Read our compelling brief in defense of the State Landmark Historic Arsenal's Jefferson Ridge. This brief has been submitted on appeal to the First District Court of Appeal. Our case is strong. We will transition from fund raising for legal fees to acquisition of the Jefferson Ridge for a visitors and local park. Your contributions are tax deductible. The brief begins on page two of this article.

Read about the attempts by proponents of two projects to build 138 units of housing in buildings so huge and so close to the historic houses that in some places they could stand higher than the historic buildings. They would put dozens of parked vehicles across the streets, would destroy the views to and from the historic area, and so would destroy the history and structure of this most important Benicia place.

This historic area is in the 1935 State Landmark designation - a gem that would be coveted by any other city, for its tourist attraction, its economic benefits, and its unique historic status. Logically that history should be strongly protected by Benicia's city government.

But as you will see, our brief details how the City failed to take actions that could better inform the public, better inform City decisions, and thus could better protect these sites. We allege that the City attempted short-cuts, ignoring City ordinances and state laws, including its refusal to prepare an Environmental Impact Report.

Officers Row is on the National Register of Historic Places, confirming its historic value for the citizens of all the states, not just for Benicia, and not just for California. That National Register status will almost certainly be withdrawn if these projects proceed. The Jefferson Ridge is also in the Delta National Heritage Area - a Heritage Area is like a National Park without federal land ownership and regulations, and with a National Parks' approved Management Plan with federal funding.

If the historic Officers Row is lost to these two projects, that historic Benicia site cannot ever be recovered. Once it's gone, it's gone forever.

Stand up for responsible government and for protection of our unique historic site! Support 1000 Friends Protecting Historic Benicia!

Case No. A172005

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

1000 FRIENDS PROTECTING HISTORIC BENICIA,
a non-profit corporation

Petitioner and Appellant,

v.

CITY OF BENICIA,

Defendant and Respondent,

KEITH ROGAL AND ROGAL & ASSOCIATES,
GINA COOPER AND ORCHARD CROSSING,
ROBERT WHITEHEAD AND RICHARD BORTOLAZZO,

Real Parties in Interest and Respondents.

APPELLANT'S OPENING BRIEF

Appeal from the Superior Court for the County of Solano
Honorable Christine A. Carringer
Case No. FCS059252

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CERTIFICATE OF INTERESTED PARTIES

Appellant is aware of no parties, entities, or persons that must be listed in this certificate under Rule 8.208 of the California Rules of Court.

Date: August 8, 2025

Respectfully submitted,

GREENFIRE LAW, P.C.

By: _____

Jessica L. Blome
Susann M. Bradford

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I. INTRODUCTION

This appeal raises novel questions of law and fact concerning the unlawful ministerial approval of two housing development projects that threaten to eliminate a historic district of local, state, and national importance. Petitioner-Appellant 1000 Friends of Protecting Historic Benicia challenges the City's decision to approve the construction of the Jefferson Ridge Project and the Park Road Project (collectively "Projects"), which propose to build multifamily condominiums and apartments within and among the buildings and districts that make up the Benicia Arsenal Historic District, a California Historic Landmark, recognized as an historic district in the National Register of Historic Places, and component of the Sacramento-San Joaquin Delta National Heritage Area. The City approved the siting of such a massive development project within this historic area ministerially, at the staff level. Critical to appellant's claims, staff denied appellant's appeal to the Benicia City Council, denying them their procedural due process rights under California law and depriving the elected body opportunity to review staff's decision to all-but-eliminate the historic character of this important part of Benicia history and culture.

The Benicia Arsenal was the United States of America's first army artillery supply depot in the Western United States. Strategically placed at the gateway to California's Central Valley, the arsenal influenced the early history of California and, for more than a century, supplied soldiers from

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the Rocky Mountains to the Pacific Coast and beyond. Today, although much of the original arsenal site has been redeveloped, causing its historical character to be compromised, the Officers Row District is largely intact, providing a unique window into the structure and operation of this Civil War era historic landmark. With the staff-level project approvals at issue in this litigation, however, that may soon change, as the District's historic character will be lost forever.

Appellant 1000 Friends Protecting Historic Benicia is a nonprofit corporation formed in 2022 to preserve the historic Benicia Arsenal. Appellant believes it has no recourse to save the exceptional Officers Row District except this appeal. The trial court decision is a mere five pages, lacking fulsome analysis of the complex and important issues presented, including conflicts of law. Appellant challenges the trial court's decision to rubberstamp the City's sacrificing of an historic district of unique national, state, and local importance based on staff-level review. Appellant also challenges the accuracy and adequacy of the City's findings, which misrepresent the proposed developments as meeting all of the criteria for ministerial review under California Government Code, section 65913.4. In fact, due to substantial evidence of wetlands and sensitive biological resources within the project areas, and manifest inconsistencies with city zoning ordinances and planning documents, the proposed development does not meet the objective review standards. As a consequence of

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improper streamlined, ministerial review, the City failed to comply with the California Environmental Quality Act (CEQA) and denied appellants the right to appeal that decision.

For the reasons explained below, appellant respectfully asks this court to reverse the lower court decision and find the challenged projects ineligible for ministerial review and properly subject to CEQA.

II. STATEMENT OF THE CASE

A. Issues on Appeal.

1. Whether the City improperly approved projects because they are not eligible for streamlined ministerial approval?

Appellant's First Cause of Action alleges that Respondent City of Benicia violated CEQA by improperly approving the Projects through streamlined, ministerial review, even though those projects failed to meet objective planning standards set forth in Government Code, section 65913.4, subdivision (a). Because the projects do not meet the required standards, they are subject to CEQA and may not be approved without adequate environmental review. (SR 013-15.)

The trial court held that the projects satisfied requirements for ministerial review and were not subject to CEQA. (SR 489-93.)

2. Whether the Projects will demolish the structure of a National Register Historic District?

Appellants alleged that the Projects are ineligible for streamlined ministerial review under Government Code, section 65913.4, subdivision

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(a)(7)(D) because the Projects will destroy the structure of a National Register Historic District, eliminate militarily significant sight lines, and require the demolition of remnants of the historic assembly grounds, sidewalks, stairs, and tennis court connected to a historic district. (SR 014.)

The trial court concluded without supporting analysis that the Projects will not require historic structures to be demolished and held that physical remnants of historic district features are not "historic structures" (SR 490.)

3. Whether the Projects are consistent with the City's objective zoning and design standards?

Appellants alleged that the Projects are ineligible for streamlined ministerial review under Government Code, section 65913.4, subdivision (a)(5) because the Projects are inconsistent with the City's objective zoning district requirements and design standards, as set forth in the City's municipal code, general plan, and Arsenal Historic Conservation Plan. (SR 014-17.)

The trial court failed to address alleged inconsistencies with objective zoning district requirements and design standards. (SR 491.)

4. Whether sufficient evidence supports the City's conclusion that the Projects' sites do not contain wetlands or habitat for protected species?

Appellants alleged that the Projects are ineligible for streamlined ministerial review under Government Code, section 65913.4, subdivision

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(a)(6)(C) and (J) because the record contains unrefuted substantial evidence that the site contains ephemeral wetlands and habitat for sensitive and protected species. (SR 015.)

The trial court rejected the evidence cited by appellant as insufficiently before the court and affirmed the City's unsupported findings to the contrary, asserting the City's findings were supported by an unrelated biological assessment.

5. Whether the City violated Public Resources Code, section 21151, by refusing to hear appellant's timely administrative appeal?

Appellant's First Cause of Action alleged that the City violated Public Resources Code, section 21151, subdivision (c) by denying appellant the opportunity to appeal City staff's ministerial approval of the Projects to the City Council, "the agency's elected decisionmaking body." (Pub. Resources Code, § 21151, subd. (c); SR 013-15.)

The trial court rejected this claim, stating without supporting statutory analysis that "the legislature did not intend CEQA and its procedures to apply to streamlined ministerial approvals of projects." (SR 493.)

B. Factual Background

1. History of Benicia Arsenal

The United States Benicia Arsenal (Arsenal) is a significant historical landmark that has shaped the history of Benicia, influenced the

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settlement of California, and played a major role in the development of the Western frontier. (SR 173.) The United States Government first acquired the Arsenal site for a military reservation in 1847, originally a 252-acre parcel of land adjoining Benicia city limits on the east. (AR 7200, SR 173.) In June 1849, two companies of the 2nd Infantry became the first troops to occupy the site and established the Benicia Barracks. (SR 68, 173, 275-76.) In 1851, upon the recommendation of the Commanding General for the Pacific Division Percifer F. Smith, the army selected the Arsenal to be the first Ordnance Supply Depot in the West. (SR 173.) In 1852, the army designated the site the Benicia Arsenal. (SR 173, 281.) The Army constructed the Arsenal's distinctive fortress building, which later added the clocktower, in 1859 on a high bluff overlooking Carquinez Strait. (SR 166, 280-81.) During its long history the fortress served as a storehouse, a munitions depot, quarters for enlisted men during the Civil War, a chapel, and a National Guard Armory. (SR 166.) The Army constructed the Commanding Officers home in 1860 and built additional officer quarters between 1861 and 1874 (Officers Row). (SR 164-67; See also **Attachment A: Early view of Arsenal** (AR 9328).)

The Army used the Arsenal as a garrisoned post until 1898 when it reassigned troops to duty in the Philippine Islands for the Spanish-American War. (SR 173, 285.) The Union used the Arsenal as a staging area during the Civil War for troops from the West. (SR 176, 284-85.)

