 17-24

Decisions about where to locate new high density infill circle around community values.

My persistent concerns are for developing new policies that would offer best protections to ensure against continuing loss of cultural and historic resources, AND, to ensure that future residents would not be put in harm's way of major industrial sources of pollution and known hazards. [See further comments on these issues]. | 17-25

Reading project descriptions in the HEU and DPEIR, I surmise that a major challenge was finding sites that could be rezoned to allow for a maximum numbers of units at the low end of the income distribution range. It is assumed that a developer's costs of building "affordable units" within a project would be partially subsidized by other units designated for moderate and/or above moderate income level. | 17-26

The HEU considers that maximum density infill, which offers the greatest opportunity for providing units in the lower income range, needs to be fairly distributed throughout the city — the revised HEU advises that such inclusion should occur in the most affluent areas of Southampton, to be expressive of the ideal of social mobility. With regard for public understanding of the potential locations/placements of high density infill, it's imperative | 17-27

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<p>that the DPEIR provide a table that categorizes those parcels that would accommodate highest density according to their geographic location. Without such clearly presented information, a reader cannot evaluate the "fairness" of distribution of high density infill throughout the city, which is stated in policies and programs of the revised HEU, Chapter II, Policy 1.01, p 7; Program 1.08; p.10].</p>	<p>17-27 (cont'd)</p>
<p>I could not find any chart or table in the DPEIR that provides totals of all units that would be potentially developable <u>in a given geographic area of the City</u>. The Sites Inventory List should have included those totals.</p>	<p>17-28</p>
<p><u>For public understanding, a listing of the specific site locations of parcels that could accommodate maximum densities needs to be made much clearer, especially because more low income units would be allowed in such density infill, such that environmental justice issues arise concerning putting people in harm's way. [See ISSUE #4]</u></p>	<p>17-29</p>
<p>Why was there no chart or list developed for the HEU or DPEIR that would have listed parcels by their geographic locations in town — for example: West Side below I-780; West Side Above I-780; Southampton; East Side Below I-780; East Side Above I-780; Arsenal Historic District.</p>	<p>17-30</p>
<p>Trying to account for the number of units hat would be added to the East Side, I went through the Sites Inventory List in Appendix D and added up the number of units listed that are associated to specific addresses of parcels on the East Side. I included Solano Square, since the largest part considered for infill is located east of First St. If my additions are correct, <u>that figure is 1,220 units, which is more than one third of the total number of 3,584 units accounted for.</u></p>	<p>17-31</p>
<p><u>Why was this calculation not provided in the DPEIR? The DPEIR fails to acknowledge the disproportionate burden of expanding infill density housing on the East Side, including in the Arsenal Historic District.</u> By comparison to Southampton and to the West Side below I-780, the East Side is the smallest and tightest geographic area, and is bounded by heavy industrial port facilities, the Valero Refinery, its infrastructure, I-780 and the Strait. [See further comments specifying locations of facilities and their infrastructure, and types of pollution and hazards] It is also the least advantaged part of the city, with only the downtown Marina Green serving as passive recreational park, and with only one elementary school serving the entire area.</p>	<p>17-32</p>
<p>ISSUE #4 : Environmental Justice, putting new residents "in harm's way"; Project Description and Impact Analysis lack specifics and needed characterizations and background history:</p>	<p>17-33</p>

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The DPEIR does not recognize the environmental justice issue raised by implementing an expansion of infill density housing in areas located near major sources of pollution and hazards. Why is there no map provided by the DPEIR or HEU that shows the specific locations of sources of pollution and hazards? | 17-33 (cont'd)

The DPEIR lacks accurate, specific description that would characterize for the reader terms such as "industrial uses", "industrial facilities", "hazards", "pollution sources." | 17-34

New policies to amend the SEU should PREVENT new density infill housing from being located near those named pollution sources and hazardous infrastructure cited above. Because the DPEIR does not provide adequate specific evaluation of potential Air Quality impacts as I've given example of, the DPEIR fails to give the public understanding of the kinds of impacts that future residents would be exposed to, if residing in new housing projects that would be potentially permitted in close proximity to identified sources of pollution and hazards. | 17-35

The obfuscatory problem: Although the DPEIR lists federal and state regulations and guidelines pertinent to assessing Air Quality impacts, for example, a reader could not recognize the specific sources of, say, "toxic air contaminants" without specific descriptions of where those known potential "sources" are located relative to parcels proposed for new housing infill development. | 17-36

The DPEIR should provide a clear map to locate the following major sources of air pollution, ground level contamination and hazards, and these "sources" need to be adequately characterized for public understanding of impacts; including accurate measure of distances between "Sensitive Sites" and location of pollution and hazard sources. | 17-37

In fact, what does "1/4 mile from industrial districts" specifically signify as to level of actual safety hazard presented, or to exposure scenarios at various potential pollution levels, whether by "acute facility releases" or chronic daily low level exposures to facility-generated fugitive air emissions? By what method was that figure of 1/4 mile set, and why is it so vaguely applied as if one could lump all concerns for pollution exposure together? | 17-38

- **ALL located on the East Side: The Valero Refinery and refinery-related facilities and infrastructure, including hazards:** active pipelines, their route crossing the East Side from the refinery processing block to tanker loading dock at Army Point; Petroleum Coke ("petcoke") Storage and Shipping Terminal at the Port of Benicia; rail lines along Bayshore Rd that access the petcoke terminal; high voltage transmission lines servicing the Valero tanker dock; Valero Asphalt Plant, a "small refinery" as defined by the State Energy Commission, that processes crude oil for asphalt production; and finally, the "tank farms" where crude oil unfinished products are stored.]; — ALL are sources of the panoply of toxic air page
- | 17-39

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contaminants, benzene, hydrogen sulfide [H₂S] and other dangerous gases that comprise total emissions inventories kept by the Bay Area Air Quality Management District [BAAQMD]. 17-39 (cont'd)

- **Amports LLC shipping dock and operations at the Port of Benicia**, including large parking lots along Tyler St as well as upland" parking lots along Park Rd.— sources of diesel emissions from ships in port, and benzene and other toxic gases from cars driven off ships to various Amport parking lots;
- **Freeway, I-780**, splitting Southampton from Downtown, especially affecting all school sites, and especially Semple Elementary, which is wedged between I-780 and East 2nd, both heavily traveled, including by trucks;
- **Three gas stations**: Two on East Military at 5th Street, and one at East 2nd and Military West; each is a constant source "at the pumps" of benzene and other toxic VOC emissions. 17-40

The scope of the current draft SEU was limited to impacts of global warming and mitigation measures for community protection and adaptation. However, the SEU should be further added to, to incorporate more specific policies that would address current and future impacts to Air Quality, ground-level contamination, and hazards associated to the facilities and infrastructure I've called out. 17-41

For example: To protect existing and future residents from fugitive emissions from the refinery processing block and the asphalt plant, new policies in the SEU should identify the means by which existing and future residents are to be protected from various sources of emissions. A new program would include recognition of the performance criteria set by BAAQMD for Valero's fence-line monitoring systems that sample air for H₂S, benzene and other associated signature refinery gases. 17-42

Because of major reported incidents of the last few years, more people are becoming concerned about Air Quality, as related to refinery emissions and also to major fires and the associated toxic smoke filled with dangerous pollutants and PM_{2.5}. However, from my experience of well over 20 years involved with issues of environmental pollution and contamination of air, soils and water in Benicia, as well as about existing hazards associated to industrial infrastructure, most residents remain ignorant of other sources of these problems. For example, most residents I've encountered are not at all familiar with the "refinery-related activities" beyond the borders of the refinery's processing block—which is obviously visible from East 2nd St and Industrial Way. The Port area is little known to residents vis-a-vis sources of pollution and operations performed at port terminals on a daily basis. Also, related to Air Quality impacts: few people are aware of the daily exposure to cancer- 17-43

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causing benzene from freeway tailpipe exhaust and from the refinery's fugitive emissions from all of their operations; nor of the dangers of exposures to H₂S, whether from acute releases or chronic low level exposures to fugitive emissions of H₂S emanating from the refinery processing block and also from the asphalt plant located along Park Rd, both bordered by existing housing.

17-43
(cont'd)

— An additional policy is needed that would describe "safety hazards" in the port waterfront area EXAMPLES: daily truck traffic on Park Rd and Adams St; lack of sidewalk on Adams St; blind curve on steep grade up Park Rd. from intersection with Jefferson St, where there is no stop sign or street markings for pedestrian crossing at that intersection; no pedestrian crossing at the bottom of Park Rd intersecting with Adams St.; high voltage power lines in the area of Valero tanker dock at Army Point; very steep, unstable and fire-prone slopes on the north, east and south sides of Jefferson Ridge/Clocktower Promontory; lack of secure fencing at the ridgeline all around Jefferson Ridge....ALL of these examples are relevant to prospective density housing infill at 1471 Park Rd. [see below]

17-44

"Sensitive Sites" identified by the HEU, DPEIR, and/or Appendicies (without provision of a search function for locating subjects in these documents, I can't recall where I found the list!) and other sites of particular concern for proximity to specific sources of pollution and hazards that I've identified:

- The large City-owned property at 1471 Park Rd, which lies within the northern boundary of the Arsenal Historic District [Historic Arsenal Conservation Plan, Figure 3, p.9] and is identified on the Sites Inventory List as potentially suitable site for maximum capacity high density, at 130 units, presents the obvious problem of site location as related to cultural and historic assets and also, in the context of the issue of environmental justice: considerable and cumulative foreseeable impacts from all pollution sources and infrastructure hazards I've named, and which are not adequately identified and characterized by the DPEIR, would impact future residents. This large parcel is bounded by I-780 at ground level and also I-680 flyway; active Valero pipelines; Ampports uplands parking lot, and Park Rd itself, which is dangerous, with dailly heavy truck traffic transporting cars to the Ampports lot and also moving in and out of the Industrial Park. The site is also in close proximity to Valero's asphalt plant with its own storage tanks, located only a bit farther north on Park Rd, and also, Valero Refinery's southernmost tank farm, located north of the parcel on the east side of Park Rd. It's not surprising that large "vacant" or underutilized parcels such as this one that the DPEIR's Sites Inventory List identifies and deems suitable for high density infill are located within the lands that were once part of the Benicia Arsenal. NOTE: The recently approved Jefferson

17-45

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<p>Ridge Project, reviewed as an SB35 Project, also the 1451 Park Road Project reviewed under SB35, both of which together would contribute 134+ housing units within also are located within the Arsenal Historic District. Allowing more</p>	<p>17-45 (cont'd)</p>
<ul style="list-style-type: none"> • <u>The large parcels aggregated #87, #88, #89, and #90 along Casa Grande at Viewmont</u>, are listed on the Sites Inventory List [Appendix D] as having been used in Two Consecutive Prior Housing Elements. No specific number for maximum capacity density is cited, but as subject to "by right" development, 20% of the total number of units would likely be affordable units. Refinery pipelines run just east of Casa Grande along Park Rd. Currently the site is "vacant"— both Exxon and Valero had kept the land and modestly landscaped it, it's purpose having been to provide access from Casa Grande to pipelines for their maintenance and repair; the only other access to the pipelines at that point is through Francesca Terrace Park. 	<p>17-46</p>
<p>The following are large parcels, identified on maps [Figures 3-1a thru 3-5] by number:</p> <ul style="list-style-type: none"> • Large parcel #30 located at the east end of East H St, on the water side, currently owned by Amports LLC is slated for rezone for high density infill and would accommodate approx • Large parcel at 670 East H, maximum capacity, 263 units if zoning changed from Light Industrial to High Density Residential with Overlay Use. It is on the "back up" or "Short Fall Housing Need" list [Appendix D] • Parcels #26, #27, #28, and #29 on the northern side of East H St., needing zoning/ overlay change, to accommodate greater density... • Parcel # 50, "suitably zoned, with Upzoning proposed for high density • Parcel located at 150 Riverhill Dr, which is the cemetery property 	<p>17-47</p>
<p>The DPEIR should provided needed historical background:</p> <p style="padding-left: 40px;">Established in 1847 and abandoned in 1964, the Arsenal became the Benicia Industrial Park, at which juncture big changes were afoot in the city and most of the former Arsenal properties were slated for private purchase for industrial and commercial uses.</p> <p style="padding-left: 40px;">Within the former Arsenal property boundaries, the Exxon refinery was permitted and built by 1968, entailing the construction of 7 pipelines to cross the East Side</p>	<p>17-48</p>

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from the refinery processing block and storage tank farms to a tanker dock at the Port of Benicia.

Because the refinery processes petroleum coke, a dirty toxic residue from the refining of crude oil, a port terminal along Bayshore Rd was built to store and ship "petcoke product" overseas. Petcoke is delivered each week by rail to the storage silos at the terminal, and the product is transferred to ships by conveyor belt from the silos into open ship hulls— the entire operations involved being a source of toxic Fine Particulate emissions, PM10 and PM2.5.

An independent asphalt plant had been built by Huntway at the southern edge of the Exxon refinery buffer zone along Park Rd. The plant was independently operated until 2002, when Valero, just then the new owner of the refinery, bought it and eventually formally integrated it into the refinery, wherein certain operations are shared, for example, the Valero wastewater treatment ponds. To be accurate, several years ago the California Energy Commission had listed Valero Benicia's asphalt plant as a "small refinery" processing ~18,000 bpd of crude oil. However, since that time, the listing has been removed, presumably because Valero insisted that the asphalt processing units were part of the larger refinery and/or for sake of public perception, they didn't want to be known as owning and operating *two* refineries in Benicia. [<https://www.energy.ca.gov/data-reports/energy-almanac/californias-petroleum-market/californias-oil-refineries>]

17-48
(cont'd)

ISSUE # 4 : Regarding foreseeable adverse effects of SB35 streamlining in the Arsenal and Downtown Historic Districts and other Sensitive Sites:

How many parcels in Benicia, located in the Downtown Historic District or Arsenal Historic District or elsewhere in town, would potentially, foreseeably be eligible for SB35 projects, whereby project application reviews would be exempt from CEQA? The DPEIR does not directly say.

17-49

Various tables that list "opportunity sites" and chart their potential zoning changes, do not clarify whether those parcels on the Sites Inventory recommended for maximum density could be developed under SB35's regime.

17-50

According to the DPEIR, it does not discuss specific environmental conditions of individual parcels listed on the Sites Inventory. Rather, a development application for a particular parcel may, in the future, undergo further CEQA review, (beyond an initial enviro checklist) if such deeper analyses are considered necessary, either by staff or as contested by the public.

17-51

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However, by inference, one has to assume that it is also true that a parcel identified as suitable for multifamily at maximum density in an historic district, *or anywhere else in the city*, could be deemed by staff as eligible for streamlined processing under SB35; in which case, such a proposed project would have to meet existing "objective standards", but would be exempt from CEQA review or any opportunity for public appeal of ministerial approvals. | 17-52

The Revised HEU [Program 1.14; p 12] states: "*The City will continue to implement the City's streamlined review process for projects eligible for SB 35 streamlining.*" It repeats: [Program 1.4; p.9] "*the City will continue to implement the City's streamlined review process for projects eligible for SB35 streamlining.*" | 17-53

The Revised HEU also states [HEU Program 1.06; p.9] that the minimum standards for judging SB35 projects are to be evaluated and further modified to include "*more view corridors and sight lines*" throughout the community. The implication? That the City will make every effort to allow SB35 projects "citywide" with an added qualifier acknowledging need to "*Update objective standards for clarification of scenic views and vistas citywide at the same level of detail as those already adopted for the Arsenal.*" | 17-54

In the DPEIR's Executive Summary, Table 1-2, Sensitive Sites [p. 1-28–31] are listed 29 parcels identified as located within historic districts. No other category scores a higher total of sensitive sites: the closest is 17 sites considered as vulnerable to "high landslide hazard". | 17-55

Because there doesn't appear to be any direct statement in the DPEIR that SB35 streamlining would *not* be allowed in historic districts, one has to conclude from current evidence that, indeed, more housing development applications, at least for the Arsenal Historic District, could be deemed eligible to be reviewed under SB35 streamlining protocols. | 17-56

Such was the case this year when staff approved maximum density housing developments under SB35 for very special historic properties and grounds in the Arsenal Historic District along the Jefferson Ridge, in sub-District C—the core of the historic Arsenal from the Civil War era listed on the National Park Services' National Register of Historic Places. I highlight this example to illustrate the disastrous effect of SB35—how it became possible for Benicia to completely lose the integrity of Officers' Row, whose landscape settings on both sides of Jefferson St. have been central to the district's identity and character since President Abraham Lincoln ordered the expansion of the Arsenal. Soon these open landscapes will be completely obliterated by massive housing blocks. | 17-57

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FOR THE RECORD: Again, In my view, it is the fault of the City in the first place that density housing development applications for historic parcels were ever decided to be eligible to be reviewed under SB35 protocols. Alternatively, if those applications had been evaluated under the lens of CEQA, the analyses of Aesthetic impacts alone would raise questions of "significant and unavoidable impacts": it was clear that, in order to make the claim that his plan preserved the site-lines, "view corridors" and view sheds that visually connect Ridge lands, historic structures and the Strait as discussed in the Historic Arsenal Conservation Plan, the developer had made jerry-rigged adjustments to the development's site plan to accommodate a much disrupted sense of what the original wide-open "view corridor" looked out upon. In the near future, once the housing is constructed, any visitor to Jefferson St will have to look around three-story facades of contemporary "condo" blocks to try to see those visual connections that are markers of 19th century military layout and design. These views, intrinsic to the visual character of the historic core of the Arsenal and its command structure will be so compromised as to be nearly irrelevant to story-telling about Arsenal history.

17-58

Further, by allowing SB35 streamlining within the Arsenal Historic District, the City effectively made a terrible, seemingly now irrevocable choice to sacrifice the intrinsically valuable National Register District C, failing to properly evaluate the historic importance of "the district", thus missing the whole significance of the Arsenal as a cultural, physical, visual repository of military and City history for over 150 years. In accordance with General Plan goals and policies for cultural preservation of assets and economic development, "District C" was to have been a central destination for future ventures to create heritage tourism in the Arsenal as an economic benefit to the City.

17-59

In the HEU's Appendix D, Housing Element Sites Inventory List, 56 parcels are identified as "vacant" and as having been "used in Two Consecutive Prior Housing Elements". As I have tried to understand, those parcels would qualify for development for the maximum number of units "by right" and would allow for 20% affordable units at very low to low income levels. Would this mean that those 56 parcels would be eligible for SB35 streamlined review and thereby be exempted from CEQA review? This raises the environmental justice issue, as previously discussed, with specific example of the conditions at the large, vacant 1471 Park Rd parcel owned by the City.

17-60

From HEU 3.1.6 Site Selection Methodology [p. 32]:

Larger sites are anticipated to generate the most housing in Benicia, as projects are likely better able to achieve cost efficiencies for development. City ownership and expressed owner interest indicate that development is sought out by the property owner themselves, so housing development is more likely to occur."

17-61

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To allow any proposed housing project for the 1471 Park Rd site to be eligible for SB35 streamlining would conflict with Policy 5.03 of the HEU:

"REVISED HEU POLICY 5.03: THE CITY SHALL FURTHER CONDUCT REVITALIZATION EFFORTS AND REDUCE ENVIRONMENTAL HEALTH CONCERNS NEAR INDUSTRIAL USES.

Program 5.04

Environmental health is determined by air quality, health, climate change related outcomes, water quality, cancer prevalence, and more. Neighborhoods with poor environmental health conditions are often correlated to their proximity to industrial uses, major transit corridors, and other larger pollution sources. The City will facilitate environmental health- oriented place-based revitalization of neighborhoods, particularly for housing in closer proximity to the Valero Refinery and other industrial uses on the eastern side of the city, (underlining my emphasis, highlighting vague language that does not specify the "other industrial uses"] which are more heavily impacted by pollution from prior industrial uses, diesel particulate matter from proximity to regional freeways, and the Valero Refinery through the following strategies:

- Continue to enhance parks, open space, and tree plantings in these areas to improve environmental health. Facilitate safe pedestrian and bicycle access to parks or open space to reduce environmental health disparities across the city.
- Work with Port lessees and Caltrans to reduce regional air quality impacts associated with regional transportation facilities. The City will meet with Port lessees and Caltrans annually, as feasible, to identify options for air quality improvements and coordinate action implementation.
- Increase active transportation facilities in eastern Benicia to reduce dependence on automobiles and enhance safe connections to existing pedestrian and bicycle routes, such as the Carquinez Strait Scenic Loop Trail on the Benicia-Martinez Bridge. The City will identify at least two active transportation projects in eastern Benicia by December 2024.
- Review and update the City of Benicia's planning standards to address proximity disclosures for residences within 1/4 mile of industrial districts and ensure that adequate physical separation and landscape buffers are provided."