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During World War I, the Arsenal supplied ordnance to all large artillery installations in the Western States and also provided ordnance material to American expeditionary forces in Siberia. (SR 173, 285.) During World War II, the Arsenal became the principal supply point for "shooting ordnance" for American troops in the Pacific campaign areas. (SR 173, 176.) During the Korean War, the Arsenal reached its peak of production and employed 6700 civilian workers. (SR 176.) When the Arsenal was deactivated in 1963, it had grown to 2,192.49 acres. (SR 177.)

For more than one century, the Arsenal played an important role in the nation's history and also influenced the early development of the Bay Area and contributed to the defense and economy of the region. (SR 70.) It was also the site of the first military hospital in the West (SR 70). Among the many famous people associated with the Arsenal are General William Tecumseh Sherman, General Ulysses S. Grant, General John Charles Fremont, Commodore Matthew Perry, General J. Pershing, and the Benet family. (SR 70, 173, 175-177.)

The Arsenal's location at the gateway to the Central Valley provided the Army with an excellent strategic position from which to protect its newly acquired territories and its interests in California and the West. (SR 278-79.) The Army sited the fortress and officer quarters at strategic locations on a high bluff overlooking the Carquinez Strait. (AR 9326-28.) From this vantage point, soldiers could see ships approaching the gateway

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to the burgeoning gold rush camps and inland settlements of the young state. Voyagers in the Carquinez Strait could see the Arsenal's American flag—signaling the Union's claim on the territory and readiness to protect the gold fields, including from the Confederacy. (AR 5792, 9326-28; SR 175-176.)

The Army planned for the line of sight between the Arsenal buildings and the Strait to be a critical feature of the Arsenal's design and function, as there were no radios or cell phones to relay messages during its time. (AR 9326.) Lines of sight between the Arsenal buildings were similarly important and critical to the Arsenal's function, as this allowed communication through visual signaling between key locations, including the Guard House, Headquarters, Commanding Officer's Residence, parade grounds and additional officer quarters. (AR 7165-71, 7185.) Lines of sight also facilitated the Army's ability to respond to potential threats. (SR 278-79.)

Over the years, the City grew and expanded into the Arsenal's former territory, and the City repurposed several buildings for a variety of uses. Although new development exists within some parts of the former Army installation, surviving buildings, together, comprise a site of substantial state and national historic significance.

2. Listing of the Arsenal as an Historic Resource

In 1935, around the time of its eighty-year anniversary, the State of

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California recognized the Arsenal as a California Historical Landmark. (SR 272.) The California Land Preservation Commission determined that the Arsenal warranted landmark status for its role in the early settlement of the West, the Civil War, the Spanish-American War, and World War I. (*Id*., see also 274-92.)

The Army decommissioned the Arsenal in 1963. (SR 175.) Just three years later, Congress enacted the National Historic Preservation Act of 1966, which established The National Register of Historic Places. (54 U.S.C. §§ 302101-108.) The implementing regulations for the National Register of Historic Places, 36 C.F.R. §§ 60.1–60.15, provide that an historic designation may apply to "districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association" and is also associated with significant historical events, persons, architecture, or important historical information. (36 C.F.R. § 60.4.) An historic "district" is specifically defined as

> a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

(36 C.F.R. § 60.3.) The California Department of Parks and Recreation nominated the Arsenal to the National Register of Historic Places in

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September 1975, and submitted additional information August 1976. (SR 242-43.) The Keeper of the National Register entered the Arsenal into the Register on November 7, 1976. (SR 244.)

The Arsenal's nomination form for the National Register describes the various buildings within the arsenal complex, noting their historical use and condition, and documenting this with photographs. (SR 161-248.) The nomination form lists 63 individual buildings or structures most of which have become isolated by demolition of associated structures and intrusion of new development and now lack historical context (SR 162- 172.) It also identifies three clusters of buildings that still exhibit sufficient integrity of their historic setting to be considered contiguous districts. (SR 170-71.) The Arsenal's uniqueness as the first Army depot established west of the Mississippi, its role in supplying troops with artillery through multiple wars, including the Civil War, the Spanish-American War, World War I, and World War II, and its role in supplying expeditions to the Pacific Northwest, Alaska, and Siberia, underscore its historic value and supported its inclusion in the National Registry of Historic Places. (SR 173, 175-77.)

Among the Arsenal's remaining historic districts, the Officers Row District, consisting of buildings numbered 25 through 29, includes the Arsenal's historic fortress ("the Clock Tower Building"), the arsenal commander's residence, and three additional officers residences extending in a straight line to the north along Jefferson Street. (SR 170, 181.) Just

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north of the Officer Row District, the Non-commissioned Officers Quarters, consisting of four historic residences, comprise a second smaller historic district. (*Id*.) The Army designed the arrangement of these buildings and districts to provide direct lines of sight with one another, with the Arsenal's Fortress, Headquarters, Guardhouse, and with other key arsenal buildings, allowing direct observation and visual communication. (AR 7165-71, 7197-7201, 9326-27.) The position of Officers Row District high on the bluff also enabled direct observation of ships in Carquinez Strait, and offered a strategic lookout in event of attacks. (AR 7297, 9328 (Attachment A); SR 175-176.)

Today, the Officers Row District not only remains substantially intact, preserving "one of the most impressive ensembles of military architecture in the Western United States"— it is also the nation's last surviving Army Officers Enclave of the Civil War era. (AR 7169; 7200, 9327.)

More recently, the Arsenal has also been recognized as a component of the Sacramento-San Joaquin Delta National Heritage Area (Delta NHA).[1] (SR 34-35.) The Delta NHA was established in 2019 and is

[1] Delta Protection Commission, "Sacramento-San Joaquin Delta National Heritage Area," https://delta.ca.gov/NHA/.

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California's first National Heritage Area. (John D. Dingell, Jr. Conservation, Management, and Recreation Act, Pub.L. No. 116-9 (March 12, 2019) 133 Stat. 580, § 6001, sub.(a)(4).) The National Park Service administers the Delta NHA in collaboration with the coordinating entity, California's Delta Protection Commission. (*Id*.) The Delta Protection Commission recently approved a management plan for the Delta NHA that recognizes the Arsenal for its role in the early settlement and military history of California.[2]

3. The City's Management of the Arsenal

After the Army decommissioned the Arsenal in 1963, the United States Department of Defense transferred ownership of the site to the City of Benicia in 1965. (SR 70.) Over time, the City found ways to revitalize many of the Arsenal buildings by converting them to use as offices and allowing infill to promote business and commerce, with residential use in some areas. With the exception of a few relatively small districts still featuring a concentration of historic buildings, the majority of sites are now distributed across a landscape of mixed use and industrial use districts.

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[2] Delta Protection Commission (Jan. 16, 2025), Sacramento-San Joaquin Delta National Heritage Area Management Plan, https://delta.ca.gov/wp-content/uploads/2025/03/Delta-NHA-Management-Plan-FINAL.pdf ("Supporting Theme 1: Northern California's Inland Defense (1850s-1940s").

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In 1987, the City designated the Benicia Arsenal Historic District (Arsenal District) as an historic overlay pursuant to its zoning ordinance. (SR 72.) The City adopted its Arsenal Historic Conservation Plan in 1993 to implement the zoning overlay district. (SR 60-159.) This plan includes policies for preserving historic features and sight lines within the "National Register Historic District," which it delineates to encompass the Officers Row District and the Non-Commissioned Officers Residences. (SR 78, 112; see also **Attachment B: AHCP Maps** (SR 78, 112).) The Arsenal Historic Conservation Plan also articulates design standards for different types of development for several distinct subdistricts within the boundaries of the former Arsenal—including the Officer Row District. (SR 124-125, 128-144.)

The City's 1999 General Plan affirms the value and importance of these cultural and historic resources. (SR 306-10.) The overarching goal of the General Plan is sustainable development by meeting the needs of the present without compromising the ability of future generations to meet their own needs. The General Plan land use designation for the Officers Row District is "Lower Arsenal Mixed Use." (SR 297 [General Plan, p. 28].) The General Plan describes the Lower Arsenal Mixed Use district as "characterized by older, historic buildings, and a multiplicity of uses and tenants, including studios, small professional offices, and small industrial activities, such as cabinet making." (SR 299.) Development within the

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Arsenal is also subject to standards set forth within the City's zoning code and housing ordinances.

In 2007, the City authorized the development of a Lower Arsenal Mixed Use Specific Plan,[3] and in 2009, released a Draft Recirculated Environmental Impact Report (EIR) for public review.[4] Although the City ultimately chose not to approve this plan or EIR, both documents remain on the City's website and provide additional insight into the Arsenal's history and special districts. The EIR also provides information concerning potentially significant impacts of development within the Officers Row District, despite having never been certified.

4. Proposed Development Projects

In 2021, the City received applications for two housing development projects (the Projects) located within and adjacent to the Officers Row District. First, on January 26, 2021, Respondent Real Parties in Interest Gina Cooper and Orchard Crossing, Inc. submitted a notice of intent for a project at 1451 Park Road Project, adjacent to the Arsenal (Park Road

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[3] City of Benicia, Lower Arsenal Mixed Use Specific Plan, https://www.ci.benicia.ca.us/index.asp?SEC=58EBAA21-DC1B-42E7-8D90-237E895A4ADE&DE=0B8475F2-9119-49C7-92F7-D788E9F32403.

[4] LSA Associates (2009), Lower Arsenal Mixed Use Specific Plan Environmental Impact Report [State Clearinghouse #2007062021]; https://www.ci.benicia.ca.us/vertical/sites/%7BF991A639-AAED-4E1A-9735-86EA195E2C8D%7D/uploads/LowerArsenalRecirculated.PDF.

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Project). (AR 127-28.) Ms. Cooper completed her development application on July 26, 2021 (AR 128), which she later resubmitted on May 31, 2022. (AR 128.) Second, Respondent Real Parties in Interest Keith Rogal and Rogal & Associates submitted a notice of intent for a development project on Adams and Jefferson street in the midst of Officers Row District (Jefferson Ridge Project) on May 13, 2021 (AR 2, 51.) Mr. Rogal completed his development application on November 22, 2021, which he later resubmitted on May 31, 2022 (AR 1-2.)

The Park Road Project proposes to construct a 17-unit apartment complex at the corner of Park Road and Jefferson Street (AR 127), across the street from the proposed Jefferson Ridge Project. The project buildings would be three stories tall with an adjacent, shared parking lot. (AR 127.) Two of the seventeen units (approximately twelve percent) are designated as affordable housing units for very-low or low-income households. (AR 127.)

The Jefferson Ridge Project proposes to construct 121 residential condominium units in eight clusters, or blocks, of three-story townhouse-style buildings. (AR 1, 51, 102.) The planned buildings include private garages on the ground level and rooftop decks that will add a fourth level of functional living space. (AR 1, 50, 69-71, 102.) This project also includes a small commercial component for a restaurant or market at the corner of Adams Street and Park Road, which would occupy approximately 1 percent

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of the total project area. (AR 1, 12, 102.) While the application describes this as a "walkable" neighborhood, there are few services within a walkable distance. (AR 102.) A total of twelve units (10 percent) would be deed-restricted for very-low or low-income households. (AR 1.)

Each of the real parties in interest for the Projects applied for streamlined, ministerial review and approval under Government Code, section 65913.4, enacted by Senate Bill 35 (S.B. 35) in 2017. (AR 1, 102; AR 127, 189.)

5. Senate Bill 35.

In 2017, the California Legislature enacted Senate Bill 35 (S.B. 35) to address the state's housing crisis. (Stats. 2017, Ch. 366.) Encoded as Government Code, section 65913.4, this bill established a streamlined ministerial review process with expedited review for housing development projects meeting certain criteria and located within cities that failed to meet their regional housing needs requirements. (AR 790; Gov. Code, § 65913.4, subd. (a)(4).) Because Benicia failed to build enough housing during the most recent regional housing needs assessment, it became subject to S.B. 35, allowing developers to apply to the City for ministerial approval of housing projects that meet the statutory requirements and other objective standards. (AR 790.)

In effect, S.B. 35 created a new statutory exemption to CEQA, Public Resources Code §§ 21000–21189.91, by designating certain projects

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subject to ministerial approval. CEQA generally does not apply to ministerial decisions where an agency action or permit approval is dictated solely by objective criteria. (Pub. Resources Code, § 21080(b)(1); Cal. Code Regs., tit. 14, § 15268, subd. (a).) However, S.B. 35 – or Section 65913.4 – also carved out several important exceptions to ministerial review for types of projects and project sites where approval without adequate review could foreseeably lead to unwanted or negative consequences. (See Gov. Code, § 65913.4, subd. (a), subparts (6)(A)-(K) and (7)(A)-(D).) The projects exempted from ministerial review include any projects that would demolish a *historic structure* that is listed in a national state or local registry, projects that fail to comply with the local government's objective zoning, planning, and design standards, and projects located on sites with wetlands or habitat for protected species.

Notably, there are, as yet, very few judicial decisions interpreting Section 65913.4, which has led to a dispute here, among other things, as to whether a ministerial decision that is not supported by substantial evidence can be appealed to a local elected decisionmaking body, as provided by Section 21151 of the Public Resources Code for all other statutory and categorical exemptions to CEQA. While respondents maintain that no such review is allowed under this new exemption—regardless of whether an approval plainly conflicts with objective standards or is not supported by substantial evidence—no court has yet addressed this issue.

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C. Procedural Background

1. City's Review and Approval Process

After receiving application materials for the Projects in 2021, the City reviewed the plans and issued notices on January 19, 2022, finding that the Projects were inconsistent with the S.B. 35 eligibility criteria including objective zoning, subdivision, and design standards. (AR 2, 128.) The City described the conflicting features in its response letters, as required by Section 65913.4. (*Id*.)

Real Parties for both Projects then resubmitted their development applications on May 31, 2022. (AR 2, 128.) This time, City staff issued findings that both Projects were consistent with the City's objective planning standards and therefore eligible for streamlined, ministerial review under Government Code, section 65913.4. (AR 1-49 [Jefferson Ridge]; AR 127-64 [Park Road]; SR 037.) The City's Resolutions and attached checklists provide little explanation for staff's findings and also failed to include objective standards from the Arsenal Historic Conservation Plan. (*Id*.) The City also gave no clear explanation for its decision to omit some criteria in its second review, except to state that the omitted items were either found to be inapplicable or not objective. [AR 163; SR 38.] On August 26, 2022, the City Community Development Director formally approved the Projects at the staff level. (AR 9, 134.)

Due to the Projects being deemed ministerial, the City did not

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undertake any CEQA review or examine the Projects' environmental impact. As a result, the City failed to identify potentially significant impacts to wetlands and biological resources. The City also failed to identify the Projects' impacts to the Arsenal districts and inconsistencies with other objective standards, some of which appellants notified the City of in letters. However, since the process also foreclosed any public notice and comment period or public hearings, which significantly restricted public participation and limited the administrative record.

On August 29, 2022, just three days after staff approved the Projects, appellant timely noticed the City of their intent to appeal both Projects to the City Council. (AR 5026.) On September 1, 2022, appellant submitted additional appeal letters with completed appeal forms and attachments, seeking administrative review of the Projects by the City Council, pursuant to Public Resources Code, section 21151, subdivision (c). (AR 4379-82, 4620-24; SR 38.) Having received no response, on September 9, 2022, appellant submitted additional evidence in support of the appeal. (AR 4360-64, and (3) additional pages numbered 5-7.[5])

On September 14, 2022, City staff responded with a letter stating the

[5] This administrative record (Document/Tab No. 74) contains three (3) pages that were not properly Bates numbered.

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opinion that no administrative appeals were allowed under Section 65913.4, and the City Development Director's ministerial approval was final. (AR 4358-59.) The letter went on to assert that Public Resources Code, section 21151, did not apply to streamlined, ministerially approved projects, and, in any event, the City had already exhausted its 90-day review period. (*Id*.)

On September 30, 2022, counsel for appellant submitted a second request for an administrative appeal to the City Council. (AB 4356-57.) Staff responded on October 13, 2022, again refusing to allow an appeal and leaving appellant with no recourse but judicial review. (AR 4347-48.).

2. Trial Court Proceedings and Disposition

On November 22, 2022, appellant filed a Petition for Peremptory Writ of Mandate in the Superior Court of Solano County, alleging that the City's approval of the Projects violated CEQA, the Benicia Municipal Code, was inconsistent with the Benicia General Plan, and violated their right to appeal under local and state law. (SR 1-28.)

After months of negotiations, appellants filed an administrative record in the superior court on January 16, 2024 (Appellants' Notice Designating Record on Appeal, at p. 2). Notwithstanding this filing, respondents dispute whether principles of administrative mandate record

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cases should be applied.[6] (SR 336-39.) The parties then briefed the issues and a hearing on the merits was scheduled for June 12, 2024. (SR 487.)

Prior to the hearing, the trial court issued a tentative ruling consisting of ten questions for counsel to address at the hearing. (SR 487-88.) At the hearing on June 12, 2024, counsel for the parties addressed each question in turn. (Reporter's Transcript, Vol. 1 (June 12, 2024).) On September 5, 2024, the court issued a five-page ruling, denying the petition. (SR 489-94.) The court issued a Judgment on September 20, 2024, and respondents filed a Notice of Entry of Judgment on October 23, 2024.

On November 18, 2024, appellant timely filed a Notice of Appeal.

III. STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to Code of Civil Procedure, section 904.1, subdivision (a).

IV. STANDARD OF REVIEW

A reviewing court has authority to "affirm, reverse, or modify any judgment or order appealed from, and may direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had." (Code Civ. Proc., § 43.) Appellant brought this action pursuant to Code of Civil Procedure, section 1094.5, alleging that the City's approval of the

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[6] The City's refusal to hear an administrative appeal also restricted the opportunity for members of the public to submit public comments.

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Projects violated CEQA. (Code Civ. Proc., § 1094.5.)

In determining whether an agency has complied with CEQA, courts must evaluate whether the governing body prejudicially abused its discretion, which "is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (Pub. Resources Code, § 21168.5.) Substantial evidence includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts" but not "[a]rgument, speculation, unsubstantiated opinion or narrative, [or] evidence which is clearly inaccurate or erroneous." (Pub. Resources Code, § 21082.2, subd. (c).)

Courts "review an agency's determination that CEQA does not apply to a project for abuse of discretion." (Pub. Resources Code, § 21168); *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1374-75.) "Abuse of discretion is shown if (1) the agency has not proceeded in a manner required by law, or (2) the determination is not supported by substantial evidence." (*Gentry*, at p. 1375.) "The legal determination of whether an approval is exempt from CEQA as a ministerial action is reviewed de novo." (*McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App.5th 80, 88 (citing *Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286, 303).) The interpretation of a local ordinance is also reviewed de novo. (*Id*., (citing *Brookside Investments, Ltd. v. City of El Monte* (2016) 5 Cal.App.5th 540, 548, fn.

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4).)"