17-62

Apropos HEU Policy 5.03, I have made many observations In previous comment letters. When will the recommended neighborhood revitalization activities and mitigations that would involve "Port lessees" (Valero, Amports) and CalTrans be accomplished? What is the timeline for achieving such promised activity?

17-63

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The prospect envisioned by the DPEIR and HEU of building as many units as the HEU has projected possible [Appendix D]— that is, if ALL parcels listed in the Sites Inventory were developed to the maximum, or, at the least, to the most "realistic" buildout, [~ about 50-75% of the 3,584 maximum units considered by the HEU and cited by the DPEIR] does not venture to account for possible SB35 projects nor where they would be presumed to be suitable or eligible.

17-64

[From Project Description, 3-5]

"Collectively, all 181 sites that will be used by the City to meet its RHNA, will be referred to as the Housing Element Sites Inventory. These 180 sites would contribute a total of 2,277 units¹ to meet the City's RHNA. This EIR also evaluates the conservative possibility that all sites are developed to 100 percent of their allowed density which would produce a total of 3,584 units. The location of all sites labeled by the categories described here, are shown on Figures 3-1a, Benicia Housing Element Inventory Sites #1, 3-1b, Benicia Housing Element Inventory Sites #2, 3-1c, Benicia Housing Element Inventory Sites #3, 3-1d, Benicia Housing Element Inventory Sites #4, and 3-1e, Benicia Housing Element Inventory Sites #5. For purposes of this EIR, only sites that require a change in the General Plan Land Use Designation and/or Zone District will be evaluated."

17-65

ISSUE # 5 : Impact Analyses

Conclusions in the Summary of Impacts and Mitigation Measures [Chapter 1, p. 23] make it appear that the majority of impacts cited are "less than significant" and require no mitigation.

17-66

Aesthetic Impacts:

View corridors are already to be greatly compromised if not obliterated within the Arsenal Historic District's subdistrict C, as previously cited. Further compromises are expected if several parcels along Grant St identified for infill housing are permitted,: historic site-lines that should be identified in the AHCP, linking the Guard House, the Junior Officers Barracks and the Command Post would be obstructed.

17-67

Air Quality impacts:

Those impacts cited are mostly associated to construction phases of development, and the list of mitigations for those impacts are vast, with listings of relevant laws, regs, policies that if enforced, would make a difference.

17-68

DPEIR p 4.2-5 "Placement of New Sensitive Receptors"

17-69

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<p>"Because placement of sensitive land uses falls outside CARB's jurisdiction, CARB developed and approved the Air Quality and Land Use Handbook: A Community Health Perspective (2005) to address the siting of sensitive land uses in the vicinity of freeways, distribution centers, rail yards, ports, refineries, chrome- plating facilities, dry cleaners, and gasoline-dispensing facilities. This guidance document was developed to assess compatibility and associated health risks when placing sensitive receptors near existing pollution sources. CARB's recommendations on the siting of new sensitive land uses identified in Table 4.2-2, CARB Recommendations for Siting New Sensitive Land Uses, were based on a compilation of recent studies that evaluated data on the adverse health effects from proximity to air pollution sources."</p>	<p>17-69 (cont'd)</p>
<p>Table 4.2-1 Criteria Air Pollutant Health Effects Summary: there is missing information re PM2.5 sources — smoke from urban/wild interface fires; also petcoke dust at Valero coke silos and shipping terminal Port of Benicia.</p>	<p>17-70</p>
<p>No mention of hydrogen sulfide gas [H2S] as fugitive emissions from the Valero Refinery including Valero Asphalt Plant, and Storage Tanks for crude oil and finished products.</p>	<p>17-71</p>
<p>Cultural Resources Impacts:</p>	
<p>CULT -1 deals with demolition and alterations to existing historical structures. The real cultural impact to the integrity and character of historic "District C" is not evaluated, as though the two SB35 projects approved for the Jefferson Ridge would not count when assessing other parcels on the Sites Inventory List — those sites along Grant St – that would diminish the value of cultural/historic assets adjacent to or very near them: the Command Post and Guard House, within District C, and the Junior Officers' Barracks building.</p>	<p>17-72</p>
<p>Population and Housing Impacts:</p>	
<p>POP-1 states: <i>"Implementation of the project would not induce substantial unplanned population growth or significant growth for which inadequate planning has occurred, either directly or indirectly."</i></p>	<p>17-73</p>
<p>I do not believe the DPEIR adequately characterizes the problems of water availability in regards possible mega-drought effects long-range and that impact on housing expansion plans for Benicia, considering that this expansion is bound to continue into the next RHNA cycle, beyond 2031, and considering possible residential development on the Seeno property now under discussion. The DPEIR reports that the HEU has provided parcels as potential sites (whether a listed parcel is already appropriately zoned for residential, or is proposed for upzoning or re-zoning) that cumulatively could potentially accommodate</p>	<p>17-74</p>
<p><u>3,584 units</u> — the total number of units that, under <i>this</i> Housing Update, could potentially</p>	<p>17-75</p>

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be built *before 2031*. Planning toward sustainability as required by our General Plan should involve long-range scenario building. What is envisioned for the next housing update cycle?

This begs the question the DPEIR skirts: How and by what means will the community of Benicia be sustainable into mid century and beyond if we continue to opt for more growth without sufficient understanding of those real environmental, social, and economic costs associated to development and increased population, including those related to public health and safety?

17-75
(cont'd)

Perhaps Placeworks and staff intended to locate every possible vacant or feasible parcel now, effectively *looking ahead past 2031*, assuming that the California mantra to build more housing will continue to be an ongoing requirement. Even if currently accounting for the fact that HCD would reject a certain number of identified sites proposed under the current HEU—and even if staff has allowed for those rejections and has provided "back up" sites—the DPEIR reports that the HEU has provided enough parcels for accommodating that staggering number of 3,584 units that could *potentially be built before 2031*. Of course, the few significant impacts cited by the DPEIR could be over-ridden in the interests of satisfying RHNA now and RHNA requirements in that future only eight years ahead.

17-76

These are exhausting but not exhaustive comments, given I have no time left to edit them, for which I apologize. I could not sacrifice more of my time to this written venture in public participation, while so many other meetings were needed to be attended to during this 45 day comment period, especially the Dec 13th hearing as well as the Valero CAP meeting where issues pertinent to monitoring Air Quality were the subject.

17-77

Thank you for considering my comments once again,

Respectfully,

Marilyn Bardet

Good Neighbor Steering Committee
Chair, Sustainable Solano
Board member, Benicia Community Air Monitoring Program

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17. Response to comment from Marilyn Bardet, dated December 19, 2022

17-1 Commenter states that the DEIR is long and complex. Commenter commends the labor put into producing the document and accompanying Housing Element and Safety Element and underscores the difficulty of reviewing the EIR and its components.

As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary.

17-2 Commenter alludes to the likelihood of the EIR's certification and states that the following content of the letter shall highlight the deficiencies of the EIR, specifically its lack of depiction of the magnitude of impacts that the proposed project would have on resident's health and safety.

As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary. Further response to Commenter's specific comments are contained in the responses below.

17-3 Commenter states that this comment letter incorporates all other comment letters submitted in writing to the City; oral testimony given at hearing regarding the Housing Element Update, Safety Element Update, Gateway Project, SB35 housing projects slated for the Arsenal Historic District, and the scoping of this EIR, emails sent to city officials with photographs; and all comments made in writing and/or given in oral testimony by Don Dean, Natalie Macris, Steve Goetz, Belinda Smith, Jane Lauder King and Michael Hayes.

This FEIR responds to all comments received during the public comment period on the DEIR. Specific to the commenter's reference:

- Responses from oral testimony from the December 13, 2022, meeting is found in comment letters 2 through 12 of this FEIR.
- Scoping Meeting Comments are included in Table 2-1 of the DEIR beginning on page 2-2. Table 2-2 summarizes the comments and where in the DEIR they are addressed.
- Comments from Donald Dean are included in this FEIR as comment letter 16.
- Comments from Natalie Macris are included in this FEIR as comment letter 15.
- Comments from Steve Goetz are included in this FEIR as comment 4, and 14.
- Comments from Belinda Smith are included in this FEIR as comment 10.

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- Comments from Jane Lauder King have not been received. There are no comments on file from Jane Lauder King.
- Comments from Michael Hayes are included in this FEIR as comment 11.

As this comment summarizes the other comments included by reference and does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary.

- 17-4 Commenter states that their understanding of the purpose of the EIR is to make clear to the public how the state's requirement that cities increase their total available housing stock “across all income categories” would impact the City especially in regard to the General Plan's overarching goal for sustainability.

The purpose of the EIR is to evaluate the impact that any proposed changes pursuant to the Housing Element or Safety Element Updates would have on the environment. The rezonings included as part of the proposed project would increase the maximum allowable residential density of 73 parcels in the City. This is the change evaluated by the EIR. The other parcels are already appropriately designated and zoned to allow for housing therefore they do not need to be evaluated in the DEIR.

- 17-5 Commenter states the EIR accounts for a much larger total of developable units than were assigned to the City's Regional Housing Needs Allocation (RHNA). Commenter further states that the EIR must address the significant and cumulative impacts of its 100 percent development scenario and that the EIR does not succeed in this.

Commenter is correct that the EIR evaluates a conservative 100 percent development scenario under which all allowed units identified for the sites in the Housing Element's sites inventory are developed. Further, the City has included a buffer of areas suitable to meet the RHNA so that projects maintain flexibility to develop with fewer units than required to meet the RHNA and still keep a valid Housing Element. As this commenter does not explain the ways in which the EIR is deficient, no further response is necessary.

- 17-6 Commenter summarizes the requirements of Housing Element and Safety Element law. Commenter further states that other policies that further delineate community values for protecting human health and safety, in addition to those addressing global warming impacts, community resilience, and climate adaptation, should be included.

As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no further response is required.

- 17-7 Commenter states that the City is obligated to propose zoning changes to encourage increased density and affordability to accommodate its 750 units.

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- Commenter's understanding of the Housing Element's requirement is correct, no further response is necessary.
- 17-8 Commenter states that the EIR reflects the magnitude of the State's housing crisis and change in housing policy and underscores the importance of responding to climate adaptation efforts during the next Housing Element cycle.
- As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no further response is required.
- 17-9 Commenter states that the "expansive buildout of Benicia will continue" where some projects may be subject to environmental reviews and others will be streamlined or exempt.
- As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no further response is required.
- 17-10 Commenter states that Chapter 4 of the EIR cites many federal, state and local laws that would guide land use decisions and future residential development. Commenter further states that "there would be no cause for concern" if all regulations were enforced.
- This EIR was produced with the assumption that future development under the Housing Element would comply with laws, regulations, and policies.
- 17-11 Commenter states concern over the scale of development that the Housing Element and DEIR propose and inquires as to the review protocol for any of the subsequent housing applications.
- No development is proposed under the Housing Element; the buildout scenario that the EIR evaluates is a conservative and unlikely possibility. The entitlement process for individual projects will depend on the nature of the individual development proposals. All projects must be consistent with the City's General Plan and development process.
- 17-12 Commenter quotes a section of the Housing Element and states that their belief is that the DEIR does not adequately portray the cumulative impacts of the 100 percent development scenario.
- As this comment does not describe any specific inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary. See also response to Comment 15-1.
- 17-13 Commenter quotes the Housing Element's assessment of the housing crisis and states their support for this assessment.

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As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary.

- 17-14 Commenter laments the difficulty of reviewing the DEIR in its online format, citing the cumbersome task of cross-referencing text between the appendices and the body of the DEIR.

Physical copies of the DEIR are available to members of the public in the Benicia Public Library and at Benicia City Hall.

- 17-15 Commenter states that the DEIR contains no method of viewing the precise location of the inventory parcels and states that parcels are only listed by their APN.

Figures 3-1a through 3-1e in Chapter 3, *Project Description*, of the DEIR show the location of the parcels in the Housing Element sites inventory. As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary.

- 17-16 Commenter states that the address, acreage, zoning changes, maximum units allowable, etc. should be in the DEIR's main text and that the maps provided in the project description do not contain the street addresses.

Tables 3-3 and 3-4 in Chapter 3, *Project Description*, show the APN, acreage, current General Plan Designation, current Zoning District, proposed General Plan Designation, proposed Zoning, the Housing Element's assumed units, and the maximum allowable units of each site. Commenter correctly notes that tables of most exhaustive length are available in the Housing Element's Appendix D. The Housing Element is included as Appendix 3-1 in the EIR. Vacant parcels often do not have street addresses so the tables usually refer to the County Assessor's parcel numbers.

- 17-17 Commenter states the project summary does not state the total number of developable units (3,584), clarifying that this total is provided in the Project Description. Commenter further questions why this number is so much larger than the 750 required RHNA units.

Commenter is referring to the maximum number of developable units that would be allowed under the proposed zoning amendments. This is the Housing Element's calculation for the number of units that will be used to meet their RHNA which assumes less development than the maximum allowed. As described in Section 3.1.2 of the Housing Element, the analysis of the Housing Element must assume a realistic development capacity. For the purposes of CEQA analysis, the maximum buildout of all sites should be considered to account for this possibility.

- 17-18 Commenter states the RHNA unit requirements by income listed in the Housing Element.

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- No response is required.
- 17-19 Commenter quotes paragraphs 2 and 3 of page 1-7 of Chapter 1, *Executive Summary*, that state the number of parcels, their acreage, and their units that are evaluated under proposed project.
- No response is required.
- 17-20 Commenter states that the text in the Chapter 3, *Project Description*, and Table 3-3 of present a “highly complicated presentation of facts” and fails to explain the City’s reasoning for exceeding the required RHNA. Commenter further proceeds to quote paragraphs 1, 2, and 3 of page 3-5 of the Project Description.
- See response to Comments 17-5 and 17-17 regarding the distinction between the scenarios assessed in the Housing Element and the EIR.
- 17-21 Commenter quotes a footnote provided in Table 3-3, *Opportunity Sites*, Chapter 3, *Project Description*, which provides an explanation of the realistic development capacity used by the Housing Element. This development capacity assumes 77 percent of the development capacity of each site in the inventory.
- No response is necessary.
- 17-22 Commenter states that the realistic development capacity is larger than the 15 percent buffer above the required 750 units.
- Commenter is correct in that the Housing Element has identified additional capacity above the required RHNA and its buffer. As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary. See also response to Comment 17-5 regarding the buffer.
- 17-23 Commenter states that the “suitably zoned and designated” sites in the Housing Element sites inventory do not provide enough capacity to meet the City’s RHNA and that this partially explains why the City must identify opportunity sites for rezoning. Commenter proceeds to quote a section of the Housing Element’s Sites Selection Methodology.
- The commenter is correct in that the City needs to rezone parcels to meet the RHNA. As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary.
- 17-24 Commenter states that pressure to build more affordable, maximum density infill housing in Benicia has raised public alarm and that due to public pressure sites in close proximity to the Southampton shopping center were removed from the Sites Inventory.

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As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary. No further response is required.

- 17-25 Commenter states that their concerns regarding the Housing Element are for protecting against the continuing loss of cultural and historic resources and to ensure that future residents would not be exposed to major industrial sources of pollution and known hazards.

Historic resources are addressed in Section 4.4 Cultural Resources of the DEIR. All potential future development that is subject to discretionary approval would be required to undergo environmental and design review prior to project approval. See response to comment C-4 in regard to SB 35 projects in relation to cultural resources. Approval of certain qualifying projects a proposed development that would require the demolition of a local SB-35 does require compliance with the City's objective standards.

- 17-26 Commenter states their belief that the challenges of site selection were finding sites that could be rezoned to allow units at the low-income range.

As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary. No further response is required.

- 17-27 Commenter recommends that the EIR provide a table that categorizes parcels that would accommodate high densities by geographic location. Commenter further that readers would not be able to evaluate the "fairness" of the high-density infill development throughout the City if no such information is provided.

The "fairness" of the distribution of high-density infill development is not an issue evaluated by CEQA. Please see the Housing Element for a discussion of Affirmatively Furthering Fair Housing. As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary.

- 17-28 Commenter states that no chart or table in the DEIR exists that provides totals of units in specific geographic areas of the City and states that the Sites Inventory should include this information.

Commenter is correct that no such demarcation of the sites exists in the DEIR as such categorization is not relevant to the analysis required under CEQA. Maps of the sites' locations are provided in both Chapter 3, *Project Description*, of the DEIR and in draft Housing Element.

- 17-29 Commenter states that the locations of sites that would accommodate maximum density should be clearer in the EIR because such sites would likely serve low-income units and environmental justice concerns may arise from the placement of these units.

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While fair housing is not an issue typically addressed by CEQA, the potential for exposure to environmental harm is addressed in this EIR. As specific concerns regarding the analysis and conclusions of the DEIR were not raised by the commenter, no further response to this comment is necessary.

- 17-30 Commenter inquires as to why no chart or list of the parcels in the inventory by their geographic location is included in the Housing Element or EIR. Commenter provides examples of segments of the City that should be evaluated separately.

See response to Comments 17-27 through 17-29. Specific geographic groupings of parcels are included in the DEIR as they pertain to environmental impacts. For example, sites in historic districts (the Downtown Historic Conservation District and Arsenal Historic Conservation District) are analyzed separately from other sites in the inventory for their potential impacts to historic resources.

- 17-31 Commenter calculated the number of units that would be added to parcels on that East side of the City and notes that this number is more than one third of the total number of units in the sites inventory.

See response to Comments 17-27 through 17-29. As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary.

- 17-32 Commenter asks why the above referenced calculation was not provided in the DEIR, further stating that the East side of the City would incur a disproportionate burden of expanding infill density housing. Commenter states that is area of the City is the least advantaged area of the City.

This EIR examines the environmental impacts associated the rezoning of 73 parcels in the City's Housing Element sites inventory. The issue of unfair distribution of increased residential density throughout the City is not a specific environmental concern addressed under CEQA. Impact LU-1 of Section 4.10, *Land Use and Planning*, evaluates the potential the proposed project to physically divide an established community, and as stated on page 4.10-7 of this section, the sites inventory is distributed across all areas of the City. Infill development is not typically considered to be an activity that divides an established community. Furthermore, this EIR evaluates potential impacts on a programmatic level. Specific details of future development projects are not yet known at this time regarding most sites in the inventory.

- 17-33 Commenter states that the DEIR does not address environmental justice concerns regarding to the expansion of infill housing in areas that are proximate to major sources of pollution and hazards. Commenter further inquires as to why no map of sources of pollution and hazards is not included in the DEIR.

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See response to Comments 17-27 through 17-29. Land uses which are common sources for toxic air contaminants are listed in Table 4.2-2 of the DEIR and include freeways and high-traffic roads, distribution centers, rail yards, ports, refineries, chrome platers, dry cleaners, and gasoline stations. The DEIR also provides Table 4.8-3, *Active Hazardous Sites in Proximity to Housing Element Sites*, in Section 4.8, *Hazards and Hazardous Materials*, of the DEIR. The inclusion of this information provides context for the existing pollution and hazards in the vicinity of Housing Element sites, as required under CEQA. The inclusion of a map would not provide a significant source of new information, nor would it change the conclusions of the DEIR. Environmental justice is not a CEQA issue, however, the Housing Element contains a section called Affirmatively Furthering Fair Housing that speaks to this issue. In addition, the CEQA analysis does not evaluate impacts of the environment on the project rather what potential environmental impacts the project would incur on the environment.

- 17-34 Commenter states that the DEIR lacks accurate descriptions of terms “industrial uses”, “industrial facilities”, “hazards”, “pollution sources.”

Section 4.2.1, *Environmental Setting*, of Section 4.2, *Air Quality*, provides multiple descriptions of air pollution and pollution sources. See pages 4.2-5 and 4.2-6 for descriptions of pollution sources, including those that originate from industrial uses and facilities. Section 4.8.1, *Environmental Setting*, of Section 4.8, *Hazards and Hazardous Materials*, provides descriptions of multiple types of hazards that have the potential to occur in the City. Section 4.8.5, *Environmental Impacts*, further analyzes how future development under the Housing Element would be impacted by hazards or create additional hazards.

- 17-35 The commenter states the DEIR fails to provide adequate specific evaluation of potential air quality impacts related to exposing future residents to sources of pollution and hazards.

See response to comment 9-5.

- 17-36 The commenter states that the DEIR fails to define sources of toxic air contaminants.

As discussed on page 4.2-5 of the DEIR, CARB has identified 244 compounds as toxic air contaminants. Land uses which are common sources for toxic air contaminants are listed in Table 4.2-2 of the DEIR and include freeways and high-traffic roads, distribution centers, rail yards, ports, refineries, chrome platers, dry cleaners, and gasoline stations. Nonetheless, while the above listed land uses are common sources of toxic air contaminants, a toxic air contaminant source ultimately is a land use, operation, or activity which uses any of the 244 compounds identified by CARB as toxic air contaminants.

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- 17-37 The commenter states that the DEIR should provide a clear map to locate the major sources of air pollution, ground level contamination and hazards, and pollution sources in the City.

As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary.

- 17-38 The commenter asks what ¼ mile from industrial districts specifically signifies as to the level of actual safety hazard presented, or to exposure scenarios at various potential pollution levels, whether by acute facility releases or chronic daily low level exposures to facility generated fugitive air emissions. The commenter further asks by what method the ¼ mile distance was established and why it is so vaguely applied.

The commenter is referring to an objective planning standard set by the City of Benicia. The reference to ¼ mile distance to industrial districts to analyze fugitive air emissions is not utilized in the DEIR. As the commenter is asking clarification questions to the objective rather than describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary.

- 17-39 Commenter describes the Valero Refinery and related infrastructure including its active pipelines, transmission lines, storage and shipping terminal, asphalt plant and tank farms. Commenter further states that these uses emit toxic air contaminants that are inventoried by the Bay Area Air Quality Management District (BAAQMD).

The Valero Refinery and related infrastructure is regulated by BAAQMD through its Major Facility Review Program (Title V). Part of this program requires regular monitoring and reporting. These facilities are subject to thresholds that ensure compliance with state law. Furthermore, it should be noted that residential development in the same proximity to these uses as the proposed Housing Element sites inventory is permitted under the City's current General Plan and accompanying land use plans. The refinery now owned by Valero was established in 1968. The City's General Plan EIR of 1998 does not identify air pollution hazards associated the industrial activity present in this area. As requirements for emissions standards become more stringent over time exposure to possible pollutants are reduced over time.

- 17-40 The commenter lists potential hazards from Amport LLC shipping dock and operations at the Port of Benicia, Freeway I-780, and three gas stations.

Section 4.8, Hazards and Hazardous Materials, lists hazardous material sites compiled pursuant to Government Code Section 65962.5. In addition, Section 4.8.1.2, Existing Condition, under subheading "Hazardous Materials" on page 4.8-23 of the DEIR discusses the refinery, industrial park and I-780 for their involvement of handling, sorting, and or transporting hazardous materials in Benicia.

3. Revisions to the Draft EIR

- 17-41 The commenter critiques the Safety Element Update for only including global warming mitigation measures and recommends incorporating policies addressing air quality, ground-level contamination, and hazards associated facilities.
- As this comment is directed at the Safety Element Update and does not reveal any inadequacies in the DEIR, no further revisions are required.
- 17-42 The commenter recommends the SEU should identify the means by which existing and future residents are to be protected from various sources of emission and a new program with performance criteria set by BAAQMD for Valero’s monitoring system.
- See response to comment 17-41.
- 17-43 The commenter states more people are becoming concerned about air quality related to refinery emissions, files, and toxic smoke, and PM 2.5. The commenter makes remarks about residents are not aware of other sources of pollution, air quality impacts, and hazards. The commenter goes on to explain the “refinery-related activities” such as benzene from freeway tailpipe exhaust and from the refinery’s fugitive emissions from all of their operations.
- As this comment does not describe any inadequacies to the DEIR, no changes to the DEIR are necessary. This comment will be forwarded to decision makers for their consideration.
- 17-44 The commenter recommends additional policy to describe safety hazards in the port waterfront and provides examples. The commenter states all examples are relevant to prospective density housing infill at 1471 Pard Rd.
- See response to comment 17-41.
- 17-45 The commenter identifies other sites of particular concern for proximity to specific sources of pollution and hazards such as housing site at large City-owned property at 1471 Park Rd, which lies within the northern boundary of the Arsenal Historic District. The commenter states the site is bounded by I-780, I-680, Valero pipelines, Ampports, Industrial Park, and Park Rd. The commenter states that it is not surprising that large vacant or underutilized parcels such as this one that the DPEIR’s Sites Inventory List identifies and deems suitable for high density infill are located within the lands that were once part of the Benicia Arsenal. The commenter notes that the recently approved Jefferson Ridge Project, reviewed as an SB35 Project, also the 1451 Park Road Project reviewed under SB35 together would contribute 134+ housing units within also are located within the Arsenal Historic District.

3. Revisions to the Draft EIR

An agency must analyze how environmental conditions might adversely affect a project's residents or users only where the project itself might worsen existing environmental hazards in a way that will adversely affect them. Therefore, impacts on future residents from vehicle activity on I-780, Valero pipeline, AMPORTS, and the industrial park would not constitute environmental impacts on the project and would be outside the scope of a CEQA analysis. In addition, the CEQA analysis does not evaluate impacts of the environment on the project rather what potential environmental impacts the project would bring to the environment. Comments regarding SB 35 approved projects do not reveal any inadequacies within the DEIR's analysis therefore no further revisions are required.

- 17-46 The commenter identifies other sites of particular concern for proximity to specific sources of pollution and hazards such as housing site such as large parcels aggregated #87, #88, #89, and #90 along Casa Grande at Viewmont and there are refinery pipelines that run east of Casa Grande along Park Rd. The commenter states no specific number for maximum capacity density is cited, but as subject to "by right" development, 20% of the total number of units would likely be affordable units. The commenter states that Exxon and Valero have kept parcels vacant and now the only other access to the pipelines is through Francesca Terrace Park.

See response to comment 17-45.

- 17-47 The commenter lists parcels identified on maps Figure 3-1a through Figure 3-5 specifically, #30, #26, #27, #28, #29, #50, and parcels located at 150 Riverhill Dr and 670 East H.

As this comment does not describe any inadequacies to the DEIR, no changes to the DEIR are necessary. This comment will be forwarded to decisionmakers for their consideration.

- 17-48 The commenter recommends the DEIR provide needed historical background regarding how the Arsenal became the Benicia Industrial Park.

Section 4.4.1.2, *Existing Conditions*, on page 4.4-6 of the DEIR sufficiently covers background and existing conditions for the Arsenal. In addition, the information provided would not change the analysis presented in Section 4.4.5, *Environmental Impacts*, for Cultural Resources therefore no further revisions are required.

- 17-49 Commenter asks how many parcels are located in the Historic Districts would potentially be eligible for the SB 35 exemption from CEQA.

See response to comment C-4. SB-35 was adopted by the State of California to accelerate the construction of affordable housing by making approval of certain qualifying projects

3. Revisions to the Draft EIR

ministerial and therefore not subject to CEQA. In addition, while SB-35 is not applicable to a proposed development that would require the demolition of a historic structure that was placed on a national, state, or local historic register it does not exempt properties that are not included on such a register but are in an historic district from its streamlined discretionary review and approval requirements. SB 35 projects must meet the City's objective planning standards including the objective requirements of the Arsenal Historic Conservation Plan. It is beyond the scope of the DEIR to determine how many parcels could be eligible for streamlined ministerial approval under SB 35. As this comment does not describe any inadequacies to the DEIR, no changes to the DEIR are necessary.

- 17-50 Commenter states that it is unclear which opportunity sites could be developed at their maximum densities under SB 35's regime.

See response to comment C-4. See response to Comment 17-49.

- 17-51 Commenter states that the DEIR does not discuss specific environmental conditions of individual parcels listed on the Sites Inventory. Commenter notes that at the time of development, future projects may undergo additional environmental review.

Commenter is correct. The analysis in the DEIR is programmatic and therefore cannot evaluate individual site issues. All potential future development that is subject to discretionary approval would be required to undergo environmental and design review prior to project approval.

- 17-52 Commenter states that the any parcel in the City, including in historic districts, that designated as suitable for maximum density development could be eligible for streamlining under SB 35. Commenter further explains that projects would be required to meet objective standards and would be exempt from CEQA review or public appeal of ministerial approvals.

See response to Comment 17-49. With respect to the application of SB 35 reference should be made to the eligibility criteria in Government Code Section 65913.4. This comment also assumes that the City will remain subject to SB 35. As this comment does not describe any inadequacies to the DEIR, no changes to the DEIR are necessary.

- 17-53 Commenter quotes the Housing Element's Programs 1.14 and 1.4 that state that the City will continue to implement SB 35 streamlining.

See response to Comment 17-52. As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary. No further response is necessary.

3. Revisions to the Draft EIR

- 17-54 Commenter quotes the Housing Element's Program 1.06 which states that SB 35 projects would be evaluated to include more view corridors and sight lines and that objective standards for scenic views will be implemented at the same level of detail as those adopted in the Arsenal District.
- See response to Comment 17-52. As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary. No further response is necessary.
- 17-55 Commenter notes that the DEIR's Chapter 1, *Executive Summary*, Table 1-2, *Sensitive Sites*, lists 29 parcels located in historic districts.
- Commenter is correct about the number parcels included in the sites inventory that are also within historic districts. As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary.
- 17-56 Commenter states that no statement regarding SB 35 streamlining for sites in historic districts has been made in the in the DEIR. Commenter further concludes that SB 35 streamlining would be allowed in historic districts.
- See response to comment C-4. See response to Comment 17-49.
- 17-57 Commenter states that this year City staff approved maximum density housing developments pursuant to SB 35 in sub-District C of the Arsenal Historic District. Commenter further states that this would have a disastrous effect on the historical integrity of this sub-District as the historical landscapes of this area would be obstructed by housing.
- See response to Comments 16-5 and 17-49. In addition, while specific projects are not explicitly analyzed in this DEIR, the DEIR does conclude that significant and unavoidable impacts would occur to the historical resources in the Arsenal District under the condition of cumulative buildout of all sites in the Arsenal Historic District.
- 17-58 Commenter states their disapproval of development pursuant to SB 35 in the City's historic districts and explains how this development would obstruct view corridors and degrade the visual character of the Arsenal District.
- See response to Comments 16-5, 17-49, 17-56 and 17-57.
- 17-59 Commenter briefly explains the historical value of the Arsenal Historic District and further states that City's has failed to evaluate the historic importance of the District.

3. Revisions to the Draft EIR

As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary. See also response to Comments 16-5, 17-49, 17-56, and 17-57.

- 17-60 Commenter states that the Housing Element has identified 56 parcels that shall be allow development “by-right” and asks if those 56 parcels would be eligible for SB 35 streamlined review. Commenter further states that this would raise an environmental justice issue.

See response to Comments C-4, 17-49, 17-50, and 17-52 regarding SB 35 and Comment 17-33 with respect to environmental justice. It is important to note that the by-right provisions are established as state law and not by an action of the City. From an environmental perspective this makes by-right as described herein an existing condition and not a change attributed to the proposed project. All potential future development that is subject to discretionary approval would be required to undergo environmental and design review prior to project approval. In addition, the “by-right” provisions of state law referred to by the commenter only apply to housing development projects where 20% of the units are provided as affordable to lower income households. As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary.

- 17-61 Commenter quotes a section of the Housing Element’s Sites Selection Methodology, which states that larger sites are expected to generate the most housing in Benicia.

As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary.

- 17-62 Commenter states that to allow any proposed housing project for the 1471 Park Road site to be eligible for SB 35 streamlining would conflict with Policy 5.03 of the Housing Element. Commenter proceeds to quote Policy 5.03 and Program 5.04, which identify strategies to reduce the environmental burden on housing in proximity to environmental health hazards.

As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary. See also response to Comments 14-7, 17-45, and 17-60.

- 17-63 Commenter asks in regard to the strategies listed in Program 5.04, when will the recommended neighborhood revitalization activities and mitigations that would involve "Port lessees" (Valero, Amports) and CalTrans be accomplished? What is the timeline for achieving such promised activity?

3. Revisions to the Draft EIR

As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary.

- 17-64 Commenter states that the DEIR and Housing Element do not take into account possible SB 35 projects or where they may be presumed to be suitable or eligible.

See response to comment C-4 for SB 35 projects in addition to Comments 17-49, 17-50 and 17-52. The DEIR evaluates the environmental impacts of building out the sites in the Housing Element Sites that require a zoning change leading to increased residential density. The DEIR does not evaluate every site that could be developed in the City and it furthermore assumes a maximum buildout of all sites that are listed in the inventory. It is unknown at this time which possible development sites would be eligible for streamlining under SB 35. However, this information would not change the conclusions made in the DEIR. It should be noted that while the City is included on the SB 35 Statewide Determination Summary produced by HCD based on data received as of June 1, 2022 as one of the 263 jurisdictions that had insufficient progress toward their Above Moderate Income RHNA and are therefore subject to the streamlined ministerial approval process under SB 35 for proposed developments with at least 10% affordability, the City will be removed from the list at HCD's next reporting period if the City's annual housing report demonstrates that it has met or exceeded its share of the RHNA by income category for the reporting period and would therefore no longer be subject to SB 35. All potential future development that is subject to discretionary approval would be required to undergo environmental and design review prior to project approval.

- 17-65 Commenter quotes page 3-5 of the DEIR, which discusses the number of parcels in the sites inventory and the number of units that would be allowed for development on these sites.

As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary.

- 17-66 The commenter states that conclusion in the Summary of Impacts and Mitigation Measures on appear that majority of impacts cited are less than significant and require no mitigation.

Commenter is correct. As the HEU primarily proposes infill residential development, it would be expected that the current regulatory procedures would address potential environmental impacts. Each DEIR section explains the regulatory setting that applies to development sites independent of the CEQA process. See also response to Comment 17-60. Table 1-1, *Summary of Impacts and Mitigation Measures*, of the DEIR determines aesthetics, hydrology and water quality, land use, population and housing, public services and recreation, utilities, and service systems are the environmental topical areas that are less than significant with no mitigation measures required.

3. Revisions to the Draft EIR

- 17-67 Commenter states that view corridors are already compromised if not obliterated within the Arsenal Historic District. The commenter states that if several parcels along Grant St identified for infill housing are permitted then historical resources would be obstructed.
- See response to Comments C-3, 17-49, 17-50 and 17-52 regarding the impacts to the Arsenal Historic District. Impact AES-1 on page 4.1-6 of the DEIR includes a discussion regarding the sites in historical districts is subject to the design review process that would ensure that sites would continue to maintain the historic integrity of the districts. See response to C-4 for additional information on historical resources.
- 17-68 Commenter states the air quality impact are mostly associated to construction phase of development and list of mitigations if enforced would make a difference.
- As this comment does not describe any inadequacies to the DEIR, no changes to the DEIR are necessary. This comment will be forwarded to decision makers for their consideration.
- 17-69 Commenter directly quotes a paragraph on page 4.2-5 of the DEIR.
- As this comment does not describe any inadequacies to the DEIR, no changes to the DEIR are necessary.
- 17-70 The commenter states that Table 4.2-1 of the DEIR is missing information related to PM_{2.5} sources, including smoke from urban and wild interface fires, petcoke dust from Valero coke silos, and shipping terminals at the Port of Benicia.
- As noted in Table 4.2-1 of the DEIR, the examples provided for sources of criteria air pollutants are examples and therefore do not represent exhaustive lists of criteria air pollutant sources. In addition the CEQA analysis does not evaluate impacts of the environment on the project rather what potential environmental impacts the project would bring to the environment.
- 17-71 The commenter states that there is no mention of hydrogen sulfide gas (H₂S) as fugitive emissions from the Valero refinery including Valero asphalt plant and storage tanks for crude oil and finished products.
- As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary.
- 17-72 Commenter states the real cultural impact to the integrity and character of historic "District C" is not evaluated under CULT-1. The commenter states that since the two SB35 projects approved for the Jefferson Ridge would not count when assessing other

3. Revisions to the Draft EIR

parcels on the Sites Inventory List and sites along Grant St would diminish the value of surrounding cultural/ historic resources.

See response to comment 15-8, 17-60, and 17-67.

17-73 Commenter directly quotes POP-1 statement on page 4.12-11 of the DEIR.

As this comment does not describe any inadequacies to the DEIR, no changes to the DEIR are necessary.

17-74 Commenter does not believe the DEIR adequately discloses the problems of water availability in regard to possible mega-drought and the impact of housing expansion plans for Benicia.

See response to comment 5-2.

17-75 Commenter states the DEIR reports that the HEU has provided parcels as potential sites (whether a listed parcel is already appropriately zoned for residential or is proposed for up zoning or re-zoning) that cumulatively could potentially accommodate 3,584 units in total under the HEU. The commenter asks what is envisioned for the next housing update cycle. The commenter asks how and by what means will the community of Benicia be sustainable into mid-century and beyond if more growth continues.

Table 3-3, Opportunity Sites, in the DEIR presents parcels that the City is proposing to redesignate and/or rezone to accommodate residential or increased residential development. Table 3-4, Suitability Designated/Zoned Sites, in the DEIR presents parcels that are suitably zoned. The DEIR is not at liberty to speculate what is expected on future Housing Element plans, the DEIR can only report on the potential environmental impacts of the proposed project which is the 2023-2031 Housing Element & Safety Element Updates.

17-76 Commenter states that perhaps PlaceWorks and staff intended to locate every possible vacant or feasible parcel now and looking past 2031. The commenter states that although sites can be rejected or removed, the DPEIR reports that the HEU has provided enough parcels for accommodating that staggering number of 3,584 units. The commenter also states that although the DEIR reports a few significant impacts, impacts can be over-ridden to satisfy RHNA requirements.

See response to comment 17-75. As this comment does not describe any inadequacies to the DEIR, no changes to the DEIR are necessary. This comment will be forwarded to decisionmakers for their consideration. See also response to Comment 17-60.

3. Revisions to the Draft EIR

17-77 Commenter apologizes for not editing their comments. The commenter notes other public hearing meetings during the 45-day comment period such as on December 13th and the Valero CAP meeting. The commenter thanks decision makers for considering their comments.

As this comment does not describe any inadequacies to the DEIR, no changes to the DEIR are necessary.

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3. Revisions to the Draft EIR

LETTER 18 – Trevor Macenski, Council Member (15 pages)

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Significant Impact	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
AESTHETICS			
AES-1: The project would not have a substantial adverse effect on a scenic vista.	Less than significant	No mitigation measures are required	Less than significant
AES-2: The project would not substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway.	Less than significant	No mitigation measures are required	Less than significant
AES-3: The project would not substantially degrade the existing visual character or quality of public views in non-urbanized areas nor would the project conflict with applicable zoning and other regulations governing scenic quality in urban areas.	Less than significant	No mitigation measures are required	Less than significant
AES-4: The project would not generate substantial light or glare that would adversely affect day or nighttime views in the area.	Less than significant	No mitigation measures are required	Less than significant
AIR QUALITY			
AIR-1: The project could conflict with or obstruct implementation of the BAAQMD Clean Air Plan	Potentially significant.	Mitigation Measure AIR-1a: Implement Mitigation Measures AIR-2a for construction and Mitigation Measures AIR-2b, and TRANS-1 for operation. Implementation of Mitigation Measure AIR-3c for localized impacts.	Significant and unavoidable.
AIR-2: Buildout of the project would result in a cumulatively considerable net increase of any criteria pollutant for which the project region is in non-attainment under applicable federal or State ambient air quality standard.	Potentially significant.	Mitigation Measure AIR-2a: Prior to discretionary approval by the City for development projects subject to CEQA (California Environmental Quality Act) review (i.e., nonexempt projects), future project applicants shall prepare and submit a technical assessment evaluating potential project construction-related air quality impacts to the City for review and approval. The evaluation shall be prepared in conformance with the Bay Area Air Quality Management District (BAAQMD) methodology for assessing air quality impacts identified in their CEQA Air Quality Guidelines. If construction-related criteria air pollutants are determined to have the potential to exceed the BAAQMD-adopted thresholds of significance, the City shall require feasible mitigation measures to reduce air quality emissions. Potential measures may include: Require implementation of the BAAQMD Best Management Practices for fugitive dust control, such as:	Significant and unavoidable.