When projects are submitted for streamlined ministerial review under Government Code, section 65913.4, they are "not subject to a conditional use permit or any other nonlegislative discretionary approval if the development . . . satisfies all of the [enumerated] objective planning standards." (Gov. Code, § 65913.4, subd. (a).) "If a local government's planning director or equivalent position determines that a development submitted pursuant to this section is consistent with the objective planning standards specified in subdivision (a)" and "if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards" the local government should approve the development. (*Id*., § 65913.4, subd. (c)(1) and (3).) Objective standards are defined as "standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal." (Gov. Code, § 65913.4, subd. (a)(5).)

V. ARGUMENT

Section 65913.4 of the Government Code establishes a "streamlined, ministerial approval process" for housing development applications that comply with certain conditions and satisfy a list of "objective planning standards." (Gov. Code, § 65913.4, subd. (a).) Here, the Projects do not

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qualify for streamlined, ministerial review, because they fail to meet applicable objective standards. The City's ministerial approvals are therefore invalid and violate CEQA. The trial court erred in finding the City adequately determined the Projects to be consistent with the objective standards set forth in Government Code, section 65913.4, subdivision (a). In particular, the trial court (i) failed to consider evidence that the Projects will substantially demolish a historic structure as defined by state and federal law, (ii) failed to address Project inconsistencies with objective zoning and planning standards, and (iii) failed to consider evidence that the Project sites contain wetlands and habitat for protected species. The trial court also failed to support its findings with clear reasoning and statutory analysis.

A. The Projects are exempt from streamlined review because the site is designated as a National Register Historic District.

The trial court erred in finding that the Projects would not demolish a historic structure within the meaning of Government Code, section 65913.4 and failed to provide any analysis in support of this finding.

1. The statutory exception to ministerial review clearly applies to historic districts that are listed on a national, state or local registers.

Pursuant to subdivision (a) of Government Code, section 65913.4, a development is only eligible for streamlined, ministerial review if it is

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> not located on a site where . . . [t]he development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

(Gov. Code, § 65913.4, subd. (a)(7).)

This section does not define the term "historic structure." However, the State Historical Building Code defines "a qualified historical building or structure" as:

> any structure or property, collection of structures, and their related sites deemed of importance to the history, architecture, or culture of an area by an appropriate local or state governmental jurisdiction.

(Health & Saf. Code, § 18955.[7]) This includes:

> historical buildings or structures on existing or future national, state or local historical registers or official inventories, such as the National Register of Historic Places, State Historical Landmarks, State Points of Historical Interest, and city or county registers or inventories of historical or architecturally significant sites, places, historic districts, or landmarks.

(*Id*.)

In addition, California's historic preservation law provides that "structure" means:

> an immovable work constructed by man having interrelated parts in a definite pattern of organization and used to shelter or promote a form of human activity and which constitutes an historical resource.

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[7] A clerical error in Petitioner's Opening Brief mis-cited this section as Public Resources Code section 18950. (SR 44.)

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(Pub. Resources Code, § 5024). It also defines an "historic district" as:

> a definable unified geographic entity that possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development.

(*Id.*, § 5020.1.) Similarly, the implementing regulations for the National Register of Historic Places (36 C.F.R. §§ 60.1–60.15) define an historic "district" as:

> a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

(36 C.F.R. § 60.3.)

There is no question that the Arsenal is an historic district of unique national, state, and local significance. It was designated as a State Historic Landmark in 1936 (SR 272), added to the National Registry of Historic Places in 1976 (SR 244), and recognized for its local significance in Benicia's General Plan and Arsenal Historic Conservation Plan (SR 60-159), among other documents. While much of the former Arsenal site has become fragmented (SR 161-248), the historic Officers Row District is one of the few areas that still retains connected buildings and features that display their historic context and pattern of organization. (SR 170-71, 180-82, 242). The Arsenal's remaining historic districts make-up just 44 acres

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of the Arsenal's former 2,192 acres.[8] (SR 180, 246-48.) The primary Officers Row District is defined by the cluster of high-ranking officers residences and the main fortress (buildings 25, 26, 27, 28, and 29), while a second district situated across Park Road is comprised of four remaining commissioned officers residences (buildings 24, 33, 34, 35). (SR 170, 180-81.)

The Officers Row District also meets each of the state and federal definitions of an historic structure or district. As defined under the Health and Safety Code, it is a collection of historic structures and their related sites, which also include remnants of connecting sidewalks and stairs, as well as a portion of a tennis court that was part of the Arsenal's recreational facilities. (AR 6488, SR 82.) As defined under the Public Resources Code, it is a constructed set of interrelated buildings that is organized in a linear row by rank, placed in close proximity to the Arsenal's defensive fortress (which is also connected by a tunnel to the Commanding Officer's residence), and with direct lines of site to the Strait and other key arsenal buildings. (AR 7170-71; SR 166, 170, 180-81.) This design also provided shelter to the Arsenal's highest-ranking officers, and contributed to their

[8] The largest of these, which includes powder magazines and "the camel barns." is located across I-680 and is not affected by these projects.

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ability to oversee its operation and defense. (AR 7165-71, 7185; SR 278-79.) This linkage between the buildings that conveys their collective purpose is also the defining feature of a historic district that distinguishes it from a solitary building that has lost its historical context. (SR 242.) Without this linkage, a unique historic structure would be lost. (AR 6485; SR 242.)

To *demolish* something means to break it up or destroy it.[9] This is not limited to taking a wrecking ball to a building, because historic structures are not limited to individual buildings. The Projects would demolish the connective structure of the Officers Row District by building three-story townhomes and apartments in between and surrounding the historic officer quarters, thereby breaking up and destroying their linkage and visible context. (AR 9330, 10444-45; SR 242; Attachment B: SR 78, 112.) This would block the view between the buildings and further fragment the remaining historic district by destroying the sight lines and pattern of organization that were integral to the pattern and design of the historic district, and instrumental to the historic purpose of coordinating the supervision and defense of the arsenal. (AR 6485-88; SR 80-82, 242.)

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[9] "Demolish." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/demolish. (Accessed July 28, 2025.)

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The Jefferson Ridge Project would also eliminate the Arsenal's historic Parade Grounds and assembly area, and remnants of physical urban design features that contribute to the Officers Row District's historical context. (AR 7165-71; see also Reporter's Transcript, June 12, 2024, 9:14 – 11:7.) The urban design features are also noted in the Arsenal Historic Conservation Plan. (SR 82.) Remnants of the connective sidewalks, stairs, and tennis courts, like the site lines and assembly/parade grounds, contribute to the structure of the historic district. (AR 6485-88, 7165-71, 9326-27; SR 81-82.) There is also little question that the new development would overwhelm the historic buildings by adding forty new townhomes for each historic residence, as any reasonable person can agree that a ratio of 40-to-1 (i.e., 121 townhouses to 3 three historic buildings), which would substantially dilute the historic character. (AR 9330.) The Park Road Project would add to this effect by further flanking the north end of the Officers Row District with three-story apartment buildings across the street, blocking linkage between the Officers Row District and the Non-commissioned Officers Residences, and eliminating historic sidewalks. (AR 10444-45.) The Officers Row District would be transformed from a uniquely intact historic district to a housing complex with a few historic buildings sandwiched between new residences.

Incredibly, the trial court ruling devoted all of three sentences to this potential loss of a unique historic structure that informs our national

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heritage and shaped the history of early California and Benicia:

> The Court is satisfied that neither project calls for the demolition of a historic building or structure. This issue was considered by City at the time of the approval. Although Petitioner contends that partial remains of an old tennis court, staircase and sidewalk would be demolished during construction of Jefferson Ridge, the Court finds that none of these constitutes a "historic structure" as contemplated in Govt. Code §65913.4(a)(7)(C).

(SR 490.) The ruling plainly offers no rationale or supporting evidence for its conclusions, and completely disregards the question as to whether a designated national historic district constitutes "an historic structure that was placed on a national, state, or local historic register." (*Id.*; Gov. Code, § 65913.4, subd. (a)(7)(C).) It also provides no explanation as to why the fragments of identifiable physical structures that add context to a historic district can be completely disregarded. Since the court the court never examined how "historic structure" was contemplated in the Government Code, section 65913.4, it is unclear how it reached this conclusion.

In sum, no fair argument can be made that the Arsenal and Officers Row District are anything but historic structures within the meaning of Section 65913.4.

2. The Shellmound litigation is distinguishable.

Respondents also attempt to dismiss the Projects' impacts on the historic Arsenal and Officers Row District by over-generalizing the findings of the distinguishable case *Ruegg & Ellsworth v. City of Berkeley* (2021) 63 Cal.App.5th 277). But respondents' reliance on *Ruegg &*

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Ellsworth is unavailing. Although that case examined the same provision of Government Code, section 65913.4, the facts were very different. (*Ruegg & Ellsworth*, 63 Cal.App.5th at 292.)

In *Ruegg & Ellsworth* the issues revolved around whether traces of materials from a Berkeley Shellmound constituted an historic structure sufficient to prohibit streamlined, ministerial review under Section 65913.4, subdivision (a)(7)(c). (*Id*. at p. 301.) The case was further complicated by layers of uncertainty and disputed evidence concerning the actual historic location of the shellmound, which had been destroyed and paved over as a parking lot years earlier. (*Id*. at pp. 288-90.) Although some surveys suggested part of the historic shellmound's foundation may be within the proposed development site, subsequent study of the area could not confirm the theory and even found contradictory evidence. (*Id*.) As a result, no objective evidence of any recognizable shellmound structure existed. (*Id*. at pp. 305-06.) Under those facts, the court held it could not uphold the City of Berkeley's decision to deny a housing project requesting ministerial approval under Section 65913.4. (*Id*. at p. 306.)

Unlike in *Ruegg & Ellsworth*, there is no question that the proposed Jefferson Ridge Project site is located in the middle of a historic district that has been registered on the National Register of Historic Places and recognized as a State Historic Landmark *for decades*. The pertinent issue is not whether a historic structure actually exists on the site, but whether a

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National Register Historic District, whose structure consists of multiple interrelated buildings and the areas between them, is exempt from ministerial review under Section 65913.4. As shown above, the Officers Row District is clearly a "structure" within the meaning of Health & Safety Code, section 18955, and Public Resources Code, section 5024.

Moreover, the legislature's decision to use broad term "historic structure" instead of *building* in framing this exception indicates the intent to encompass a full range of historic structures that are "placed on a national, state, or local historic register." (Gov. Code, § 65913.4, subd. (a)(7)(C).) This should obviously include registered national historic districts, as defined in the federal regulations for the National Register of Historic Places. (36 C.F.R. § 60.3.) Under established rules of statutory construction, the statute should be interpreted to give this word choice effect. (*State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 955.)

Respondents also echo *Ruegg* in suggesting that the historic significance of the site should be downplayed because "[s]ection 65913.4 is not a historic preservation statute." (SR 348 (citing *Ruegg*, *supra*, 63 Cal.App.5th pp. 303-304).) But again, the Arsenal is nothing like the shellmound. While Section 65913.4 is to be interpreted in a manner that gives the fullest possible weight to increasing the state's housing supply, per subdivision (u), this does not mean that its other provisions and

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exclusions should be disregarded. (Gov. Code, § 65913.4, subd. (u).) The legislature plainly included the exception for national state and local historic sites in the statute, and plainly chose to use the broad word "structure" instead of *building* is framing this exception. (*Id*., subd. (a)(7)(C).) Therefore, the reasonable inference is that the legislature intended for this provision to have effect, and to encompass historic structures and not just buildings.

Finally, the Arsenal's loss of integrity was already an issue of concern at the time of its listing in the National Register (SR 170, 242), and further fragmentation could place this listing at risk. Appellant's comments included the expert opinion of a professional architectural historian and referenced comments for the State Historic Preservation Officer raising this concern. (See comments of Jane Lauder King, AR 7197-7201; AR 9330-31.) Also, for projects subject to CEQA, "an historical resource is materially impaired when a project . . . [d]emolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources" (Cal. Code Regs., tit. 14, § 15064.5, subd. (b)(3); AR 9331.)

This is a novel issue—and one that not even the trial court in this case has properly reviewed. The plain language of Section 65914.3 demonstrates that the legislature did not intend for ministerial housing

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review to *automatically* take precedence over the preservation of a state and national historic district and national heritage site that significantly influenced the settlement of California and supplied our national defense through five major wars. Appellants respectfully request that the Court affirm that the Arsenal and the Officers Row District are historic structures within the meaning of this statute, and that such structures can be demolished, which at the very least merits discretionary review to assess the impact on our collective heritage.

B. The Projects are exempt from streamlining because they are inconsistent with objective planning and zoning requirements.

Pursuant to subdivision (a) of Government Code, section 65913.4, a development is only eligible for streamlined ministerial review if it is:

> consistent with objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time that the development is submitted to the local government pursuant to this section, or at the time a notice of intent is submitted pursuant to subdivision (b), whichever occurs earlier.

(Gov. Code, § 65913.4, subd. (a)(5).)

Because the Projects fail to meet the City's objective standards, as set forth in the City's own zoning ordinances, General Plan, and the Arsenal Historic Conservation Plan, the Projects are not eligible for streamlined, ministerial approval. The Projects do not comply with the applicable zoning district, which objectively prohibits ground level multifamily housing, and fail to maintain objective sight lines and view

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corridors, as required by the Arsenal Historic Conservation Plan. Therefore, the Projects do not qualify for streamlining and the City's ministerial approvals of the Projects are invalid.

1. The Jefferson Ridge Project is inconsistent with the applicable zoning ordinance.

Pursuant to the City of Benicia zoning code, Benicia Municipal Code (BMC), section 17.28.020, Multifamily housing within the Commercial Office (CO) zoning district is "not permitted on ground level." (BMC, § 17.28.020; SR 250, 254.) Multifamily housing means there are two or more dwelling units on the same site. (BMC, § 17.16.030.)

Appellant alleged in the underlying case that the Jefferson Ridge Project is ineligible for streamlined ministerial review because it violates the applicable zoning restriction ground floor residential use. (SR 40-41.) This is plainly an unambiguous, objective standard and there is no dispute that the Jefferson Ridge Project is located within the CO zoning district or that it constitutes a multifamily residential use. (AR 1.) There is also no question that the proposed project would construct 121 three-story condominiums, with private, attached garages on the ground level that are clearly part and parcel of the multifamily residential use. (AR 51-67.) Yet, the City nevertheless approved the application and made findings that the Project is consistent with the applicable objective zoning standards (AR 1.) The City's finding is incorrect.

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First, the Jefferson Ridge site plans plainly show that the ground level is also the first floor of the private residences, as shown below in figures 1 and 2. (AR 50-71.) It stands to reason that the private owners will be able to use this space for any number of uses, including but not limited to parking, because it will be part of their homes. Whether these garages and unfinished spaces are used for parking, storage, or weight training, etc., will be up to the owners because they are part of the private residences – and thus part of the multifamily use. Even if some of the ground level is designed as shared garage space, it will still be part of the private, multifamily residential use. Moreover, any waiver or variance from what is objectively stated in the zoning code is a discretionary approval beyond the scope of Government Code, section 65913.4.



Fig. 1. Sample drawing from building design plans. (AR 62.)

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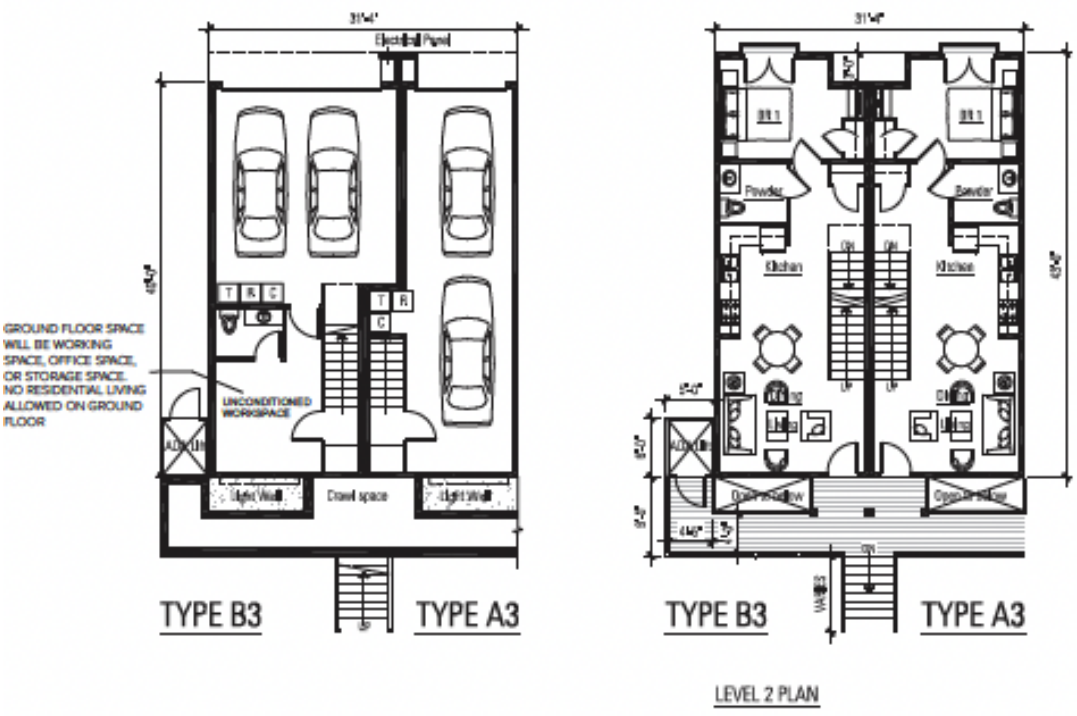


Fig. 2. Sample drawing from building design plans. (AR 69.)

Respondents make the convoluted argument that parking is simultaneously an accessory use and not a use at all. (SR 340-41.) But, either way, the arguments are unavailing and only support that ground level parking, whether as an accessory use or a *non-use*, would not constitute a distinct use from the multifamily residential use to which it is attached.

First, they assert that parking is an allowable accessory use even though this is stated nowhere in the zoning code. (SR 340) In fact, the zoning code for the OC district identifies exactly one accessory use, "donation and collection bins." (BMC, § 17.28.020; SR 253.) Instead, respondents purport to rely on a single discretionary approval from 2005 for another project in a completely different zoning district (SR 434-48),

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alleging this somehow changed the applicable zoning code (SR 340). Notably, respondents do not explain why a resolution addressing a specific project appeal in the Downtown Commercial (CD) District would have any bearing on the objective zoning standards for the OC District. (SR 435, at § 1.A.) Respondents also ignore the fact that the special resolution they rely on was a plainly a discretionary action addressing a specific project and appeal and not offered as an amendment to the zoning code. (SR 434-48.)

More importantly, however, respondents fail to explain why, even if parking is an accessory use, it would not therefore be deemed an extension of the multifamily residential use. (SR 340-41.) Their own objective zoning standards define an accessory use as follows: "Use, accessory means a use that is appropriate, subordinate, and customarily incidental to the main use of the site and which is located on the same site as the main use." (BMC, § 17.12.030.) Thus, clearly, if parking is an accessory use, this only supports petitioner-appellant's conclusion that this makes it part of the multifamily residential use – which is "not permitted on ground level."[10] (BMC, § 17.28.020; SR 250, 254.)