Summary of Comments on 4._Draft_EIR_Without_Appendices TWM Comments (2).pdf

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 Author: tmacenski Subject: Highlight Date: 12/13/2022 8:01:38 PM

In general I would like to see a mitigation chat that identifies which mitigations are anticipated to apply to each site.

18-1

 Author: tmacenski Subject: Highlight Date: 12/13/2022 8:36:36 PM

EXECUTIVE SUMMARY

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Significant Impact	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
		<p>assess the significance of the finding under the criteria set forth in CEQA Guidelines Section 15064.5.</p> <ul style="list-style-type: none"> The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction activities are allowed to resume at the location of the find. If is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of construction activities on the discovery. The excavation plan shall be submitted to the City of Benicia for review and approval prior to implementation. All construction activities shall adhere to the recommendations in the excavation plan. 	
GREENHOUSE GAS EMISSIONS			
GHG-1: The project would generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment.	Potentially significant	<p>Mitigation Measure GHG-1a: New development on Housing Element sites shall provide electric vehicle (EV) charging infrastructure as specified in the California Green Building Standards Code (CALGreen) Tier 2 standards.</p> <p>Mitigation Measure GHG-1b: New development on Housing Element sites shall not include natural gas appliances or natural gas plumbing.</p>	Significant and unavoidable.
GHG-2: The project would not conflict with an applicable plan, policy, or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases.	Less than significant.	No mitigation measures are required.	Less than significant.
HAZARDS AND HAZARDOUS MATERIALS			
HAZ-1: The project would not create a significant hazard to the public or the environment through the routine transport, use or disposal of hazardous materials.	Potentially significant.	<p>HAZ-1: Prior to issuance of any building permit for a structure identified on the County Assessor records of having been constructed prior to 1978, the applicant shall disclose whether lead paint exists on the structure. If lead paint exists on the structure, lead must be contained during demolition activities (California Health & Safety Code Sections 17920.10 and 105255).</p> <p>HAZ-2: Prior to issuance of any building permit for a structure identified on the County Assessor records of having been constructed prior to 1970, the applicant shall disclose whether asbestos exists on the structure. If asbestos exists on the structure, the applicant shall use the procedures specified in subsections 303.1 through 303.13 of the Bay Area Air Quality Management District Regulation 11 Rule 2 of Asbestos Demolition, Renovation and Manufacturing.</p>	Less than significant.

 Author: tmacenski Subject: Sticky Note Date: 12/13/2022 6:10:33 PM

I just wanted to see if there is a point in which a mitigation like this deters the production of housing units on smaller sites. I understand it for a larger project, but a project that was under 10 units I think it would negatively impact property owners values.

 Author: tmacenski Subject: Highlight Date: 12/13/2022 7:59:38 PM

Is this feasible if the City hasn't taken a policy position on this?

Feasible means "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors."

I think without the City taking a position on this from a policy perspective it is not feasible and would deter smaller projects from moving forward.

CITY OF BENICIA HOUSING ELEMENT AND SAFETY ELEMENT UPDATES DRAFT EIR
CITY OF BENICIA

EXECUTIVE SUMMARY

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Significant Impact	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
<p>plaster); or a vibratory roller within 25 feet of any structure, the project applicant shall prepare a noise and vibration analysis to assess and mitigate potential noise and vibration impacts related to these activities. A qualified and experienced acoustical consultant or engineer shall conduct this noise and vibration analysis. The vibration levels shall not exceed Federal Transit Administration (FTA) architectural damage thresholds (e.g., 0.22 inches per second [in/sec] peak particle velocity [PPV] for fragile or historical resources, 0.2 in/sec PPV for nonengineered timber and masonry buildings, and 0.3 in/sec PPV for engineered concrete and masonry). If vibration levels would exceed this threshold, alternative uses such as drilling piles as opposed to pile driving and static rollers as opposed to vibratory rollers shall be used. If necessary, construction vibration monitoring shall be conducted to ensure vibration thresholds are not exceeded.</p>			
<p>NOI-2b: New residential projects (or other noise-sensitive uses) located within 200 feet of existing railroad lines shall be required to conduct a groundborne vibration and noise evaluation consistent with Federal Transit Administration (FTA)-approved methodologies to determine the extent of potential impact. If the soil or construction techniques must be modified to result in vibration levels at or below 0.006 PPV, the report shall include the recommendation that shall be included in the construction plans. If the interior vibration level cannot be reduced to 0.006 peak particle velocity (PPV), construction of new residential buildings cannot occur.</p>			
<p>NOI-3: Implementation of the proposed project does not expose future residents to excessive levels of airport-related noise</p>	<p>No impact.</p>	<p>No mitigation measures are required.</p>	<p>No impact.</p>
<p>POPULATION AND HOUSING</p>			
<p>POP-1: Implementation of the project would not induce substantial unplanned population growth or growth for which inadequate planning has occurred, either directly or indirectly.</p>	<p>Less than significant.</p>	<p>No mitigation measures are required.</p>	<p>Less than significant.</p>
<p>POP-2: Implementation of the project would not displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere.</p>	<p>Less than significant.</p>	<p>No mitigation measures are required.</p>	<p>Less than significant.</p>

 Author: tmacenski Subject: Highlight Date: 12/13/2022 6:16:25 PM

When I looked at the HE sites, I didn't see anything within 200 feet of the rail line.

EXECUTIVE SUMMARY

TABLE 1-1 SUMMARY OF IMPACTS AND MITIGATION MEASURES

Significant Impact	Significance Without Mitigation	Mitigation Measures	Significance With Mitigation
TRANS-2: The project would conflict or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b).	Potentially significant	<p>TRANS-1: Individual projects that do not screen out from VMT analysis shall provide a quantitative VMT analysis consistent with the methodology in the City of Benicia Local Guidelines for CEQA Review (Guidelines). Projects which result in a significant impact shall provide VMT mitigation as described in the Guidelines, consisting of the following options:</p> <ul style="list-style-type: none"> ▪ Modify the project’s characteristics to reduce VMT generated by the project. This might involve changing the density or mixture of land uses on the project site or changing the project’s location to one that is more accessible by transit or other travel modes. ▪ Implement transportation demand management (TDM) or physical design measures to reduce VMT generated by the project. The full range of travel demand management measures are listed in the Guidelines. ▪ Participate in a VMT impact fee program and/or VMT mitigation exchange or banking program. Currently there are no fee programs, banks, or exchanges that Benicia development could participate in, but if future programs are developed this would be an option. 	Significant and unavoidable.
TRANS-3: The project would not substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment).	Less than significant.	No mitigation measures are required.	Less than significant.
TRANS-4: The project would not result in inadequate emergency access.	Less than significant.	No mitigation measures are required.	Less than significant.
TRIBAL CULTURAL RESOURCES			
TCR-1: The proposed project would cause a substantial adverse change in the significance of a tribal cultural resource that is listed or eligible for listing in the California Register of Historical Resources or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k), or a resource determined to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Public Resources Code § 5024.1.	Potentially Significant.	<p>Mitigation Measure TCR-1: In the event that Native American human remains are found during the ground-disturbing activities of a project, the determination of Most Likely Descendant (MLD) under California Public Resources Code Section 5097.98 will be made by the Native American Heritage Commission (NAHC) upon notification of the NAHC of the discovery of said remains at a project site.</p> <p>Mitigation Measure TCR-2: Treatment of Native American Remains. In the event that Native American human remains are found during development of a project and the applicable tribe(s) or one of its members is determined to be MLD pursuant to Mitigation Measure TCR-1, the following provisions shall apply:</p>	Less than significant with mitigation incorporated.

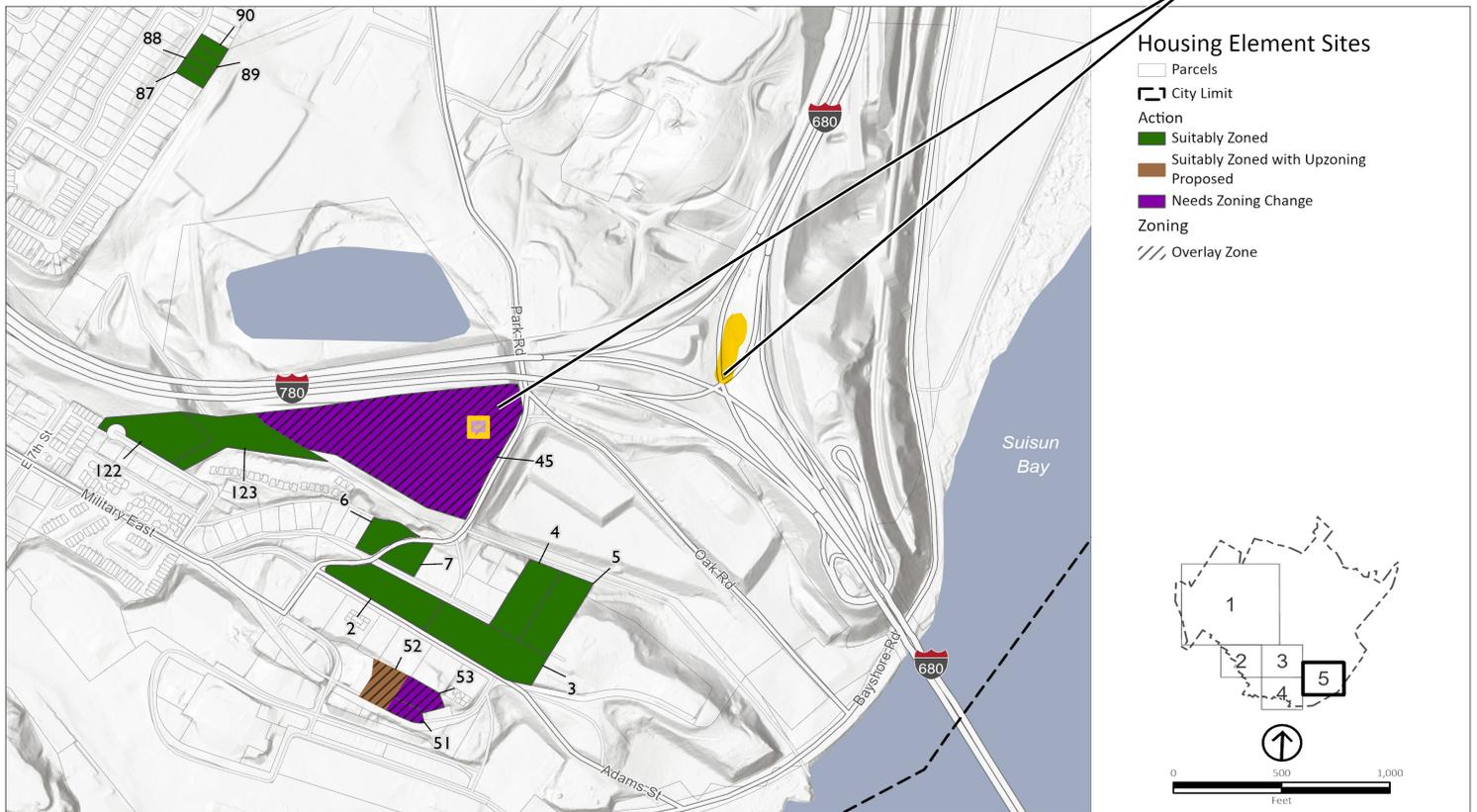
I don't think this is a feasible mitigation.



Figure 3-1d
Housing Element Sites Inventory #4

 Author: tmacenski Subject: Sticky Note Date: 12/13/2022 6:47:25 PM

What is the density on this site given the footprint into the bay.



Source: Placeworks 2022

Figure 3-1e
Housing Element Sites Inventory #5

 Author: tmacenski Subject: Highlight Date: 12/13/2022 8:42:59 PM

 Author: tmacenski Subject: Sticky Note Date: 12/13/2022 6:43:43 PM

Im just asking about City owned land.... and if we would have to offer this up as surplus land act. And if that is considered a governmental barrier as noted in HCD's letter. Also With this site (45) and 35,32, 31,122 and 123 I was wondering if BAAQMDs siting distance for DPM emissions from the freeway were identified as a environmental constraint. HRAs for high volume roadways would be required for residential uses in these locations and Im curious if you feel that it affects the realistic build out of the parcels.

18-6

18-7

AESTHETICS

The Housing Element includes 17 sites proposed to be rezoned for MU-I and one site suitably zones as MU-L which would be required to follow standards set in Chapter 17.26, Mixed Use Districts, of the Municipal Code as well as the Mixed-Use Districts have Objective Design Standards for Mixed-Use and Multifamily Development as mentioned in Section 17.26.040, Additional standards for all mixed-use districts, in the Municipal Code.

There are 13 opportunity sites and four suitably zones sites in the Housing Element Update inventory within the Downtown Historic District. Under the proposed Housing Opportunity Sites Zoning Overlay, all 13 opportunity sites in the Downtown Historic Conservation District would allow a maximum of 35 feet in height and three stories. Sites in the Downtown Historic District, the redevelopment of these sites would be subject to the provisions in Chapter 17.54, Historic Overlay District (H) which requires that demolition permits be reviewed and approved by the historic preservation review commission. In addition, Housing Element Sites Inventory includes 12 total sites within the boundaries of the Arsenal District. Four of these sites are opportunity sites and eight of these sites are suitably zoned. Development within the Arsenal Historic Conservation District is subject to the design review process of the Arsenal Historic Conservation Plan which ensures that modifications within the Benicia Arsenal Plan Area will continue to maintain the historic integrity of the district.

The City's General Plan provides Policy 2.1.1 ensure that new development is compatible with adjacent existing development and does not detract from Benicia's small-town qualities and historic heritage. Upon implementation of the policies in the General Plan and Municipal Code the proposed project would not substantially degrade the visual character or quality of the City of Benicia since future sites would be introduced in urban areas and any difference in allowed height will not be visually significant from a distance. Impacts would be less than significant.

Safety Element Update

The Safety Element Update (SEU) policies and implementing actions address change resiliency and adaptation mitigation as well as other topics such as fire risk, seismic risk, flood risk, site contamination, and the City's ability to respond to natural and manmade disasters. These policies and implementing actions aim to reduce the risk to the community and ensure protection from foreseeable natural and human caused hazards. SEU policies and implementing actions aim to address and mitigate manmade and natural disasters. As this is a policy document, this SEU would not have any significant physical environmental effects related to the City's aesthetic resources. No impacts would occur.

Significance Without Mitigation: No impact.

AES-4	The project would not generate substantial light or glare that would adversely affect day or nighttime views in the area.
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Housing Element Update

The two major causes of light pollution are glare and spill light. Spill light is caused by misdirected light that illuminates outside the intended area. Glare is light that shines directly or is reflected from a surface

 Author: tmacenski Subject: Highlight Date: 12/13/2022 8:21:19 PM

This is a programmatic statement, but there are a number of parcels, most notably site 45 and 35 which are located in an elevated location that are more visual from public spaces and parks. 35 is directly across from a State Recreation area. Please revise the analysis to address these impacts.

Also there are historic view corridors that need to be considered in the arsenal.

- **Policy 1.7:** Work with local and regional transportation agencies to help protect primary evacuation routes from being blocked or damaged by a hazard event.

4.2.5 ENVIRONMENTAL IMPACTS

4.2.5.1 METHODOLOGY

Emissions Quantification

Impacts related to air quality resulting from implementation (construction and operation) of the proposed project are discussed below. The impact analysis is based on air quality modeling of the criteria air pollutant and ozone precursor emissions that would result from projected future growth at buildout of the proposed project. To determine the increase in air pollutants as a result of the proposed project, the maximum allowable residential dwelling units envisioned by the proposed project (3,598 units) were estimated by calculating the net change from existing conditions and buildout of the proposed project in 2031. Due to a lack of available information on existing housing units on sites identified to accommodate the envisioned 3,598 dwelling units through 2031, all 3,598 dwelling units are herein considered to be a net increase in housing supply in the City.

CalEEMod Version 2020.4.0 was used to calculate emissions of air pollutants associated with buildout of the proposed project (see Appendix 4.2-1). Please refer to Tables 3-2 and 3-3 in Chapter 3, *Project Description*, for the sites identified to accommodate the housing supply growth envisioned by the proposed project. Due to the variety of housing types that could develop as a result of the proposed project, all new housing units modeled were assumed to best match the “Apartments Low-Rise” land use category in CalEEMod. Consistent with the VMT Analysis prepared by Fehr & Peers for the proposed project (Fehr & Peers, 2022), ITE Code 220 was utilized to identify the weekday and weekend average daily trip (ADT) generation rates for each housing unit and an average trip length of 10 miles was utilized in the emissions modeling. Moreover, all vehicle trips represented in the emissions modeling were assigned to be 100-percent primary, meaning no trip distance or generation discounts were applied for pass-by or diverted trips to provide a conservative emissions estimate.

Consistent with the BAAQMD’s Regulation 6, Rule 3, *Wood-Burning Devices*, no new dwelling units modeled with CalEEMod were assumed to contain any wood-burning devices. In addition, the per-dwelling unit indoor and outdoor water consumption rates utilized in CalEEMod were adjusted to reflect the consumption estimates contained in the City’s 2020 Urban Water Management Plan (Benicia, 2020). No other default values contained in CalEEMod were altered for calculating the emissions generated by the proposed project.

 Author: tmacenski Subject: Highlight Date: 12/13/2022 8:22:56 PM
Did BAAQMD want us to use their updated model?

 Author: tmacenski Subject: Highlight Date: 12/13/2022 8:23:31 PM

Mitigation Measure AIR-3. Applicants for construction within 1,000 feet of residential and other sensitive land use projects (e.g., hospitals, nursing homes, day care centers), as measured from the property line of the project to the property line of the source/edge of the nearest travel lane, shall submit a health risk assessment (HRA) to the City prior to future discretionary project approval. The HRA shall be prepared in accordance with policies and procedures of the Office of Environmental Health Hazard Assessment (OEHHA) and the BAAQMD. The latest OEHHA guidelines shall be used for the analysis, including age sensitivity factors, breathing rates, and body weights appropriate for children ages 0 to 16 years. If the HRA shows that the incremental cancer risk exceeds ten in one million (10E-06), PM_{2.5} concentrations exceed 0.3 µg/m³, or the appropriate noncancer hazard index exceeds 1.0, the applicant will be required to identify and demonstrate that mitigation measures are capable of reducing potential cancer and non-cancer risks to an acceptable level (i.e., below ten in one million or a hazard index of 1.0), including appropriate enforcement mechanisms. Measures to reduce risk may include, but are not limited to:

- Use of construction equipment rated as US EPA Tier 4 Interim for equipment of 50 horsepower or more.
- Use of construction equipment fitted with Level 3 Diesel Particulate Filters for all equipment of 50 horsepower or more.

Measures identified in the HRA shall be included in the environmental document and/or incorporated into the site development plan as a component of the proposed project. Prior to issuance of any construction permit, the construction contractor shall ensure that all construction plans submitted to the Community Development Department clearly show incorporation of all applicable mitigation measures.

Significance With Mitigation: Less than significant. Mitigation Measure AIR-3 would ensure that discretionary development projects with construction proximate to sensitive receptors achieve the BAAQMD significance criteria of one million (10E-06) cancer risk, PM_{2.5} concentrations exceed 0.3 µg/m³, or the noncancer hazard index exceeds 1.0 by requiring use of newer, lower emitting construction equipment, and would not expose sensitive receptors to substantial pollutant concentrations.

AIR-4	The project would not result in other emissions (such as those leading to odors) adversely affecting a substantial number of people.
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Housing Element Update

Construction

While odors could be generated during construction activities, the proposed project is a General Plan Housing Element Update and would not directly result in construction of any development project.

 Author: tmacenski Subject: Highlight Date: 12/13/2022 8:30:01 PM

 Author: tmacenski Subject: Highlight Date: 12/13/2022 8:33:12 PM

There is no analysis on the long term impacts on Health Risk. I would like the analysis to be revised to include an identification of sites that would be impacted by the contributing cumulative condition of 780 emissions. Based on the direct proximity you should identify mitigation for implementation of high filtering hvac systems for all the parcels within 500 feet.