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[10] Notably, the 2005 Resolution offered by Respondents also supports this conclusion, by illustrating another instance in which ground level parking did not modify the development's overall use, which in that case was a commercial use.

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Next, respondents contend that parking is not a use at all, but "a development regulation listed under Section 17.23.030," which they vaguely imply somehow resolves the inconsistency. (SR 341.) But the parking is not the problem. The issue is that whether parking is deemed an accessory use or a development regulation, neither of those designations are distinct from the multi-family use that the parking is subordinate to. In other words, no one is disputing whether parking can be part of a multifamily residential use. The project is inconsistent with the objective zoning requirements for the OC district because *any* multifamily residential use on the ground floor violate this objective standard.

Accordingly, the Jefferson Ridge Project fails to meet the City's objective zoning standards, and therefore also fails to meet the requirements for streamlined ministerial review, as set forth in subdivision (a) of Government Code, section 65913.4. (Gov. Code, § 65913.4, subd. (a)(5).) Because the project fails to meet the standards of Section 65913.4, the City's ministerial approval is invalid and should be set aside.

The trial court ruling did not address this issue. (SR 489-93.) Appellant, therefore, respectfully requests that the Court find the Jefferson Ridge Project violates the objective CO District zoning standard prohibiting multifamily residential use on the ground level, and set aside the City's consistency finding and improper ministerial approval.

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2. The Projects are inconsistent with objective standards for preserving historic sight lines.

The Policy 3.1.5 of the Benicia General Plan directs the City to: "Permit new development, remodeling and building renovation in historic districts when consistent with the policies of the applicable Historic Conservation Plan. (SR 309.)

The Arsenal Historic Conservation Plan (AHCP) identifies several significant view corridors and sight lines that "contribute to the Arsenal's historic identity and merit preservation under policies of this conservation plan." (SR 107-10.) It also anticipated that "additional views within the subdistrict that will be determined upon preparation of a master plan for future development of the site. (SR 107.) The AHCP view corridor and sight line policies, in pertinent part, include the following:

> 1. Maintain designated sight lines to landmark buildings.
>
> 2. Where view corridors are indicated, it is important to maintain a direct sight line to all landmark structures and important natural features which fall within the view angle mapped in Figure 6. New development within a designated view corridor is permitted but should be of a scale that will not overpower or dominate views of landmarks.

(*Id*.) The AHCP also notes identifies Special Review Areas, including the National Register Historic Districts and critical development sites, "where new development may disrupt existing views, landscape features and/or historic development patterns if not carefully sited and designed." (SR 111-12.) This section also notes that any development within National Register

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Historic Districts that have received federal financial assistance is required by federal law to consider the impacts of projects on these districts. (SR 111.)

The Projects violate these policies because they do not preserve the sight lines and view corridors as required by the AHCP and General Plan. This is evident in the photo simulations of these views. The Jefferson Ridge Project will substantially obstruct several protected views. (AR 72-74; AR 7185, 7769, 6289.) View No. 6, in particular is supposed to include the Guardhouse and the water beyond (SR 109-10), but the simulations show this reduced to a narrow fraction of the former view, with Project buildings obstructing well over half of the view and eliminating the water view completely. (AR 74 ["view 2"].) In addition, both developments will disrupt the current views and sight lines within the Special Review Areas district boundaries denoted in Figure 7. (Att. B, SR 112.) There is also no evidence of any effort to assess the impacts of the Projects on National Register Historic Districts boundaries or designations. As a matter of record, the district has received at least one federal grant to stabilize the fortress/clocktower building. (SR 245.)

Respondents contend that these are not objective standards and should not stand in the way of new housing. (SR 342-44.) First, respondents question the objectivity of the verb "maintain," which they say is subjective, but the directive to "maintain a direct line of sight" is no more

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subjective than drawing a straight line between two specified points. The AHCP identifies specific view corridors and sight lines that are geographically verifiable and therefore objective. (SR 109-10.) Respondent also takes issue with the Policy 2 language clarifying that some development within corridors is permissible if not at a scale that doesn't *overpower or dominate* the view of the landmarks. However, this allowance for some intrusion does not change the directive to preserve sight lines to the key buildings and natural features. The connection between the Guardhouse and the Strait is historically significant because it informs the Arsenal's historic function. Completely obstructing the view of either landmark is inconsistent with maintaining a direct sight line that preserves the visibility of both. While, in contrast, there could be disagreement over whether a partial blockage overpowers or dominates a historic view; even so, in an extreme case where well over half of the view or landmark is completely obstructed, a reasonable person would conclude that these descriptive terms were applicable.

The requirement to consider project impacts on the National Register Historic District is also unambiguous, as the boundary of the National Register Historic District is also geographically verifiable. (SR 111-12, 180-81; see also Attachment B: AHCP Maps (SR 78, 112).) While the full scope of the required impact analysis is not specified in the AHCP, respondents have refused to even acknowledge, let alone consider any

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impacts to the Officer Row District's structure, as distinguished from individual buildings. This includes the historic views and sight lines that preserve the district's patterns and organization, and contributed to its historic functions and purpose.

The trial court ruling did not address this issue. (SR 489-93.) Therefore, appellant respectfully requests that this Court find the Projects fail to maintain the AHCP's objective design standards for historic views and sight lines. Further, because the Projects do not comply with the applicable zoning standard prohibiting ground level multifamily housing, and also fail to maintain historic views and sight lines, appellant asks the Court to find the Projects do not qualify for ministerial approval and to set aside the City's ministerial approvals as invalid.

C. The Projects are exempt from streamlining because they are located on sites with a wetland and significant biological resources.

The lead agency's determination that a development meets applicable standards must be supported by "substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards." (Gov. Code, § 65913.4, subd. (c)(1).) The trial court erred in finding the City adequately determined that the Projects will not impact wetlands or biological resources. In fact, there is unrefuted evidence of wetlands and biological resources within the Projects' areas. Because project in locations with wetlands and biological

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resources are exempt from ministerial review, the Project approvals are invalid.

Pursuant to subdivision (a) of Government Code, section 65913.4, a development is only eligible for streamlined ministerial review if it is:

> not located on a site that is [a] . . . [w]etlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(Gov. Code, § 65913.4, subd. (a)(6)(C).) In other words, the legislature specifically excluded development projects on sites with wetlands from streamlined, ministerial review. It is also clear from the legislature's designated definition that this exclusion encompasses seasonal, or ephemeral wetlands, because the manual defines wetlands as follows:

> lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this classification, wetlands must have one or more of the following three attributes: (1) at least periodically, the land supports predominantly hydrophytes (plants specifically adapted to live in wetlands); (2) the substrate is predominantly undrained hydric (wetland) soil; and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.

(U.S. FWS (1993) Wetland Classification System, § 2.5 (A).)

In addition, a development is not eligible for streamlined ministerial review if it contains:

> [h]abitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California

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> Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

(Gov. Code, § 65913.4, subd. (a)(6)(J).)

In 2007, the City released a Draft Environmental Impact Report (EIR) for a proposed Lower Arsenal Mixed Use Specific Plan that identified potentially significant impacts to wetlands and biological resources on the Project site. (AR 4361-62, 4371, 4831; see also AR 5789-90.) This document, the Lower Arsenal Mixed Use Specific Plan EIR – Public Review Draft, was prepared by the professional environmental consultants, LSA Associates, and was cited in public comments as further evidence showing that the Projects are ineligible for streamlined ministerial review under Government Code, section 65913.4. (*Id.*) Although the City ultimately decided not to go forward with the proposed specific plan and therefore never certified the EIR, it was registered with the California Natural Resources Agency under State Clearinghouse No. 2007062021 and published on the City's website as a public record.[11] Because this document was accurately cited (4370-71), and available to the City at the time it

[11] LSA Associates, Inc. (July 2007). [Public Review Draft] Lower Arsenal Mixed Use Specific Plan Environmental Impact Report, SCH 2007062021, available at https://www.ci.benicia.ca.us/index.asp?SEC=58EBAA21-DC1B-42E7-8D90-237E895A4ADE (Hereinafter "2007 Draft EIR.")

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reviewed the Projects, the City should have considered it during its evaluation of these objective standards.

With respect to wetlands, the EIR identified a seasonal wetland within the Jefferson Ridge/ Officer Row District, at the upper edge of the Jefferson Ridge Project site.[12] (AR 4362, 4371.) The EIR also recommended several mitigation measures, including a formal wetland delineation prior to approving future projects in this area. (*Id*.) Although never formally certified, because this document was professionally prepared and filed with the state, and went through a formal public review process, it constitutes credible evidence that the Jefferson Ridge site contains a seasonal wetland.

With respect to habitat for protected species, "LSA biologists conducted a reconnaissance-level survey of biological resources at the project site on April 24, 2007."[13] The Draft EIR identified seven special-status animal species with foraging, nesting, or roosting habitat within the project areas: white-tailed kite, Cooper's hawk, western burrowing owl, loggerhead shrike (*Lanius ludovicianus*), California horned lark, pallid bat,

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[12] LSA Associates, 2007 Draft EIR, *supra*, n.10, at pp. 162, 180-81.

[13] *Id*., at p. 159.