18-
10

road vehicles. Electricity, natural gas, and transportation fuel consumption estimates during operation of the proposed project are presented in Table 4.5-1, *Year 2031 Forecast Electricity Consumption*.

TABLE 4.5-1 YEAR 2031 FORECAST ELECTRICITY CONSUMPTION

Energy Resource	Annual Energy Consumption
Building – Electricity ¹	14,611,500
Building – Natural Gas ²	35,504,300
Transportation – Electricity ¹	2,323,443
Transportation – Natural Gas ²	1,813
Transportation – Diesel ³	56,946
Transportation – Gasoline ³	2,288,428

¹ Energy resource is expressed in kilowatt-hours (kWh).

² Energy resource is expressed in British thermal units (kBtu).

³ Diesel, compressed natural gas (CNG), and gasoline fuels are expressed in gallons. Electric vehicles are expressed in kilowatt-hours (kWh).

Source: CalEEMod Output; EMFAC 2021 Version 1.0.2; Appendix 4.2-1.

As shown in Table 4.5-1, the maximum 2031 buildout of up to 3,598 new units under the proposed project would result in the annual consumption of an estimate 16,934,943 kWh, 35,504,300 British thermal units, 56,946 gallons of diesel fuel, and 2,288,428 gallons of gasoline fuel. Considering that the introduction of up to 3,598 new units could accommodate an estimate 8,743 new residents, the proposed project is anticipated to result in 1,937 kWh, 4,061 British thermal units, 6.5 gallons of diesel fuel, and 262 gallons of gasoline fuel per capita. As previously discussed, the proposed project would be considered to result in a potentially significant impact if it would result in wasteful, inefficient, or unnecessary consumption of energy resources. Considering the guidance provided by Appendix F of the CEQA Guidelines and the Appellate Court decision in *League to Save Lake Tahoe Mountain etc. v. County of Placer* (2022) (75 Cal.App.5th 63, 164-168), the proposed project would be considered to result in wasteful, inefficient, or unnecessary consumption of energy resources if it would conflict with any of the following energy conservation goals:

- Decrease overall per capita energy consumption.
- Decrease reliance on fossil fuels such as coal, natural gas, or oil.
- Increase reliance on renewable energy sources.

Decreasing Overall Per Capita Energy Consumption

While the electricity and natural gas demand for the City would increase compared to existing conditions as the new energy consumption shown above in Table 4.5-1 account for new units beyond the City's current housing supply, developments accommodated under the proposed project would be required to comply with the current and future updates to the Building Energy Efficiency Standards and CALGreen. Compliance with CALGreen energy efficiency standards would contribute to reducing the building-related energy demands shown in Table 4.5-1. New and replacement buildings in compliance with these

 Author: tmacenski Subject: Highlight Date: 12/13/2022 8:48:48 PM

I think this needs to be revised to account for our accurate participation in MCE's clean energy program. That information is available.

ENERGY

Considering the above, the proposed project would result in the construction and operation of up to 3,598 dwelling units that would be designed compliant to the California Building Code, thereby reducing reliance on fossil fuels for space and water heating. In addition, the proposed project would result in population growth that would result in subsequent increases in transportation energy demand; however, with improving fuel efficiency standards year over year through the buildout year of 2031 and compliance with the EV charging infrastructure requirements contained in the California Building Code, the proposed project would on average reduce reliance on fossil fuels for transportation energy demand. Therefore, the proposed project would be considered consistent with this energy conservation criterion.

Increasing Reliance on Renewable Energy Sources

As previously discussed, the proposed project envisions new residential development throughout the City which would be required to install rooftop solar, as applicable. New single-family residences would be required to comply with Title 24, Part 6, Subchapter 8, Section 150.1(c)14 and new multi-family residences would be required to comply with Title 24, Part 6, Subchapter 11, Section 170.2(f), of the 2022 California Building Code to include rooftop solar systems. Compliance with these codes would directly increase overall reliance on renewable energy sources for electricity generation. Moreover, compliance with the EV charging infrastructure requirements contained in the California Building Code would on average increase reliance on electricity for transportation energy demand. As electricity consumed in California is required to meet the increasing renewable energy mix requirements under the State's RPS and accelerated by SB 100, greater and greater proportions of electricity consumed in buildings and for transportation energy demand envisioned under the proposed project would continue to be sourced from renewable energy sources.

Furthermore, new residences facilitated by the proposed project would be automatically enrolled in MCE service, which provides more renewable-sourced electricity services in addition to those provided by PG&E. While future residents would have the option to opt-out back into PG&E service, MCE would automatically enroll future residents accommodated by the proposed project into their minimum 60 percent renewable "MCE Light Green" electricity service (MCE 2019). In 2021, PG&E's "Base Plan" electricity service consisted of a power mix of 47.7 percent sourced from eligible renewable sources (PG&E 2022a). As future residents have the option to choose an electricity service that relies on renewable sources more for electricity generation than what is minimally required under the State's RPS, and considering that both electricity service providers for the Planning Area would provide incrementally greater and greater proportions of renewably-sourced electricity to City residents, buildout of the proposed project in 2031 would result in an overall increase in reliance on renewable energy sources. As such, the proposed project would be consistent with this energy conservation criterion.

Taking into account the above analysis demonstrating that the proposed project would result in an overall decrease in energy consumption per capita, decrease in reliance on fossil fuels, and increase in renewable energy sources, the proposed project would not result in wasteful, inefficient, or unnecessary consumption of energy resources. As such, this impact would be less than significant.

 Author: tmacenski Subject: Highlight Date: 12/13/2022 8:50:01 PM
Please let me know if this was taken into account in the projection.

GREENHOUSE GAS EMISSIONS

emissions impacts resulting from the proposed project would remain significant and unavoidable after implementation of MM GHG-1.

Safety Element Update

California Government Code Section 65302(g) requires all local jurisdiction to update their Safety Element upon revision of the Housing Element. The Safety Element Update (SEU) policies and implementing actions address change resiliency and adaptation mitigation as well as other topics such as fire risk, seismic risk, flood risk, site contamination, and the City's ability to respond to natural and manmade disasters. These policies and implementing actions aim to reduce the risk to the community and ensure protection from foreseeable natural and human caused hazards. SEU policies and implementing actions aim to address and mitigate manmade and natural disasters. As this is a policy document targeting the mitigation of hazards, this SEU would not result in GHG emissions to exceed the GHG reduction targets set by AB 1279 or the State's carbon neutrality goals. No impact would occur.

Significance Without Mitigation: Potentially significant.

Mitigation Measure GHG-1a: New development on Housing Element sites shall provide electric vehicle (EV) charging infrastructure as specified in the California Green Building Standards Code (CALGreen) Tier 2 standards.

Mitigation Measure GHG-1b: New development on Housing Element sites shall not include natural gas appliances or natural gas plumbing.

Significance With Mitigation: Significant and Unavoidable. While mitigation measure GHG-1a and GHG-1b would ensure that development of the Housing Element sites would provide the necessary design elements that would lay a foundation to achieve carbon neutrality by 2045 and contribute their "fair share" to achieving the State's climate goals. None-the-less, GHG emissions associated with the project are conservatively considered significant because individual housing project consistent with the Housing Element update would have the potential to exceed net zero emissions.

GHG-2	The project would not conflict with an applicable plan, policy, or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases.
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Housing Element Update

Applicable plans adopted for the purpose of reducing GHG emissions include CARB's Scoping Plan, ABAG's/MTC's Plan Bay Area, and the City of Benicia CAP. A consistency analysis with these plans is presented below.

 Author: tmacenski Subject: Highlight Date: 12/13/2022 8:53:47 PM
Please see the previous comment.

NOISE

qualified and experienced acoustical consultant or engineer shall conduct this noise and vibration analysis. The vibration levels shall not exceed Federal Transit Administration (FTA) architectural damage thresholds (e.g., 0.12 inches per second [in/sec] peak particle velocity [PPV] for fragile or historical resources, 0.2 in/sec PPV for nonengineered timber and masonry buildings, and 0.3 in/sec PPV for engineered concrete and masonry). If vibration levels would exceed this threshold, alternative uses such as drilling piles as opposed to pile driving and static rollers as opposed to vibratory rollers shall be used. If necessary, construction vibration monitoring shall be conducted to ensure vibration thresholds are not exceeded.

NOI-2b New residential projects (or other noise-sensitive uses) located within 200 feet of existing railroad lines shall be required to conduct a groundborne vibration and noise evaluation consistent with Federal Transit Administration (FTA)-approved methodologies to determine the extent of potential impact. If the soil or construction techniques must be modified to result in vibration levels at or below 0.006 PPV, the report shall include the recommendation that shall be included in the construction plans. If the interior vibration level cannot be reduced to 0.006 peak particle velocity (PPV), construction of new residential buildings cannot occur.

Significance With Mitigation: Less than significant.

NOI-3 Implementation of the proposed project does not expose future residents to excessive levels of airport-related noise.

Housing Element Update

The City of Benicia is within the Airport Influence Area (AIA) for the Travis Air Force Base Airport Land Use Compatibility Plan (ALUCP). Specifically, Compatibility Zones D and E which are outlying areas that are areas subject to frequent aircraft overflight (see Figure 4.8-1, in Chapter 4.8, *Hazards and Hazardous Materials*). However, the HEU would not introduce housing sites near noise-sensitive land uses from the Travis Air Force Base Airport Land Use as shown in Figure 2 of the Travis ALUCP (Solano DRM). Therefore, there would be no impacts.

Safety Element Update

California Government Code Section 65302(g) requires all local jurisdiction to update their Safety Element upon revision of the Housing Element. The Safety Element Update (SEU) policies and implementing actions address change resiliency and adaptation mitigation as well as other topics such as fire risk, seismic risk, flood risk, site contamination, and the City's ability to respond to natural and manmade disasters. These policies and implementing actions aim to reduce the risk to the community and ensure protection from foreseeable natural and human caused hazards. SEU policies and implementing actions

 Author: tmacenski Subject: Highlight Date: 12/13/2022 8:54:24 PM

See comment. I don't know that there are any sites near the rail line to have this matter.

Safety Element Update

Implementation Safety Element Update (SEU) is policy-based and does not identify any changes to the transportation network in the City. The SEU would not result in any changes to daily VMT because proposed policy changes would improve the risk of death, injuries, property damage, and economic and social disruption resulting from fires, floods, droughts, earthquakes, landslides, climate change, and other hazards, and would not affect daily travel patterns. The SEU policies and implementing actions would encourage the design and construction of planned developments, such as addition of design elements related to emergency access and pedestrian safety. Therefore, the SEU would result in a less-than-significant impacts.

Significance Without Mitigation: Potentially significant.

Mitigation Measure:

TRANS-1: Individual projects that do not screen out from VMT analysis shall provide a quantitative VMT analysis consistent with the methodology in the *City of Benicia Local Guidelines for CEQA Review (Guidelines)*. Projects which result in a significant impact shall provide VMT mitigation as described in the *Guidelines*, consisting of the following options:

- Modify the project's characteristics to reduce VMT generated by the project. This might involve changing the density or mixture of land uses on the project site or changing the project's location to one that is more accessible by transit or other travel modes.
- Implement transportation demand management (TDM) or physical design measures to reduce VMT generated by the project. The full range of travel demand management measures are listed in the Guidelines.
- Participate in a VMT impact fee program and/or VMT mitigation exchange or banking program. Currently there are no fee programs, banks, or exchanges that Benicia development could participate in, but if future programs are developed this would be an option.

Significance With Mitigation: Significant and unavoidable.

 This is not feasible. The City has no plan to do this.

UTILITIES & SERVICE SYSTEMS

drainage facilities as necessary to correct localized drainage problems and Policy 4.12.3 ensures that new development pays its fair share cost of drainage system improvements. Furthermore, Policy 4.12.4 states: where practicable, discourage the use of storm drain systems, and promote stormwater management strategies which maximize opportunities for absorption of rainfall, overland conveyance of runoff, non-reservoir surface storage, and other measures that reduce development-induced impacts on peak flow rates.

In addition, the City requires a Stormwater Control Plan for all projects that create or replace 2,500 square feet or more of impervious surface to ensure that stormwater runoff is reduced and pollutants are minimized. The City requires a MS4 Permit to address stormwater pollution issues in development of private and public projects. This is regulated through the City's Stormwater Management Program, and requirements include implementation of best management practices (BMPs) during construction and the use of post-construction controls to reduce pollutants discharged from the project site. An Erosion and Sediment Control Plan or a Stormwater Pollution Prevention Plan must be prepared to address construction-related impacts. Adherence to these regulations would reduce impacts to the City's stormwater drainage facilities.

Furthermore, the Housing Element Update (Appendix 3-1) reports that the City has capacity in its current stormwater infrastructure sufficient to accommodate the Housing Element Inventory Sites. As such, the proposed project would not require the construction of new or expanded stormwater drainage facilities and impacts would be less than significant.

Safety Element Update

California Government Code Section 65302(g) requires all local jurisdiction to update their Safety Element upon revision of the Housing Element. The Safety Element Update (SEU) policies and implementing actions address change resiliency and adaptation mitigation as well as other topics such as fire risk, seismic risk, flood risk, site contamination, and the City's ability to respond to natural and manmade disasters. These policies and implementing actions aim to reduce the risk to the community and ensure protection from foreseeable natural and human caused hazards. SEU policies and implementing actions aim to address and mitigate manmade and natural disasters. As this is a policy document, this SEU would not have any significant physical environmental effects related to the City's stormwater drainage facilities. No impacts would occur.

Significance Without Mitigation: Less than significant.

 Author: tmacenski Subject: Highlight Date: 12/13/2022 9:01:17 PM

This is not accurate. We have a known condition related to flooding and storm water control on the lower and east side. So project sites in proximity to that area need to have the feasibility evaluated if they are adjacent to a known area of flooding.

3. Revisions to the Draft EIR

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3. Revisions to the Draft EIR

18. Response to Comment from Trevor Macenski, Council Member, dated December 19, 2022

18-1 The commenter states they would like to see a mitigation chart that identifies which mitigation are anticipated to apply to each site.

As this Comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary. Mitigation applies to all actions taken consistent with the Housing and Safety Elements.

18-2 The commenter questions if Mitigation Measure GHG1-b would deter the production of housing units on smaller sites. The commenter states this mitigation measure would negatively impact property value. The commenter questions if the mitigation measure is feasible if the city has not taken a policy position.

See response to Comment 9-2. It is not necessary for the city to have taken a policy position to impose this mitigation measure.

18-3 The commenter refers to Mitigation Measure NOI-2b and states when looking at the HE sites they did not see anything within 200 feet of the rail line.

See response to Comment 9-3.

18-4 The commenter does not think the third bullet point under Mitigation Measure TRANS-1 is feasible.

Mitigation measures listed under TRANS-1 are options. Since the DEIR is a Program EIR, this allows the lead agency an opportunity to consider broad mitigation measures, as well as greater flexibility to address project-specific and cumulative environmental impacts on a comprehensive scale.

18-5 The commenter refers to Figure 3-1d of the DEIR and asks what the density on the site is given the footprint of the bay.

Site 30 density is 30 units per acre on page 68 of the attached Housing Element in Appendix 3-1.

18-6 The commenter refers to Figure 3-1e on page 67 of the DEIR. The commenter asks about City owned land and if would be required to offer this up as surplus land act. The commenter asks if that is considered a governmental barrier as noted in HCD's letter and lists 45, 35, 32, 31, 122 and 123.

This comment is geared towards Housing Element Update and does not reveal any inadequacies within the DEIR. As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary.

3. Revisions to the Draft EIR

18-7 The commenter asks if BAAQMDs siting distance for DPM emissions from the freeway were identified as an environmental constraint. The commenter states HRAs for high volume roadways would be required for residential uses in these locations and is curious of the realistic build out of the parcels.

See response to Comment 9-5.

18-8 The commenter is concerned about Site 45 and Site 35 being located in elevated locations that are more visual from public spaces and parks. The commenter states site 35 is directly across a State Park. The commenter recommends revision the analysis and also include the historic view corridors that need to be considered in the arsenal.

See response to Comment 9-6 for Site 35 and Site 45. Impact AES-1 on page 84 of the DEIR includes a discussion regarding the sites in historical districts is subject to the design review process that would ensure that sites would continue to maintain the historic integrity of the districts. In addition housing development projects that are not subject to discretionary review must comply with the city's objective planning standards including the objective requirements of the Arsenal Historic Conservation Plan.

18-9 The commenter references CalEEMod Version 2020.4.0 and asks if the BAAQMD want us to use their updated model.

BAAQMD does not own, maintain, or distribute CalEEMod for use in CEQA analyses. At the time the DEIR was prepared, CalEEMod Version 2020.4.0 was the most recent version of CalEEMod formally released for use in CEQA analyses. As this comment does not describe any inadequacies in the CEQA analysis or conclusion in the DEIR, no changes to the DEIR are necessary. No further response is required.

18-10 The commenter states there is no analysis on the long-term impacts on Health Risk and recommends revising the analysis to include an identification of sites that would be impacted by the contributing cumulative condition of 780 emissions. The commenter recommends a mitigation for implementation of high filtering HVAC systems for all the parcels within 500 feet.

See response to Comment 9-5. In addition, future developments were not analyzed for their quantifiable health risk because the proposed project constituted the development of residential land uses, which are not major sources of toxic air contaminants. Moreover, the commenter recommends a mitigation for implementation of high filtering HVAC systems. It should be noted, however, that both the current 2019 and the future 2022 California Building Standards Codes, effective January 1, 2023, require that new residential development install indoor air filtration systems meeting a Minimum Efficiency Reporting Value (MERV) of 13 or greater, which is proven to reduce indoor suspended particulate concentrations, including DPM, by up to 90 percent.

3. Revisions to the Draft EIR

- 18-11 The commenter states Table 4.5-1 on page 4.5-13 of the DEIR needs to be revised to account for accurate participation in MCE'S clean energy program.
- The commenter states that the electricity consumption estimates in Chapter 4.5, *Energy*, of the DEIR be revised to consider MCE participation. The electricity consumption estimates presented in Table 4.5-1 are irrespective of which utility provider supplies electricity. Based on the methodology presented in Chapter 4.5 of the DEIR, the proposed project is estimated to generate a building electricity demand of approximately 14,611,500 kilowatt-hours per year. Whether future residences envisioned under the proposed project enroll 100 percent in PG&E or 100 percent in MCE services, the proposed project would still generate an estimated building electricity demand of approximately 14,611,500 kilowatt-hours per year.
- 18-12 The commenter asks if the MCE service discussion on page 4.5-16 of the DEIR was considered in the projection.
- As mentioned on page 4.5-16 of the DEIR, automatic enrollment in MCE electricity service was considered in the analysis.
- 18-13 The commenter states to see the previous comment regarding Mitigation Measure GHG-1b.
- See response to Comments 9-2 and 18-2.
- 18-14 The commenter refers to NOI-2b and states there are no sites near the rail line to have this mitigation measure.
- See response to Comment 9-3.
- 18-15 The commenter refers to the third bullet under Mitigation Measure TRANS-1 and states that it is not feasible, and the city does not plan to do this.
- The bullet items listed under mitigation measures TRANS-1 are options that can be applied at the time of development. Commenter provides no substantial evidence that VMT mitigation or banking programs are infeasible or might not be feasible in the future. The options are included in the adopted City of Benicia Local Guidelines for CEQA Review adopted by the City Resolution 22-111.
- 18-16 The commenter states the discussion regarding the best management practices during and post construction controls to reduce pollutants discharge from housing sites is not accurate. The commenter states there is a flooding and storm water control on the lower and east side so these sites need to have feasibility evaluated if they are adjacent to a known area of flooding.

3. Revisions to the Draft EIR

See response to Comment 8-1 in regard to sites identified in flood hazard maps. Construction projects of one acre or more of land area must comply with the requirements of the State Water Resources Control Board's (SWRCB) Construction General Permit (Order No. 2009-009-DWQ as amended by 2010-0014-DWQ). The permit includes Storm Water Pollution Prevention Plan (SWPPP) which requires erosion control plan with the incorporation of Best Management Practices (BMP). This information is provided on page 4.6-33 of the DEIR. In addition, the City's Chief Building Official is a certified FEMA Floodplain Administrator and reviews all development and building permit applications for compliance with FEMA regulations in accordance with our participation in the National Flood Insurance Program.