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and Townsend's western big-eared bat.[14] (AR 4370-71) The Draft EIR also identified five special-status plant species that may be present on the project site, including: alkali milk vetch, San Joaquin saltbush, big tarplant, Congdon's tarplant, and pappose tarplant.[15] (AR 4370.) The Draft EIR also found that mature trees protected under the City's Tree Ordinance could be impacted by development on the project site.[16] The report issued significance findings and proposed mitigation measures to address each of these potential impacts, including protocol level rare plant surveys, and pre-construction surveys for each animal species.[17]

Respondents opposed this evidence, arguing that the 2007 document is not credible because it was never certified, and opined without evidence that urban sites are "not likely to provide habitat for protected species." (SR 398-432.) They also introduced a 2013 biological assessment from the Urban Waterfront and Enhancement Master Plan EIR—prepared for an entirely different project site along the downtown waterfront—which they misconstrued as evidence refuting the 2007 EIR. (SR 346.) However, none

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[14] LSA Associates, 2007 Draft EIR, *supra*, n.10, at pp. 168-69, 174-78.

[15] *Id*., at pp. 168-74.

[16] *Id*., at 79-80.

[17] *Id*., at 179-86

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of these arguments refutes the validity of the Draft EIR or provides evidence that the Project sites have no wetlands or habitat for protected species.

First, there is no merit to the claim that an environmental document must be certified to be credible. Certification makes an environmental document enforceable, while the credibility rests on the factual findings of qualified experts. Here, the City's website shows that they issued the draft for public review, and later recirculated a supplemental EIR that made no substantive changes to the Biological Resources section. The document is also a verifiable public record that was filed with the state Natural Resources Agency and archived on the City's website.[18] So whatever the City's reasons for not proceeding with the Lower Arsenal Mixed Use Specific Plan, there is no indication that the Draft EIR's biological resources assessment was found inadequate or invalid.

Second, respondents' unsupported opinion that urban habitat is not likely to support sensitive species is not only purely speculative but inaccurate. For example, as explained in the 2007 Draft EIR, it is not unusual for groups of trees and old buildings in urban areas to provide

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[18] See Cal. Natural Resources Agency, CEQAnet (public archive), SCH No. 2007062021, https://ceqanet.lci.ca.gov/2007062021/2.

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seasonal foraging and breeding habitat for protected nesting birds, owls, and bats.[19] An unsupported assertion to the contrary has no evidentiary weight. And third, a close inspection of the 2013 Urban Waterfront and Enhancement Master Plan EIR shows that it addresses an entirely different coastal site located "along the shoreline of Carquinez Strait and edge of the developed downtown area of Benicia." (SR 400-01; 416.) That project site was limited to a small coastal area that extended only a few hundred feet inland from the shoreline, as far as B Street, and was nowhere near the National Register Historic District here at issue. (SR 400, 416.) Thus, the primary reason it did not identify any wetlands or protected species habitat at the Jefferson Ridge and Park Road sites is that it never evaluated these sites. This report does not establish that the 2007 Lower Arsenal Mixed Use Specific Plan Draft EIR findings are outdated or invalid. Rather, the 2007 Draft EIR provides sufficient evidence for a reasonable person to conclude that the Project sites contain seasonal wetlands and habitat, and at minimum should be re-surveyed to show otherwise.

Because there is credible evidence of that the Jefferson Ridge site contains a seasonal wetland and evidence that both projects contain potential habitat for protected species, the court should find that the

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[19] LSA Associates, 2007 Draft EIR, *supra*, n.10, at pp. 183-86.

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Projects are ineligible for streamlined ministerial review.

D. The City unlawfully exempted the Projects from CEQA.

Because the Projects do not meet the objective standards set forth in Government Code 65913.4, subdivision (a) the City's approval of the Projects also violates CEQA.

1. The City unlawfully approved projects that failed to meet the objective standards for ministerial review.

Government Code, section 65913.4, establishes a "streamlined, ministerial approval process" for housing development applications that comply with certain conditions and satisfy a list of "objective planning standards." (Gov. Code, § 65913.4, subd. (a).) This implies that streamlined ministerial review is not available under this statute for development applications that do *not* comply with these objective planning standards. Unless otherwise exempted from CEQA, such projects are subject to CEQA review.

Here, even after a reasonable opportunity to repair and resubmit the applications, both Projects fail to meet the objective standards. As shown above, the Projects (a) would demolish a historic structure (See *infra*, § V.A.), (b) are inconsistent with one or more objective zoning and design standard (See infra, § V.B.), and are located on sites where substantial evidence indicates the presence of a wetland and significant biological resources. (See infra, § V.C.) Accordingly, the City's findings that the

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Projects satisfied the objective review standards are incorrect, and the ministerial approval of these Projects is unlawful and renders the approvals invalid.

2. The City violated CEQA because it ignored substantial evidence of wetlands and biological resources that showed the project required an EIR.

"[T]he heart of CEQA . . . is the requirement that public agencies prepare an EIR for any project that may have a significant effect on the environment. (*Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 944 (cleaned up).) In determining whether an agency has complied with CEQA, courts look for prejudicial abuse of discretion, which "is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (Pub Resources Code, § 21168.5.) Substantial evidence includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts" but not "[a]rgument, speculation, unsubstantiated opinion or narrative, [or] evidence which is clearly inaccurate or erroneous." (Pub. Resources Code, § 21082.2, subd. (c).) Where "failure to comply with the law results in a subversion of the purposes of CEQA by omitting information from the environmental review process, the error is prejudicial." (*Rural Landowners Assn. v. City Council* (1983) 143 Cal.App.3d 1013, 1023.)

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Here, the 2007 Lower Arsenal Mixed Use Specific Plan EIR – Public Review Draft constitutes substantial evidence that development within the Projects areas will have potentially significant adverse impacts on wetlands and biological resources. (AR 4361-62, 4371, 4831.) This document is not mere speculation or opinion, but was prepared for the City by environmental specialists LSA Associates. Moreover, the City has provided no substantial evidence to refute the findings of this document. As explained in the previous section, neither the City's speculation about the likelihood of urban habitat, nor the 2013 EIR for an entirely different geographical area along the Downtown Waterfront established that the findings of the 2007 Draft EIR are invalid. (See *infra*, § V.C.) Thus, the 2007 Draft EIR by LSA Associates constitutes substantial evidence that Project will have a significant effect on the environment.

This evidence not only establishes that the Projects fail to qualify for streamlined, ministerial review under Government Code, section 65913.4, but also shows that the City failed to comply with CEQA. Because the Projects do not meet the objective standards, they are properly subject to CEQA. The City's findings that the Projects were subject to ministerial review were "not supported by substantial evidence," and the City "failed to proceed in the manner required by law" by nevertheless issuing ministerial approvals. (Pub Resources Code § 21168.5.)

In addition, because unrefuted substantial evidence indicates that the

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Projects will have a potentially significant impact on the environment, the city should have prepared an EIR prior to any project approvals. (*Friends of College of San Mateo Gardens*, *supra*, 1 Cal.5th at p. 944.) Further, because the City was aware of the findings in the 2007 EIR but disregarded and omitted that information from its review process, the City's error is also prejudicial." (*Rural Landowners Assn*., *supra*, 143 Cal.App.3d at p. 1023

Therefore, appellant asks the Court to find that the City ministerial approval of the Projects are invalid and violate CEQA.

E. The trial court erred in finding that Appellant was not entitled to appeal the City's ministerial decision to an elected decisionmaking body.

This issue raises a novel question: The parties dispute whether Public Resources Code, section 21151, subdivision (c), which allows an appeal to the local governing body when a non-elected decisionmaker determines that a project is not subject to CEQA, properly applies to streamlined ministerial review of projects under Government Code, section 65913.4.

The trial court did not resolve this question. In ruling for respondents, it simply ignored the plain language of section 21151, which expressly encompasses determinations that a project is exempt from CEQA (SR 38-39, 475). The trial court ruling failed to examine or interpret the statutory language of this provision, and failed to support its ruling with

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any explanation or elucidation of its reasoning. (SR 491-93.)

When two statutes are found to conflict or have irreconcilable differences, courts utilize statutory construction in the effort to interpret the full meaning in a manner that harmonizes and gives effect to both provisions:

> A court must, where reasonably possible, harmonize statutes, reconcile seeming inconsistencies in them, and construe them to give force and effect to all of their provisions. This rule applies although one of the statutes involved deals generally with a subject and another relates specifically to particular aspects of the subject. Thus, when two codes are to be construed, they must be regarded as blending into each other and forming a single statute. Accordingly, they must be read together and so construed as to give effect, when possible, to all the provisions thereof. Further, all presumptions are against a repeal by implication. Absent an express declaration of legislative intent, we will find an implied repeal 'only when there is no rational basis for harmonizing the two potentially conflicting statutes, and the statutes are "irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation. (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 805 [149 Cal. Rptr. 3d 383, 288 P.3d 717] (Pacific Palisades); see *Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 986 [104 Cal. Rptr. 3d 710, 224 P.3d 41].)

(*State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 955-956 (cleaned up).)

1. Statutory interpretation favors harmonization of conflicting statutes.

Pursuant to Public Resources Code, section 21151, subdivision (c),

> If a nonelected decisionmaking body of a local lead agency . . . determines that a project is not subject to this division, that . . . determination may be appealed to the agency's elected decisionmaking body, if any.

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(Pub. Resources Code, § 21151, subd. (c).)

Public Resource Code, section 21151, plainly applies to projects that are exempt from or "not subject to" CEQA. (Pub. Resources Code, § 21151, subd. (c).) In contrast, Government Code, section 65913.4, contains no express language preempting section 21151. (Gov. Code, § 65913.4.). In fact, section 65913.4 makes just three narrow references to CEQA: (i) subsection (b)(1)(E) provides that CEQA does not apply to the section's tribal consultation provisions; (ii) subsection (d)(2) exempts eligible projects from CEQA review of Subdivision Map Act applications; and (iii) subdivision (k) exempts certain land transfers and funding decisions from CEQA review.