3. Revisions to the Draft EIR

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3. Revisions to the Draft EIR

3. Revisions to the Draft EIR

3.1 INTRODUCTION

This section contains revisions to the DEIR based upon (1) additional or revised information required to prepare a response to a specific comment; (2) applicable updated information that was not available at the time of DEIR publication; and/or (3) typographical errors. This section also includes additional mitigation measures to fully respond to commenter concerns as well as provide additional clarification to mitigation requirements included in the DEIR. The provision of these additional mitigation measures does not alter any impact significance conclusions as disclosed in the DEIR. Changes made to the DEIR are identified here in ~~strikeout text~~ to indicate deletions and in underlined text to signify additions.

3.2 DEIR REVISIONS IN RESPONSE TO WRITTEN COMMENTS

The DEIR for the 2023-2031 Housing Element and Safety Element Updates was published for public review on November 04, 2022. Since the DEIR has been made available for public review, there have been revisions to the Draft Housing Element and Safety Element Update. The Draft Housing Element was provided to the Department of Housing and Community Development (HCD) for review on August 24, 2022, with additional revisions sent on November 18, 2022. Following HCD's 90-day statutory review period, comments were received on November 22, 2022. The Draft EIR, which evaluates the potential environmental impacts of amendments to the Housing Element, Safety Element and Zoning Ordinance and Zoning Map, was released on November 3, 2022, therefore HCD comments were not incorporated into the Draft EIR. The Housing Element with HCD's edits will be posted and made available with two versions of the document showing a clean version of the document and a copy with the changes made in response to comments by HCD on January 12, 2023.

Note that between the time of publishing the DEIR and this FEIR edits have been made to the 2023-2031 Housing Element. No new sites were added to the housing sites inventory in subsequent drafts of the Housing Element. Changes have been made to the unit allocations in Table 1.1, *City of Benicia Regional Housing Needs Allocation, June 30, 2022 – December 15, 2030*, to include the "Very-Low Income" category however, this does not affect the City's total RHNA. Additional changes include clarifying implementation strategies including the addition of guidance and/or informational details, or rewording to ensure the intent is known. Therefore, both the Housing Element and Safety Element Updates with revisions incorporated would not result in changes to the CEQA analysis or change any of the conclusions.

The following text has been revised in response to comments received on the DEIR.

Page 1-15, Chapter 1, *Executive Summary*. The following changes are incorporated into Table 1-1, *Summary of Impacts and Mitigation Measures*, under the column titled *Mitigation Measures* for Impact BIO-1, in response to

3. Revisions to the Draft EIR

Comments B-9, B-10, B-13, B-17, B-18, B-20, and B-22 from Eric Chappell, Regional Manager, California Department of Fish and Wildlife, dated December 19, 2022.

Mitigation Measure BIO-1: Prior to the issuance of a building permit, all projects must provide documentation that the site and nearby vicinity does not include special status species (e.g., Threatened or Endangered species, CNPS List 1B and 2 plants, or species protected under Section 15380 of CEQA) If the species ~~are found~~ have the potential to occur on the site or nearby vicinity, focused surveys shall be conducted prior to any ground disturbance activities by a qualified biologist. The documentation shall ensure that botanical surveys are conducted during the appropriate blooming period. If no special status species are found on the project site or nearby vicinity, no additional action is necessary, and the project can continue. If special status species are found, no ground disturbance can occur and the project must either avoid the special status species, or develop a mitigation plan approved by the City in consultation with the California Department of Fish and Wildlife that reduces mitigates impacts to less than significant as feasible. Projects shall be required to implement the mitigation plan through a Mitigation Monitoring and Reporting Program. If off site replacement is the only mitigation option available, the performance criteria shall be at a ratio specified by the resource agency such as the Army Corps of Engineers or the California Department of Fish and Wildlife.

Mitigation Measure BIO-2: Prior to the issuance of the first action and/or permit which would allow for site disturbance (e.g., grading permit), a detailed mitigation plan shall be prepared by a qualified biologist for approval by the City, the USFWS, and CDFW shall include: (1) the responsibilities and qualifications of personnel to implement and supervise the plan; (2) site selection; (3) site preparation and planting implementation; (4) a schedule; (5) maintenance plan/guidelines; (6) a monitoring plan; and (7) long-term preservation requirements. Projects shall be required to implement the mitigation plan as outlined within the Plan.

Any permanent impacts to sensitive natural communities shall be mitigated for at a 3:1 ratio by acreage and temporary impacts shall be restored on-site at a 1:1 ratio by acreage. If on-site mitigation is infeasible, habitat shall be compensated by the permanent protection of habitat at the same ratio through a conservation easement and through the preparation and funding of a long-term management plan. Oak trees shall be replaced at the following ratios:

- 3:1 replacement for trees 5 to 8 inches diameter at breast height (DBH)
- 5:1 replacement for trees greater than 8 inches to 16 inches DBH
- 10:1 replacement for trees greater than 16-inch DBH, which are considered old-growth oaks

Habitat compensation shall also be required for wetland impacts. The project shall obtain permits from the Regional Water Quality Control Board and Army Corps of Engineers pursuant to the Clean Water Act.

Mitigation Measure BIO-3: Prior to ~~the issuance~~ any ground disturbance, the City shall require a habitat connectivity/wildlife corridor evaluation for future development that may impact existing connectivity areas and wildlife linkages. This evaluation shall be conducted by a qualified biologist. The results of the evaluation

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shall be incorporated into the project's biological report required in Mitigation Measure BIO-1. The evaluation shall also identify the project design features that would reduce potential impacts and maintain habitat and wildlife movement. To this end, the City shall incorporate the following measures, for projects impacting wildlife movement corridors:

- Encourage clustering of development
- Avoid sensitive biological resources and sensitive natural communities identified in the analysis
- Provide shield lighting adjacent to sensitive habitat areas
- Provide physical or distance buffers between development and wetland/riparian areas
- Require wildlife-passable fence designs (e.g., 3-strand barbless wire fence) on property boundaries.

Page 1-15, Chapter 1, *Executive Summary*. The following changes are incorporated into Table 1-1, *Summary of Impacts and Mitigation Measures*, under the column titled *Mitigation Measures* for Impacts BIO-2 and BIO-3, in response to Comments B-12, B-14, B-15, and B-21 from Eric Chappell, Regional Manager, California Department of Fish and Wildlife, dated December 19, 2022.

Mitigation Measure BIO-4: Ground disturbance activities involving vegetation removal shall be conducted between September 16 and March 14. If construction occurs inside the peak nesting season (between March 15 and September 15), a preconstruction survey (or possibly multiple surveys) by a qualified biologist is recommended prior to construction activities to identify any active nesting locations. If the biologist does not find any active nests within the project site, the construction work shall be allowed to proceed. If the biologist finds an active nest within the project site and determined that the nest may be impacted, the biologist shall delineate an appropriate buffer zone around the nest, and the size of the buffer zone shall depend on the affected species and the type of construction activity. Any active nests observed during the survey shall be mapped on an aerial photograph. Only construction activities (if any) that have been approved by a biological monitor shall take place within the buffer zone until the nest is vacated. The biologist shall serve as a construction monitor when construction activities take place near active areas to ensure no inadvertent impacts on these nests occur. Results of the preconstruction survey and any subsequent monitoring shall be provided to the California Department of Fish and Wildlife and the City.

Nesting Bird Avoidance. Active nests occurring at or near the project sites shall be avoided. Permittee is responsible for complying with Fish and Game Code section 3503 et seq. and the Migratory Bird Treaty Act of 1918.

a) Nesting Bird Surveys. If construction, grading, vegetation removal, or other project-related activities are scheduled during the nesting season, February 1 to August 31, a focused survey for active nests shall be conducted by a Qualified Biologist within 7 days prior to the beginning of Project-related activities. If an active nest is found, Permittee shall consult with CDFW regarding appropriate action to comply with Fish and Game Code. If a lapse in Project-related work of 7 days or longer occurs, another focused survey and, if needed, consultation with CDFW, shall be required before Project work can be reinitiated.

b) Active Nest Buffers. If an active nest is found during surveys, the project shall consult with CDFW regarding appropriate action to comply with state and federal laws. Active nest sites shall be designated as

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“Ecologically Sensitive Areas” (ESA) and protected (while occupied) during Project work by demarking a “No Work Zone” around each nest site.

- Buffer distances for bird nests shall be site-specific and an appropriate distance, as determined by a Qualified Biologist. The buffer distances shall be specified to protect the bird’s normal behavior to prevent nesting failure or abandonment. The buffer distance recommendation shall be developed after field investigations that evaluate the bird(s) apparent distress in the presence of people or equipment at various distances. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards project personnel, standing up from a brooding position, and flying away from the nest. The Qualified Biologist shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.
- The Qualified Biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by project work. Nest monitoring shall continue during Project work until the young have fully fledged (have completely left the nest site and are no longer being fed by the parents), as determined by the Qualified Biologist. Any reduction in monitoring active nests must be approved in writing by CDFW.

c) Nesting Habitat Removal or Modification. No habitat removal or modification shall occur within the ESA-marked nest zone until the young have fully fledged and will no longer be adversely affected by the Project, as determined by a Qualified Biologist.

Mitigation Measure BIO-5: Pre-Project Special-Status Plant Surveys. A Qualified Biologist shall conduct botanical surveys during the appropriate blooming period and conditions for all special-status plants that have the potential to occur prior to the start of construction. More than one year of surveys may be necessary. Surveys shall be conducted following CDFW’s Protocol for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (<https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>). Survey reports shall be submitted to CDFW for written approval prior to the start of construction. If any special-status plant species are observed, the project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to project activities.

If special-status plants will be impacted, the project shall provide mitigation prior to project start in a form accepted in writing by CDFW which may include on-site restoration pursuant to a restoration plan prepared by the project and approved by CDFW, off-site habitat preservation at a minimum 3:1 mitigation to impact ratio based on acreage or number of plants as appropriate, unless otherwise approved in writing by CDFW.

Mitigation Measure BIO-6: Swainson’s Hawk Surveys and Avoidance: If project activities are scheduled during the nesting season for Swainson’s hawks (March 1 to August 31), prior to beginning work on this project, Swainson’s hawk surveys shall be conducted by a qualified biologist with experience surveying for and detecting the species pursuant to the Recommended timing and methodology for Swainson’s Hawk Nesting Surveys in California’s Central Valley Swainson’s Hawk (2000) survey protocol, within 0.5 mile of the project site each year that project activities occur. Pursuant to the above survey protocol, surveys shall be

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completed for at least the two survey periods immediately prior to a project's initiation. For example, if the project is scheduled to begin on June 20, the qualified biologist shall complete three surveys in Period III and three surveys in Period V. It is recommended that surveys be completed in Periods II, III and V. The project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to project construction occurring between March 1 and August 31 each year. If the qualified biologist identifies nesting Swainson's hawks, the project shall implement a 0.5 mile no disturbance buffer zone around the nest, unless otherwise approved in writing by CDFW. project activities shall be prohibited within the buffer zone between March 1 and August 31, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be avoided, the project shall consult with CDFW pursuant to CESA and obtain an ITP.

Mitigation Measure BIO-7: Surveys and Avoidance of Fully Protected Raptors. Surveys shall be conducted for fully protected raptors, including white-tailed kite and golden eagle. The survey area shall be determined by a qualified Raptor Biologist in consultation with CDFW based on the species of concern, and if the nest of any fully protected raptor is identified during pre-construction nesting surveys, a biological based justification for the buffer zone, as determined by a qualified Raptor Biologist, shall be submitted to CDFW for review. Project activities shall not proceed between March 1 and August 31 unless CDFW provides written approval of the buffer zone around any nest of a fully protected raptor species.

Mitigation Measure BIO-8: Tricolored Blackbird Avoidance. If nesting tricolored blackbird or evidence of their presence is found, CDFW shall be notified immediately and work shall not occur without written approval from CDFW allowing the project to proceed. Project activities shall not occur within 500 feet of an active nest unless otherwise approved in writing by CDFW. Presence of nesting tricolored blackbird may require a CESA Incidental Take Permit before project activities may commence.

Mitigation Measure BIO-9: Special-Status Bee Habitat Assessment and Avoidance: A qualified wildlife biologist shall conduct visual surveys of areas planned for ground disturbance, including but not limited to, installation of water main, new roads, leach fields, and building sites, and within a 100-foot buffer of ground-disturbing activities. Surveys shall be conducted to coincide with the blooming period of locally common nectar sources such as vetch (*Vicia spp.*) and California poppy (*Eschscholzia californica*) during the flight season for the western, crotch's, and obscure bumble bee (generally late February through late June). Between two and four evenly spaced surveys shall be conducted for the highest detection probability, including surveys in early spring (late March/early April) and early summer (late June/July). Surveys shall take place when temperatures are above 60°F, preferably on sunny days with low wind speeds (e.g., less than 8 miles per hour) and at least 2 hours after sunrise and 3 hours before sunset. On warm days (e.g., over 85°F), bumble bees will be more active in the mornings and evenings. The qualified biologist shall conduct transect surveys following the Streamlined Bee Monitoring Protocol for Assessing Pollinator Habitat (https://www.xerces.org/sites/default/files/2018-05/14-021_01_XercesSoc_Streamlined-Bee-Monitoring-Protocol_web.pdf), focusing on detection of foraging bumble bees and underground nests using visual aids such as binoculars. If western, crotch's or obscure bumble bee nests are identified within the ground disturbance area or 100-foot buffer area, a plan to protect bumble bee nests and individuals shall be developed and implemented in consultation with CDFW. The plan shall include, but not be limited to: 1) specifications for construction timing and sequencing requirements (e.g., avoidance of raking, mowing, tilling, or other ground disturbance until late March to protect overwintering queens); 2) preconstruction surveys conducted within 30 days and consistent with any current available protocol standards prior to the start of

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ground-disturbing activities to identify active nests; 3) establishment of appropriate no-disturbance buffers for nest sites and construction monitoring by a qualified biologist to ensure compliance with buffers; 4) restrictions associated with construction practices, equipment, or materials that may harm bumble bees (e.g., avoidance of pesticides/herbicides, measures to minimize the spread of invasive plant species); and 5) prescription of an appropriate restoration seed mix targeted for the bumble bees, including native plant species known to be visited by native bumble bee species and containing a mix of flowering plant species with continual floral availability through the entire active season for bumble bees (March to October).

Presence of western bumble bee or crotch's bumble bee may require a CESA Incidental Take Permit before project activities may commence.

Mitigation Measure BIO-10 : Bat Tree Habitat Assessment and Surveys. Prior to any tree removal, a Qualified Biologist shall conduct a habitat assessment for bats. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to tree removal and shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting species). If suitable habitat trees are found, they shall be flagged or otherwise clearly marked, CDFW shall be notified immediately, and tree trimming or removal shall not proceed without approval in writing from CDFW. Trees may be removed only if: a) presence of bats is presumed, or documented during the surveys described below, in trees with suitable habitat, and removal using the two-step removal process detailed below occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a Qualified Biologist, under prior written approval of the proposed survey methods by CDFW, conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats. Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a Qualified Biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only. Limbs with cavities, crevices, or deep bark fissures shall be avoided, and 2) the second day the entire tree shall be removed.

Mitigation Measure BIO-11: Avoidance of Fully Protected Marsh Birds. Project activities within or adjacent to tidal marsh or suitable Ridgway's (California clapper) rail (CCR) or California black rail (CBR) habitat shall be avoided during rail breeding season (January 15 – August 31 for CCR, February 1 – August 31 for CBR) each year unless appropriately timed, yearly protocol level surveys are conducted and survey methodology and results are submitted to and accepted by CDFW. Surveys shall focus on suitable habitat that may be disturbed by project activities during the breeding season to ensure that these species are not nesting in these locations.

If breeding rails are determined to be present, no activities, visual disturbance (direct line of sight) and/or an increase in the ambient noise level shall occur within 700 feet of areas where CCR and/or CBR have been detected during the breeding season. If surveys have not been conducted, all work shall be conducted 700 feet from CCR and/or CBR habitat during nesting season. Additionally, no project activities shall occur within 50 feet of suitable habitat during extreme high tide events or when adjacent tidal marsh is flooded. Extreme high tides events are defined as a tide forecast of 6.5 feet or higher measured at the Golden Gate Bridge and adjusted to the timing of local high tides.

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Mitigation Measure BIO-12: Avoidance of Fully Protected Salt-Marsh Harvest Mouse. Impacts to salt-marsh harvest mouse shall be fully avoided.

a) **Habitat Avoidance.** No project activities shall occur within 50 feet of suitable tidal marsh habitat for the salt marsh harvest mouse (SMHM) within two (2) hours before and after an extreme high tide event (6.5 feet or higher measured at the Golden Gate Bridge and adjusted to the timing of local high tides) or when adjacent marsh is flooded unless SMHM proof exclusion fencing has been installed around the work area.

b) **Vegetation Removal.** Prior to impacting salt marsh habitat, an approved qualified biologist or biological monitor, familiar with salt marsh harvest mouse (SMHM), shall walk through and inspect suitable habitat prior to vegetation removal and search for signs of harvest mice or other sensitive wildlife and plants. Following inspection, personnel, under the supervision of the qualified biologist, will disturb (e.g., flush) vegetation to force movement of SMHM into adjacent marsh areas. Flushing of vegetation will first occur in the center of the site then progress toward the two sides away from the open water areas or in this case, away from impacted habitat. Immediately following vegetation flushing, personnel, under the supervision of the qualified biologist or biological monitor, will remove vegetation with hand tools (e.g., weed-eater, hoe, rake, trowel, shovel, grazing) so that vegetation is no taller than 2 inches.

c) **Exclusion Fencing.** After vegetation removal, a mouse proof barrier shall be placed along the edge of the area removed of vegetation to further reduce the likelihood of SMHM returning to the area prior to construction. The fence shall be made of a heavy plastic sheeting material that does not allow salt marsh harvest mice to pass through or climb, and the bottom shall be buried to a depth of 4 inches so that salt marsh harvest mouse cannot crawl under the fence. Fence height shall be at least 12 inches higher than the highest adjacent vegetation with a maximum height of 4 feet. All supports for the exclusion fencing shall be placed on the inside of the work area. An approximately 2-foot-wide de-vegetated buffer shall be created along the habitat side of the exclusion fence. The SMHM exclusion fencing shall remain in operating condition throughout the duration of all placement of fill events. The qualified biologist or biological monitor shall daily inspect the integrity of the exclusion fencing to ensure there are no gaps, tears or damage. Maintenance of the fencing shall be conducted as needed. Any necessary repairs to the fencing shall be completed within 24 hours of the initial observance of the damage. Any mice found along or outside the fence shall be closely monitored until they move away from the project area.

Mitigation Measure BIO-13: American Badger Avoidance. A qualified biologist shall conduct a habitat assessment to determine if the Project site or nearby vicinity has suitable habitat for American badger. If suitable habitat is present at the Project site, a qualified biologist shall survey for American badger within the Project site and nearby vicinity prior to construction. If any occupied burrows are discovered the Project shall implement an appropriate buffer from the burrow, as determined by a qualified biologist and approved in writing by CDFW. If the Project cannot avoid impacts to the occupied burrow the Project shall confer with CDFW regarding next steps before proceeding. This make require the Project to prepare and implement a relocation plan, unless otherwise approved in writing by CDFW.

Mitigation Measure BIO-14: The project shall conduct an evaluation of the sensitive natural communities on the project site and within the vicinity of the project site, pursuant to the Department of Fish and Wildlife's (CDFW's) Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (2018). Should sensitive riparian habitat be found and should

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the project result in significant impacts to a stream or lake, the project proponent shall obtain a Lake and Streambed Alteration Agreement (LSAA) from CDFW. The project applicant will be responsible for complying with all permit conditions. Such conditions may include, but are not limited to, implementation of best management practices (i.e., erosion and sediment control measures) and seasonal work restrictions, as appropriate. In addition, CDFW is expected to require compensatory mitigation for impacts to jurisdictional riparian habitat. The amount of required compensatory habitat acreage will be based on the functions and values of impacted features. Habitat compensation will be provided at a ratio of up to 3:1 of created to filled or disturbed in-kind habitat, pending coordination with CDFW. This ratio may be reduced through the permit process if CDFW find that a different ratio is sufficient to mitigate impacts to jurisdictional riparian habitat. Riparian habitat shall not be removed until the LSAA is received from CDFW or correspondence is received from CDFW indicating no permit is needed.

Page 1-15, Chapter 1, *Executive Summary*. The following changes are incorporated into Table 1-1, *Summary of Impacts and Mitigation Measures*, under the column titled *Mitigation Measures* for Impact CULT-1, in response to Comment 14-4, from Steven Goetz, dated December 19, 2022.

Mitigation Measure CULT-7: Prior to approval of any project subject to discretionary review on a vacant parcel in the City's Historic Conservation Districts, the City shall ensure that a qualified architectural historian who meets the Secretary of Interior's Professional Qualification Standards provides a report for review by the Historic Preservation Review Commission containing an evaluation of the project's consistency with the Secretary of Interior's Standards for the Treatment of Historic Properties.

Page 1-22, Chapter 1, *Executive Summary*. The following change is incorporated into Table 1-1, *Summary of Impacts and Mitigation Measures*, under the column titled *Mitigation Measures* for Impact NOI-2 in response to Comment 9-3 from Councilmember Trevor Macenski made during the December 13, 2022 public hearing on the DEIR.

~~NOI 2b: New residential projects (or other noise sensitive uses) located within 200 feet of existing railroad lines shall be required to conduct a groundborne vibration and noise evaluation consistent with Federal Transit Administration (FTA)-approved methodologies to determine the extent of potential impact. If the soil or construction techniques must be modified to result in vibration levels at or below 0.006 PPV, the report shall include the recommendation that shall be included in the construction plans. If the interior vibration level cannot be reduced to 0.006 peak particle velocity (PPV), construction of new residential buildings cannot occur.~~

Page 3-7, Chapter 3, *Project Description*. Table 3-3 incorrectly states the current general plan designation, current zoning, and proposed general plan designation for parcels APN: 080150260, 080150320, and 080150330. Table 3-3 is revised as follows in response to Comment Letter 1 from Karen Massey, dated December 10, 2022. Site 089053010 was removed from the Housing Element Sites Inventory during the November draft of the Housing Element.

TABLE 3-3 OPPORTUNITY SITES

APN	Acreage	Current General Plan Designation ¹	Current Zoning District ²	Proposed General Plan Designation	Proposed Zoning ²⁻³	Total Realistic Units ⁴	Maximum Allowable Units ⁵
087011530	3.61	Public/Quasi-Public	RS	Low Density Residential	RS with Overlay Zone	11	15
086062110	1.00	Low Density Residential	RS	Low Density Residential	RS with Overlay Zone	15	20
089062030	0.21	Low Density Residential	RS	Low Density Residential	RS with Overlay Zone	4	6
088141060	5.16	Public/Quasi-Public	PS	Public/Quasi-Public	PS with Overlay Zone	8	14
088141070	0.22	Public/Quasi-Public	PS	Public/Quasi-Public	PS with Overlay Zone	6	7
088113010	0.37	Public/Quasi-Public	PS	Public/Quasi-Public	PS with Overlay Zone	6	7
088113030	0.11	Public/Quasi-Public	PS	Public/Quasi-Public	PS with Overlay Zone	5	6
088113020	0.17	Public/Quasi-Public	PS	Public/Quasi-Public	PS with Overlay Zone	5	5
087144010	0.38	High Density Residential	RM	Medium Density Residential	RM with Overlay Zone	8	11
087144060	0.02	High Density Residential	RM	Medium Density Residential	RM with Overlay Zone	1	1
087122200	0.43	Low Density Residential	RS	High Density Residential	RH with Overlay Zone	9	13
086047040	0.84	Low Density Residential	RS	High Density Residential	RH with Overlay Zone	15	25
088091120	0.24	Low Density Residential	RS	Low Density Residential	RS with Overlay Zone	5	7
088091110	0.24	Low Density Residential	RS	Low Density Residential	RS with Overlay Zone	5	7
088091100	0.24	Low Density Residential	RS	Low Density Residential	RS with Overlay Zone	5	7
087200090	0.38	General Commercial	CG	High Density Residential	RH with Overlay Zone	1	11
087143130	1.63	Low Density Residential	RS	High Density Residential	RH with Overlay Zone	26	34
089074100	0.22	High Density Residential	RM	Medium Density Residential	RM with Overlay Zone	4	7
089074330	0.80	High Density Residential	RM	Medium Density Residential	RM with Overlay Zone	15	24
089074030	0.43	Low Density Residential	RS	Low Density Residential	RS with Overlay Zone	8	13
089074020	0.29	Low Density Residential	RS	Low Density Residential	RS with Overlay Zone	5	9
080180050	10.35	Limited Industrial	LI	High Density Residential	RH with Overlay Zone	147	310
080180150	6.86	Limited Industrial	LI	High Density Residential	RH with Overlay Zone	98	205
080180110	0.03	Limited Industrial	LI	High Density Residential	RH with Overlay Zone	4	4
080180130	18.48	Limited Industrial	LI	High Density Residential	RH with Overlay Zone	263	554
087011810	1.01	Office Commercial	CO	Mixed Use Infill	MU-I	34	44
086151110	13.67	General Commercial	CG	Mixed Use Infill	MU-I	463	601
087200100	0.47	General Commercial	CG	Mixed Use Infill	MU-I	15	21
087200040	0.51	General Commercial	CG	Mixed Use Infill	MU-I	17	22

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APN	Acreage	Current General Plan Designation ¹	Current Zoning District ²	Proposed General Plan Designation	Proposed Zoning ²⁻³	Total Realistic Units ⁴	Maximum Allowable Units ⁵
087200050	1.19	General Commercial	CG	Mixed Use Infill	MU-I	40	52
087200060	1.88	General Commercial	CG	Mixed Use Infill	MU-I	63	83
087200070	0.67	General Commercial	CG	Mixed Use Infill	MU-I	22	29
087200080	0.73	General Commercial	CG	Mixed Use Infill	MU-I	24	32
087200130	0.77	General Commercial	CG	Mixed Use Infill	MU-I	26	34
087200120	1.15	General Commercial	CG	Mixed Use Infill	MU-I	38	51
087161010	0.47	Low Density Residential	RS	High Density Residential	RH with Overlay Zone	9	14
087161140	0.08	Low Density Residential	RS	High Density Residential	RH with Overlay Zone	0	2
087161150	0.09	Low Density Residential	RS	High Density Residential	RH with Overlay Zone	1	3
087161220	0.46	Low Density Residential	RS	High Density Residential	RH with Overlay Zone	9	14
079020360	2.47	General Commercial	CG	Mixed Use Infill	MU-I	34	109
087144100	0.12	Community Commercial	CC	Community Commercial	CC with Overlay Zone	2	4
089371110	1.66	Downtown Commercial	NG	Downtown Commercial	NG with Overlay Zone	17	23
089371020	0.43	Downtown Commercial	NG	Downtown Commercial	NG with Overlay Zone	9	13
089053110	0.43	Public/Quasi-Public	PS	Public/Quasi-Public	PS with Overlay Zone	9	13
089053100	0.22	Public/Quasi-Public	PS	Public/Quasi-Public	PS with Overlay Zone	5	7
089053090	0.22	Public/Quasi-Public	PS	Public/Quasi-Public	PS with Overlay Zone	5	7
089053010	0.43	Downtown Mixed Use	NG-O	Downtown Mixed Use	NG-O with Overlay Zone	9	13
088111070	0.37	General Commercial	CG	Mixed Use Infill	MU-I	12	16
088111080	0.19	General Commercial	CG	Mixed Use Infill	MU-I	6	8
088111090	0.49	General Commercial	CG	Mixed Use Infill	MU-I	16	22
088111120	0.05	General Commercial	CG	Mixed Use Infill	MU-I	2	2
088111110	0.37	General Commercial	CG	Mixed Use Infill	MU-I	12	16
089044090	0.43	Downtown Commercial	TC	Downtown Commercial	TC with Overlay Zone	9	13
080140670	9.41	Public/Quasi-Public	PS	High Density Residential	RH with Overlay Zone	130	169
086050030	0.16	Low Density Residential	RS	Medium Density Residential	RM with Overlay Zone	2	5
086050040	0.13	Low Density Residential	RS	Medium Density Residential	RM with Overlay Zone	2	4
089052290	0.21	Downtown Commercial	NG	Downtown Commercial	NG with Overlay Zone	0	6
087021160	20.12	Public/Quasi-Public	PS	Public/Quasi-Public	PS with Overlay Zone	63	83
089076120	0.14	Low Density Residential	RS	Low Density Residential	RS with Overlay Zone	2	4

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APN	Acreage	Current General Plan Designation ¹	Current Zoning District ²	Proposed General Plan Designation	Proposed Zoning ²⁻³	Total Realistic Units ⁴	Maximum Allowable Units ⁵
089076130	0.14	Low Density Residential	RS	Low Density Residential	RS with Overlay Zone	2	4
089076140	0.14	Low Density Residential	RS	Low Density Residential	RS with Overlay Zone	2	4
089076090	0.34	Low Density Residential	RS	Low Density Residential	RS with Overlay Zone	6	10
080150260	0.29	Office Commercial Lower Arsenal Mixed Use	CO CG	Office Commercial Lower Arsenal Mixed Use	CO with Overlay Zone	6	9
080150320	0.71	General Commercial Lower Arsenal Mixed Use	CG	Office Commercial Lower Arsenal Mixed Use	CO with Overlay Zone	5	21
080150330	0.51	General Commercial Lower Arsenal Mixed Use	CG	Office Commercial Lower Arsenal Mixed Use	CO with Overlay Zone	2	15
089052160	0.09	Downtown Mixed Use	TC-O	Downtown Mixed Use	TC-O with Overlay Zone	2	3
089173190	0.12	Downtown Mixed Use	TC-O	Downtown Mixed Use	TC-O with Overlay Zone	2	4
089115160	0.14	Downtown Commercial	TC	Downtown Commercial	TC with Overlay Zone	3	4
089044320	0.14	Downtown Mixed Use	TC-O	Downtown Mixed Use	TC-O with Overlay Zone	1	4
089044330	0.11	Downtown Mixed Use	TC-O	Downtown Mixed Use	TC-O with Overlay Zone	1	3
089072170	0.22	High Density Residential	RM	Medium Density Residential	RM with Overlay Zone	4	7
089072160	0.22	High Density Residential	RM	Medium Density Residential	RM with Overlay Zone	5	7
089072150	0.21	High Density Residential	RM	Medium Density Residential	RM with Overlay Zone	3	6
TOTAL	117.29					1,830	2,963

¹ RLD = Residential Low Density
HDR = High Density Residential
OC = Office Commercial
CC = Community Commercial
DC = Downtown Commercial
OS = Open Space
LI = Limited Industrial
² CG = Commercial General
PD = Planned Development
TC = Town Core
NG = Neighborhood General
NG-O = Neighborhood General Office
PS = Public and Semi-Public
CO = Commercial Office

⁴“Realistic units” refers to the development capacity that is used in the Housing Element for the purposes of calculating the City’s RHNA. It is based on allowed the density and historic residential development trends in the City and corresponds to 77 percent of the development capacity of each site in the inventory.

⁵ “Maximum Allowable Units” is the site’s acreage multiplied by its proposed maximum allowed density (units/acre).

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APN	Acreage	Current General Plan Designation ¹	Current Zoning District ²	Proposed General Plan Designation	Proposed Zoning ²⁻³	Total Realistic Units ⁴	Maximum Allowable Units ⁵
RS = Single Family Residential RM = Medium Density Residential TC-O = Town Core Open ³ RH = High Density Residential MU-I = Mixed Use Infill District MU-L = Mixed Use Limited District							

Page 4.3-5, Section 4.3.1.2, *Existing Conditions*, Section 4.3, *Biological Resources*. The following table is incorporated under the sub-heading “Special Status Species and Sensitive Natural Communities” in response to Comment B-8, from Eric Chappell, Regional Manager, California Department of Fish and Wildlife, dated December 19, 2022.

Special Status Species and Sensitive Natural Communities

A record search indicates several plant and animal species with special status in the City, mostly in the tidal marshland habitat (Benicia 1999). The following species listed in Table 4.3-1, *Special Status Species*, are fully protected, threatened, endangered, candidate, and other special-status species that are known to occur, or have the potential to occur in or near the Plan Area.

Table 4.3-1 Special Status Species

<u>Species Name</u>	<u>Common Name</u>	<u>Status</u>
<u><i>Reithrodontomys raviventris</i></u>	<u>Salt-marsh harvest mouse</u>	<u>FP, FE</u>
<u><i>Rallus obsoletus obsoletus</i></u>	<u>California Ridgeway's rail</u>	<u>FP, FE</u>
<u><i>Laterallus jamaicensis coturniculus</i></u>	<u>California black rail</u>	<u>FP</u>
<u><i>Elanus leucurus</i></u>	<u>White-tailed kite</u>	<u>FP</u>
<u><i>Aquila chrysaetos</i></u>	<u>Golden eagle</u>	<u>FP</u>
<u><i>Buteo swainsoni</i></u>	<u>Swainson's hawk</u>	<u>ST</u>
<u><i>Agelaius tricolor</i></u>	<u>Tricolored blackbird</u>	<u>ST</u>
<u><i>Geothlypis trichas sinuosa</i></u>	<u>Saltmarsh common yellowthroat</u>	<u>SSC</u>
<u><i>Melospiza melodia maxillaris</i></u>	<u>Suisun song sparrow</u>	<u>SSC</u>
<u><i>Circus hudsonius</i></u>	<u>Northern harrier</u>	<u>SSC</u>
<u><i>Antrozous pallidus</i></u>	<u>Pallid bat</u>	<u>SSC</u>
<u><i>Taxidea taxus</i></u>	<u>American badger</u>	<u>SSC</u>
<u><i>Corynorhinus townsendii</i></u>	<u>Townsend's big-eared bat</u>	<u>SSC</u>
<u><i>Sorex ornatus sinuosus</i></u>	<u>Suisun shrew</u>	<u>SSC</u>
<u><i>Bombus occidentalis</i></u>	<u>Western bumble bee</u>	<u>SC, ICP</u>
<u><i>Blepharizonia plumosa</i></u>	<u>Big tarplant</u>	<u>CRPR1B.1</u>
<u><i>Isocoma arguta</i></u>	<u>Carquinez goldenbush</u>	<u>CRPR1B.1</u>
<u><i>Centromadia parryi ssp. congdonii</i></u>	<u>Congdon's tarplant</u>	<u>CRPR1B.1</u>
<u><i>Eryngium jepsonii</i></u>	<u>Jepson's coyote-thistle</u>	<u>CRPR1B.2</u>
<u><i>Trifolium hydrophilum</i></u>	<u>Saline clover</u>	<u>CRPR1B.2</u>

Source: CDFW 2022

FP = state fully protected under Fish and Game Code; FE = federally listed as endangered under the Endangered Species Act (ESA); FT = federally listed as threatened under ESA; SE = state listed as endangered under CESA; SC = state candidate for listing under California Endangered Species Act (CESA); ICP = California Terrestrial and Vernal Pool Invertebrate of Conservation Priority¹; SSC = state Species of Special Concern; CRPR = California Rare Plant Rank²

¹ The list of California Terrestrial and Vernal Pool Invertebrates of Conservation Priority was collated during CDFW's Scientific Collecting Permit rulemaking process: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157415&inline>

² CRPR 1B plants are considered rare, threatened, or endangered in California and elsewhere while Further information on CRPR ranks is available in CDFW's Special Vascular Plants, Bryophytes, and Lichens List (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109383&inline>) and on the California Native Plant Society website (<https://www.cnps.org/rare-plants/cnps-rare-plant-ranks>).

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Page 4.3-7, Impact BIO-1, Section 4.3.5, *Environmental Impacts*, Section 4.3, *Biological Resources*. The following mitigation measures have been revised and added in response to Comments B-9, B-10, B-13, B-17, B-18, B-20, and B-22 from Eric Chappell, Regional Manager, California Department of Fish and Wildlife, dated December 19, 2022.

BIO-1 Prior to the issuance of a building permit, all projects must provide documentation that the site and nearby vicinity does not include special status species (e.g., Threatened or Endangered species, CNPS List 1B and 2 plants, or species protected under Section 15380 of CEQA) ~~If the species are found~~ have the potential to occur on the site or nearby vicinity, focused surveys shall be conducted prior to any ground disturbance activities by a qualified biologist. The documentation shall ensure that botanical surveys are conducted during the appropriate blooming period. If no special status species are found on the project site or nearby vicinity, no additional action is necessary, and the project can continue. If special status species are found, no ground disturbance can occur and the project must either avoid the special status species, or develop a mitigation plan approved by the City in consultation with the California Department of Fish and Wildlife that reduces mitigates impacts to less than significant as feasible. Projects shall be required to implement the mitigation plan through a Mitigation Monitoring and Reporting Program. If off site replacement is the only mitigation option available, the performance criteria shall be at a ratio specified by the resource agency such as the Army Corps of Engineers or the California Department of Fish and Wildlife.

BIO-2 Prior to the issuance of the first action and/or permit which would allow for site disturbance (e.g., grading permit), a detailed mitigation plan shall be prepared by a qualified biologist for approval by the City, the USFWS, and CDFW shall include: (1) the responsibilities and qualifications of personnel to implement and supervise the plan; (2) site selection; (3) site preparation and planting implementation; (4) a schedule; (5) maintenance plan/guidelines; (6) a monitoring plan; and (7) long-term preservation requirements. Projects shall be required to implement the mitigation plan as outlined within the Plan.

Any permanent impacts to sensitive natural communities shall be mitigated for at a 3:1 ratio by acreage and temporary impacts shall be restored on-site at a 1:1 ratio by acreage. If on-site mitigation is infeasible, habitat shall be compensated by the permanent protection of habitat at the same ratio through a conservation easement and through the preparation and funding of a long-term management plan. Oak trees shall be replaced at the following ratios:

- 3:1 replacement for trees 5 to 8 inches diameter at breast height (DBH)
- 5:1 replacement for trees greater than 8 inches to 16 inches DBH
- 10:1 replacement for trees greater than 16-inch DBH, which are considered old-growth oaks

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Habitat compensation shall also be required for wetland impacts. The project shall obtain permits from the Regional Water Quality Control Board and Army Corps of Engineers pursuant to the Clean Water Act.

BIO-3 ~~Prior to the issuance~~ any ground disturbance, the City shall require a habitat connectivity/wildlife corridor evaluation for future development that may impact existing connectivity areas and wildlife linkages. This evaluation shall be conducted by a qualified biologist. The results of the evaluation shall be incorporated into the project's biological report required in Mitigation Measure BIO-1. The evaluation shall also identify the project design features that would reduce potential impacts and maintain habitat and wildlife movement. To this end, the City shall incorporate the following measures, for projects impacting wildlife movement corridors:

- Encourage clustering of development
- Avoid sensitive biological resources and sensitive natural communities identified in the analysis
- Provide shield lighting adjacent to sensitive habitat areas
- Provide physical or distance buffers between development and wetland/riparian areas
- Require wildlife-passable fence designs (e.g., 3-strand barbless wire fence) on property boundaries.

Page 4.3-8, Impact BIO-2, Section 4.3.5, *Environmental Impacts*, Section 4.3, *Biological Resources*. The following statement has been added to clarify Impact BIO-2 under the sub-heading *Housing Element Update* response to Comment B-16 and B-19 from Eric Chappell, Regional Manager, California Department of Fish and Wildlife, dated December 19, 2022.

Housing Element Update

The City includes various wetland and riparian habitats, such as Carquinez Strait, Suisun Bay, and Lake Herman. As indicated in Section 4.3.1.2, above, there are several species that are found in wetland and riparian habitats. Due to the proximity of such habitat to Housing Element sites, the proposed project could impact species in wetland and riparian habitats during the construction and operation phases of the future projects under the Housing Element. General Plan policies, as well as Mitigation Measures BIO-1 and BIO-2 would prevent impacts on special status species by requiring pre-construction surveys and obtaining take permits from appropriate agencies.

Page 4.3-10, Impact BIO-3, Section 4.3.5, *Environmental Impacts*, Section 4.3, *Biological Resources*. The following mitigation measures have been revised and added in response to Comments B-12, B-14, B-15, and B-21 from Eric Chappell, Regional Manager, California Department of Fish and Wildlife, dated December 19, 2022.

BIO-4 ~~Ground disturbance activities involving vegetation removal shall be conducted between September 16 and March 14. If construction occurs inside the peak nesting season (between~~

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~~March 15 and September 15), a preconstruction survey (or possibly multiple surveys) by a qualified biologist is recommended prior to construction activities to identify any active nesting locations. If the biologist does not find any active nests within the project site, the construction work shall be allowed to proceed. If the biologist finds an active nest within the project site and determined that the nest may be impacted, the biologist shall delineate an appropriate buffer zone around the nest, and the size of the buffer zone shall depend on the affected species and the type of construction activity. Any active nests observed during the survey shall be mapped on an aerial photograph. Only construction activities (if any) that have been approved by a biological monitor shall take place within the buffer zone until the nest is vacated. The biologist shall serve as a construction monitor when construction activities take place near active areas to ensure no inadvertent impacts on these nests occur. Results of the preconstruction survey and any subsequent monitoring shall be provided to the California Department of Fish and Wildlife and the City.~~

Nesting Bird Avoidance. Active nests occurring at or near the project sites shall be avoided. Permittee is responsible for complying with Fish and Game Code section 3503 et seq. and the Migratory Bird Treaty Act of 1918.

a) **Nesting Bird Surveys.** If construction, grading, vegetation removal, or other project-related activities are scheduled during the nesting season, February 1 to August 31, a focused survey for active nests shall be conducted by a Qualified Biologist within 7 days prior to the beginning of Project-related activities. If an active nest is found, Permittee shall consult with CDFW regarding appropriate action to comply with Fish and Game Code. If a lapse in Project-related work of 7 days or longer occurs, another focused survey and, if needed, consultation with CDFW, shall be required before Project work can be reinitiated.

b) **Active Nest Buffers.** If an active nest is found during surveys, the project shall consult with CDFW regarding appropriate action to comply with state and federal laws. Active nest sites shall be designated as “Ecologically Sensitive Areas” (ESA) and protected (while occupied) during Project work by demarking a “No Work Zone” around each nest site.

- Buffer distances for bird nests shall be site-specific and an appropriate distance, as determined by a Qualified Biologist. The buffer distances shall be specified to protect the bird’s normal behavior to prevent nesting failure or abandonment. The buffer distance recommendation shall be developed after field investigations that evaluate the bird(s) apparent distress in the presence of people or equipment at various distances. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards project personnel, standing up from a brooding position, and flying away from the nest. The Qualified Biologist shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.

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- The Qualified Biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by project work. Nest monitoring shall continue during Project work until the young have fully fledged (have completely left the nest site and are no longer being fed by the parents), as determined by the Qualified Biologist. Any reduction in monitoring active nests must be approved in writing by CDFW.

c) **Nesting Habitat Removal or Modification.** No habitat removal or modification shall occur within the ESA-marked nest zone until the young have fully fledged and will no longer be adversely affected by the Project, as determined by a Qualified Biologist.

BIO-5 **Pre-Project Special-Status Plant Surveys.** A Qualified Biologist shall conduct botanical surveys during the appropriate blooming period and conditions for all special-status plants that have the potential to occur prior to the start of construction. More than one year of surveys may be necessary. Surveys shall be conducted following CDFW's Protocol for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (<https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>). Survey reports shall be submitted to CDFW for written approval prior to the start of construction. If any special-status plant species are observed, the project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to project activities.

If special-status plants will be impacted, the project shall provide mitigation prior to project start in a form accepted in writing by CDFW which may include on-site restoration pursuant to a restoration plan prepared by the project and approved by CDFW, off-site habitat preservation at a minimum 3:1 mitigation to impact ratio based on acreage or number of plants as appropriate, unless otherwise approved in writing by CDFW.

BIO-6 **Swainson's Hawk Surveys and Avoidance:** If project activities are scheduled during the nesting season for Swainson's hawks (March 1 to August 31), prior to beginning work on this project, Swainson's hawk surveys shall be conducted by a qualified biologist with experience surveying for and detecting the species pursuant to the Recommended timing and methodology for Swainson's Hawk Nesting Surveys in California's Central Valley Swainson's Hawk (2000) survey protocol, within 0.5 mile of the project site each year that project activities occur. Pursuant to the above survey protocol, surveys shall be completed for at least the two survey periods immediately prior to a project's initiation. For example, if the project is scheduled to begin on June 20, the qualified biologist shall complete three surveys in Period III and three surveys in Period V. It is recommended that surveys be completed in Periods II, III and V. The project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to project construction occurring between March 1 and August 31 each year. If the qualified biologist identifies nesting Swainson's hawks, the project shall implement a 0.5 mile no disturbance buffer zone around the nest, unless otherwise approved in writing by CDFW. project

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activities shall be prohibited within the buffer zone between March 1 and August 31, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be avoided, the project shall consult with CDFW pursuant to CESA and obtain an ITP.

BIO-7 Surveys and Avoidance of Fully Protected Raptors. Surveys shall be conducted for fully protected raptors, including white-tailed kite and golden eagle. The survey area shall be determined by a qualified Raptor Biologist in consultation with CDFW based on the species of concern, and if the nest of any fully protected raptor is identified during pre-construction nesting surveys, a biological based justification for the buffer zone, as determined by a qualified Raptor Biologist, shall be submitted to CDFW for review. Project activities shall not proceed between March 1 and August 31 unless CDFW provides written approval of the buffer zone around any nest of a fully protected raptor species.

BIO-8 Tricolored Blackbird Avoidance. If nesting tricolored blackbird or evidence of their presence is found, CDFW shall be notified immediately and work shall not occur without written approval from CDFW allowing the project to proceed. Project activities shall not occur within 500 feet of an active nest unless otherwise approved in writing by CDFW. Presence of nesting tricolored blackbird may require a CESA Incidental Take Permit before project activities may commence.

BIO-9 Special-Status Bee Habitat Assessment and Avoidance: A qualified wildlife biologist shall conduct visual surveys of areas planned for ground disturbance, including but not limited to, installation of water main, new roads, leach fields, and building sites, and within a 100-foot buffer of ground-disturbing activities. Surveys shall be conducted to coincide with the blooming period of locally common nectar sources such as vetch (*Vicia* spp.) and California poppy (*Eschscholzia californica*) during the flight season for the western, crotch's, and obscure bumble bee (generally late February through late June). Between two and four evenly spaced surveys shall be conducted for the highest detection probability, including surveys in early spring (late March/early April) and early summer (late June/July). Surveys shall take place when temperatures are above 60°F, preferably on sunny days with low wind speeds (e.g., less than 8 miles per hour) and at least 2 hours after sunrise and 3 hours before sunset. On warm days (e.g., over 85°F), bumble bees will be more active in the mornings and evenings. The qualified biologist shall conduct transect surveys following the Streamlined Bee Monitoring Protocol for Assessing Pollinator Habitat (https://www.xerces.org/sites/default/files/2018-05/14-021_01_XercesSoc_Streamlined-Bee-Monitoring-Protocol_web.pdf), focusing on detection of foraging bumble bees and underground nests using visual aids such as binoculars. If western, crotch's or obscure bumble bee nests are identified within the ground disturbance area or 100-foot buffer area, a plan to protect bumble bee nests and individuals shall be developed and implemented in consultation with CDFW. The plan shall include, but not be limited to: 1) specifications for construction timing and sequencing requirements (e.g., avoidance of raking, mowing, tilling, or other ground disturbance until late March to protect overwintering queens); 2) preconstruction surveys conducted within 30 days and consistent with any current available protocol standards prior to the start of ground-disturbing activities to identify active nests; 3)

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establishment of appropriate no-disturbance buffers for nest sites and construction monitoring by a qualified biologist to ensure compliance with buffers; 4) restrictions associated with construction practices, equipment, or materials that may harm bumble bees (e.g., avoidance of pesticides/herbicides, measures to minimize the spread of invasive plant species); and 5) prescription of an appropriate restoration seed mix targeted for the bumble bees, including native plant species known to be visited by native bumble bee species and containing a mix of flowering plant species with continual floral availability through the entire active season for bumble bees (March to October).

Presence of western bumble bee or crotch's bumble bee may require a CESA Incidental Take Permit before project activities may commence.

BIO-10 Bat Tree Habitat Assessment and Surveys. Prior to any tree removal, a Qualified Biologist shall conduct a habitat assessment for bats. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to tree removal and shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting species). If suitable habitat trees are found, they shall be flagged or otherwise clearly marked, CDFW shall be notified immediately, and tree trimming or removal shall not proceed without approval in writing from CDFW. Trees may be removed only if: a) presence of bats is presumed, or documented during the surveys described below, in trees with suitable habitat, and removal using the two-step removal process detailed below occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a Qualified Biologist, under prior written approval of the proposed survey methods by CDFW, conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats. Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a Qualified Biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only. Limbs with cavities, crevices, or deep bark fissures shall be avoided, and 2) the second day the entire tree shall be removed.

BIO-11 Avoidance of Fully Protected Marsh Birds. Project activities within or adjacent to tidal marsh or suitable Ridgway's (California clapper) rail (CCR) or California black rail (CBR) habitat shall be avoided during rail breeding season (January 15 – August 31 for CCR, February 1 – August 31 for CBR) each year unless appropriately timed, yearly protocol level surveys are conducted and survey methodology and results are submitted to and accepted by CDFW. Surveys shall focus on suitable habitat that may be disturbed by project activities during the breeding season to ensure that these species are not nesting in these locations.

If breeding rails are determined to be present, no activities, visual disturbance (direct line of sight) and/or an increase in the ambient noise level shall occur within 700 feet of areas where CCR and/or CBR have been detected during the breeding season. If surveys have not been conducted, all work shall be conducted 700 feet from CCR and/or CBR habitat during nesting

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season. Additionally, no project activities shall occur within 50 feet of suitable habitat during extreme high tide events or when adjacent tidal marsh is flooded. Extreme high tides events are defined as a tide forecast of 6.5 feet or higher measured at the Golden Gate Bridge and adjusted to the timing of local high tides.

BIO-12 **Avoidance of Fully Protected Salt-Marsh Harvest Mouse.** Impacts to salt-marsh harvest mouse shall be fully avoided.

- a) **Habitat Avoidance.** No project activities shall occur within 50 feet of suitable tidal marsh habitat for the salt marsh harvest mouse (SMHM) within two (2) hours before and after an extreme high tide event (6.5 feet or higher measured at the Golden Gate Bridge and adjusted to the timing of local high tides) or when adjacent marsh is flooded unless SMHM proof exclusion fencing has been installed around the work area.
- b) **Vegetation Removal.** Prior to impacting salt marsh habitat, an approved qualified biologist or biological monitor, familiar with salt marsh harvest mouse (SMHM), shall walk through and inspect suitable habitat prior to vegetation removal and search for signs of harvest mice or other sensitive wildlife and plants. Following inspection, personnel, under the supervision of the qualified biologist, will disturb (e.g., flush) vegetation to force movement of SMHM into adjacent marsh areas. Flushing of vegetation will first occur in the center of the site then progress toward the two sides away from the open water areas or in this case, away from impacted habitat. Immediately following vegetation flushing, personnel, under the supervision of the qualified biologist or biological monitor, will remove vegetation with hand tools (e.g., weed-eater, hoe, rake, trowel, shovel, grazing) so that vegetation is no taller than 2 inches.
- c) **Exclusion Fencing.** After vegetation removal, a mouse proof barrier shall be placed along the edge of the area removed of vegetation to further reduce the likelihood of SMHM returning to the area prior to construction. The fence shall be made of a heavy plastic sheeting material that does not allow salt marsh harvest mice to pass through or climb, and the bottom shall be buried to a depth of 4 inches so that salt marsh harvest mouse cannot crawl under the fence. Fence height shall be at least 12 inches higher than the highest adjacent vegetation with a maximum height of 4 feet. All supports for the exclusion fencing shall be placed on the inside of the work area. An approximately 2-foot-wide de-vegetated buffer shall be created along the habitat side of the exclusion fence. The SMHM exclusion fencing shall remain in operating condition throughout the duration of all placement of fill events. The qualified biologist or biological monitor shall daily inspect the integrity of the exclusion fencing to ensure there are no gaps, tears or damage. Maintenance of the fencing shall be conducted as needed. Any necessary repairs to the fencing shall be completed within 24 hours of the initial observance of the damage. Any mice found along or outside the fence shall be closely monitored until they move away from the project area.

BIO-13 **American Badger Avoidance.** A qualified biologist shall conduct a habitat assessment to determine if the Project site or nearby vicinity has suitable habitat for American badger. If suitable

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habitat is present at the Project site, a qualified biologist shall survey for American badger within the Project site and nearby vicinity prior to construction. If any occupied burrows are discovered the Project shall implement an appropriate buffer from the burrow, as determined by a qualified biologist and approved in writing by CDFW. If the Project cannot avoid impacts to the occupied burrow the Project shall confer with CDFW regarding next steps before proceeding. This make require the Project to prepare and implement a relocation plan, unless otherwise approved in writing by CDFW.

BIO-14 The project shall conduct an evaluation of the sensitive natural communities on the project site and within the vicinity of the project site, pursuant to the Department of Fish and Wildlife's (CDFW's) Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (2018). Should sensitive riparian habitat be found and should the project result in significant impacts to a stream or lake, the project proponent shall obtain a Lake and Streambed Alteration Agreement (LSAA) from CDFW. The project applicant will be responsible for complying with all permit conditions. Such conditions may include, but are not limited to, implementation of best management practices (i.e., erosion and sediment control measures) and seasonal work restrictions, as appropriate. In addition, CDFW is expected to require compensatory mitigation for impacts to jurisdictional riparian habitat. The amount of required compensatory habitat acreage will be based on the functions and values of impacted features. Habitat compensation will be provided at a ratio of up to 3:1 of created to filled or disturbed in-kind habitat, pending coordination with CDFW. This ratio may be reduced through the permit process if CDFW find that a different ratio is sufficient to mitigate impacts to jurisdictional riparian habitat. Riparian habitat shall not be removed until the LSAA is received from CDFW or correspondence is received from CDFW indicating no permit is needed.

Page 4.4-71, Section 4.4, *Cultural Resources*. The following changes are incorporated under Impact CULT-1 in response to Comment 14-4, from Steven Geotz, dated December 19, 2022.

CULT-7: Prior to approval of any project subject to discretionary review on a vacant parcel in the City's Historic Conservation Districts, the City shall ensure that a qualified architectural historian who meets the Secretary of Interior's Professional Qualification Standards provides a report for review by the Historic Preservation Review Commission containing any recommendations for revisions necessary for an evaluation of the project's consistency with the project to meet the Secretary of Interior's Standards for the Treatment of Historic Properties.

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Page 4.4-7, Section 4.3.1.2, *Existing Conditions*, Section 4.4, *Cultural Resources*. The following changes are incorporated under the sub-heading “Arsenal Historic District” in response to Comment C-2, from Belinda Smith, on behalf of Benicia Historical Society dated December 19, 2022.

Arsenal Historic District

Arsenal district boundary includes 345 acres of land east of the city and adjacent to the Carquinez Strait donated originally by the town’s founder for use as a military reservation. Buildings around this area were developed for the needs of the army. The arsenal district also includes residential areas, and quarters scattered throughout. The open space, landscape features, and urban design elements recognized as contributing to the Arsenal District include the following: the former Barracks Parade Ground, the Military Cemetery, the rolling hills that form the setting for the Storehouses (Camel Barns), Ammunition Shops, and Magazines on the northern part of the district (Benicia 1993) and also includes Jefferson Ridge and Officers’ Row. Figure 4.4-2, Arsenal Historic District and Housing Element Sites, shows the proposed housing sites within the Arsenal Historic District.

Page 4.11-20, Impact NOI-2, Section 4.11.5, *Environmental Impacts*, Section 4.11, *Noise*. The following mitigation measure has been removed in response to Comment 9-3 from Trevor Macenski made during the December 13, 2022 public hearing for the Draft EIR.

~~NOI-2b — New residential projects (or other noise-sensitive uses) located within 200 feet of existing railroad lines shall be required to conduct a groundborne vibration and noise evaluation consistent with Federal Transit Administration (FTA) approved methodologies to determine the extent of potential impact. If the soil or construction techniques must be modified to result in vibration levels at or below 0.006 PPV, the report shall include the recommendation that shall be included in the construction plans. If the interior vibration level cannot be reduced to 0.006 peak particle velocity (PPV), construction of new residential buildings cannot occur.~~

3.3 DEIR REVISIONS

The following are additional revisions that have been made to the Draft EIR.

Page 4.4-14, Section 4.4, Cultural Resources. The following revisions are made District and Arsenal Historic District subheading.

Arsenal Historic District

As discussed above in Section 4.4.1, the Arsenal Historic District is recognized as a National Historic Place and State Landmark in addition to its designation as a Historic District under Chapter 17.54 of the City’s Municipal Code. The Housing Element Sites Inventory includes 12 total sites within the boundaries of the Arsenal District, as shown in Figure 4.4-2 and in Table 4.4-2, *Housing Element Sites in the Arsenal Historic District*. Four of these sites are opportunity sites that would be rezoned for the purposes of accommodating residential development potential that did not previously exist or accommodating

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increased residential density. These sites and their proximity to historic resources in the Arsenal Plan Area can be described as follows:

- APN 0080-150-260 on 1043 Grant Street is a 0.29-acre site and currently designated as Office Commercial and zoned as General Commercial. Its proposed zone is Commercial Office with Overlay Zone. This zone would allow for a maximum of nine units to be developed on the site. Commercial use of this parcel would continue to be permitted by its underlying zoning district. It borders a City-designated landmark building, Arsenal Building 45, Barracks, to the West and is adjacent to several other landmark designated areas/buildings including Arsenal Building 48, Shop; Arsenal Building 47, Office (Headquarters) Building; and Arsenal Building 74, Photo Lab.
- APN 0080-150-330 on Grant Street of 0.71-acre and Polk Street and APN 0080-150-320 on 1025 Grant Street of 0.51-acre border each other, as well as APN 080-150-260, analyzed above. These two sites are currently designated and zoned General Commercial and would also both be rezoned to Office Commercial with Housing Overlay Zone. This would allow a maximum of 15 units to be developed on APN 080-150-330 and a maximum of 21 units to be developed on APN 080-150-320. These sites border landmark designated building Arsenal Building 39, Guard House to the north and are similarly adjacent to the landmark sites listed above for APN 0080-150-260.

Page 4.4-16, Section 4.4, Cultural Resources. The following revisions are made to Table 4.4-2, *Housing Element Sites In The Arsenal Historic*, regarding the current existing general plan designations, current zoning, and proposed general plan land use designations for parcels APN: 080150260, 080150320, and 080150330.

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TABLE 4.4-2 HOUSING ELEMENT SITES IN THE ARSENAL HISTORIC DISTRICT

APN	Address	Current Designation/Zone ¹	Proposed Designation/Zone
Suitably Zoned Sites			
080-140-630	Buchanan Street and Hospital Road	HDR/RM	---
080-140-640	Buchanan Street and Hospital Road	HDR/RM	---
080-150-390	Adams Street and Park Road	LA MU/CO	---
080-150-380	Adams Street and Park Road	LA MU/CO	---
080-150-400	Jefferson Street and Park Road	LA MU/CO	---
080-150-410	Jefferson Street and Park Road	LA MU/CO	---
080-222-010	1451 Park Road	LA MU/PD	---
080-150-010	Jefferson Street and Park Road	OC/CO	---
Opportunity Sites			
080-150-260	1043 Grant Street	General Commercial/CO <u>Lower Arsenal Mixed Use</u>	CO with Overlay Zone
080-150-330	Grant Street and Polk Street	General Commercial/CG <u>Lower Arsenal Mixed Use</u>	CO with Overlay Zone
080-140-670	1471 Park Road at 780	Public/Quasi-Public/PS	RH with Overlay Zone
080-150-320	1025 Grant Street	General Commercial/CG <u>Lower Arsenal Mixed Use</u>	CO with Overlay Zone

¹ HDR = High Density Residential
RM = Medium Density Residential
RH = Residential High Density
CG = Commercial General
PS = Public and Semi-Public
CO = Commercial Office
PD = Planned Development
LA MU = Lower Arsenal Mixed Use

3. Revisions to the Draft EIR

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