Although ministerial decisions are generally exempt from CEQA review, this does not logically extend to the determination of whether a decision qualifies for ministerial review in the first place. Review under section 65913.4 begins with a threshold inquiry to determine whether a particular development project is eligible for ministerial review based on whether it meets a long list of objective standards. (Gov. Code, § 65913.4, subd (a).) Unlike building permits, for example, which are generally presumed to be ministerial unless an express provision states otherwise (Cal. Code Regs., tit. 14, § 15268, subd. (b)), development projects are only deemed ministerial if it is evident that they meet certain conditions. Whether those conditions have been met is thus a critical, substantive

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determination necessary to assess which review procedures should be applied. The determination of whether a development project meets objective standards that would exempt it from CEQA and qualify it for ministerial review is precisely the type of determination made subject to appeal under section 21151. (Pub. Resources Code, § 21151, subd. (c).)

Here, both Project approvals assert an exemption under CEQA:

> "The subject application . . . is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15268 which establishes a statutory exemption for ministerial permits and Government Code Section 65913.4."

(AR 1, 127.) Thus, the City plainly made determinations, however incorrectly, that the Projects are exempt from CEQA and subject to streamlined ministerial review. In addition, both approvals are signed by the City's Community Development Director, a nonelected decisionmaker. (AR 9, 134.) Therefore, because these determinations are consistent with the appeal provisions contained in Public Resources Code, section 21151, subdivision (c), it is reasonable to conclude that they may be appealed to the City Council.

However, when appellant submitted an appeal letter requesting City Council review of the Community Development Director's project approvals, the City refused to hear the appeal in direct violation of section 21151. Moreover, the trial court erred in its review of this question by failing to engage in statutory analysis to interpret or reconcile a potential

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conflict between statutory directives.

Notably, although CEQA Guidelines, section 15268, states that "[m]inisterial projects are exempt from CEQA," it makes no comment on the availability of administrative review to examine whether a statutory exemption is properly applied. (Cal. Code Regs., tit. 14, § 15268.) Nor, even if it did, would a regulation preempt a statute. And, as already noted above, none of the three references to CEQA within Government Code, section 65913.4, addresses section 21151.

In addition, Respondents' theory that the statements in the approvals are not *determinations* also lacks merit. In their lower court briefing, respondents contend that the exemption is "automatic" and "the only party who decided whether or not the Projects were subject to CEQA is the legislature." (SR 339.) But the legislature did not make any determinations about whether these specific Projects satisfy S.B. 35's objective planning standards, let alone *this* city's objective planning and zoning standards, or design review standards. Nor did the legislature choose to enact language expressly preempting or repealing access to local review under to ensure that the objective standards are properly applied. Moreover, because "all presumptions are against a repeal by implication (*State Dept. of Public Health*, *supra*, 60 Cal.4th pp. 955-956), it is unreasonable to conclude that Government Code, section 65913.4 implicitly supersedes all administrative review of an exemption determination.

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The law is clear: If the court finds that these statutes are in conflict, "they must be read together and so construed as to give effect, when possible, to all the provisions thereof." (*Id*.) The trial court ruling made no such effort to harmonize conflicting mandates. (SR 491-93.) The ruling offers no analysis of the statutes and provides no support for the court's conclusion that petitioner-appellant was properly denied access to administrative review. Therefore, the holding is arbitrary and capricious and should be over-ruled.

2. Section 65913.4 does not prohibit local government review of ministerial approvals that fail to meet its sufficient evidence standard.

Further, Government Code, section 65913.4, subdivision (c), provides that a local government "shall approve" a development under this section "if a local government's planning director or equivalent position determines that a development submitted pursuant to this section is consistent with the objective planning standards specified in subdivision (a) *and pursuant to paragraph (3) of this subdivision*." (Gov. Code, § 65913.4, subd. (c)(1) (emphasis added).) Paragraph (3) requires consistency determinations to be supported by "substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards." Thus, where such evidence is absent, the governing body should not be compelled to approve a development project based solely on unsupported consistency findings or the discretion of its

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planning director or equivalent.

Here, as discussed above, the application contains no substantial evidence to support the determination that the Jefferson Ridge project is consistent with the commercial office zoning district's limitation on first floor residential use, no evidence indicating that a prior study finding wetlands and sensitive species on the project site is invalid, and no evidence that the destruction of a national historic district is consistent with the objective standards articulated in S.B. 35. (see *infra* §§ V.A.1-3.)

In addition, previous cases addressing ministerial approval of housing projects have found no need to restrict local government review that is appropriately limited to examining whether the applicable objective standards were met. (see *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App.5th 80, 92; *California Renters Legal Advocacy & Education Fund v. City of San Mateo* ("*California Renters*") (2021) 68 Cal.App.5th 820, 853-54.) For example, in *McCorkle*, where ministerial review of multifamily housing was established under the city's housing element and zoning code, the Court affirmed that the city had correctly limited the scope of appeal to whether the project satisfied objective standards. (*Id*.) Similarly, in *California Renters*, a case challenging an improper project denial under the streamlined review provisions of the Housing Accountability Act (Gov. Code, § 65589.5), the court found no need to preclude local government review that was limited

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to ascertaining whether a project complied with objective standards. (*California Renters*, *supra*, 68 Cal.App.5th at pp. 853-54.) These cases, further demonstrate that local government review is not inherently inconsistent with streamlined ministerial approval.

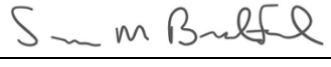
Therefore, because the trial court failed to examine the statutory language or support its findings with any analysis, and because the City's consistency findings were not supported by sufficient evidence to meet the reasonable person standard set forth in Government Code, section 65913.4, appellants were improperly denied an administrative appeal and ask this court to reverse the trial court decision.

VI. CONCLUSION

For the forgoing reasons, it is clear that the challenged Projects do not qualify for the streamlined, ministerial review process under Government Code, section 65913.4. Appellants respectfully ask the Court to reverse the trial court ruling on writ of mandate, and to vacate and set aside the City's approvals of the Jefferson Ridge Project and the Park Road Project.

Dated: August 8, 2025,

Respectfully Submitted,

By: 

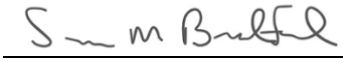
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Jessica L. Blome
Susann Bradford

Attorneys for Appellants

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains **13,120** words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

By: 

Susann Bradford

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ATTACHMENT A

AR 9328 - Early View of Arsenal

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Figure 1: An Early View of the Arsenal



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AR 009328

ATTACHMENT B

ACHP Maps:

SR 78 – National Register Historic District

SR 112 – AHCP Special Review Areas

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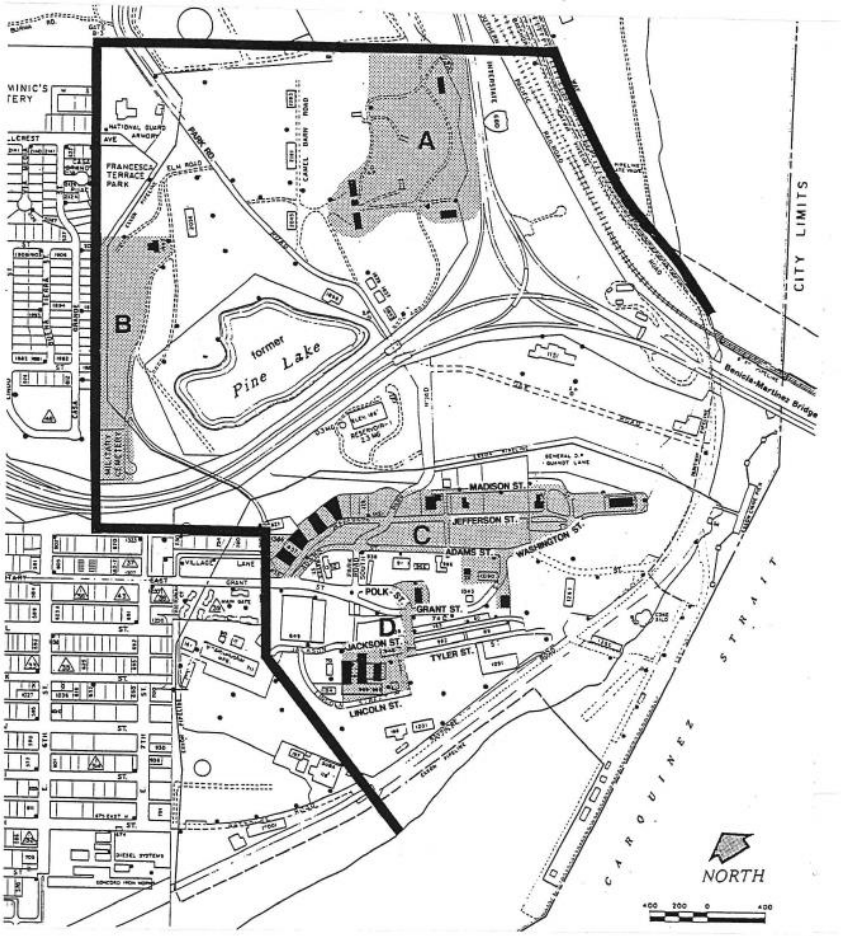


Figure 2

National Register Historic Districts and Properties of the Benicia Arsenal

LEGEND

- Arsenal Park Historic District Boundary
- National Register District
- Building Listed on the National Register

These four districts were listed on the National Register of Historic Places in 1975.

(SR 78)

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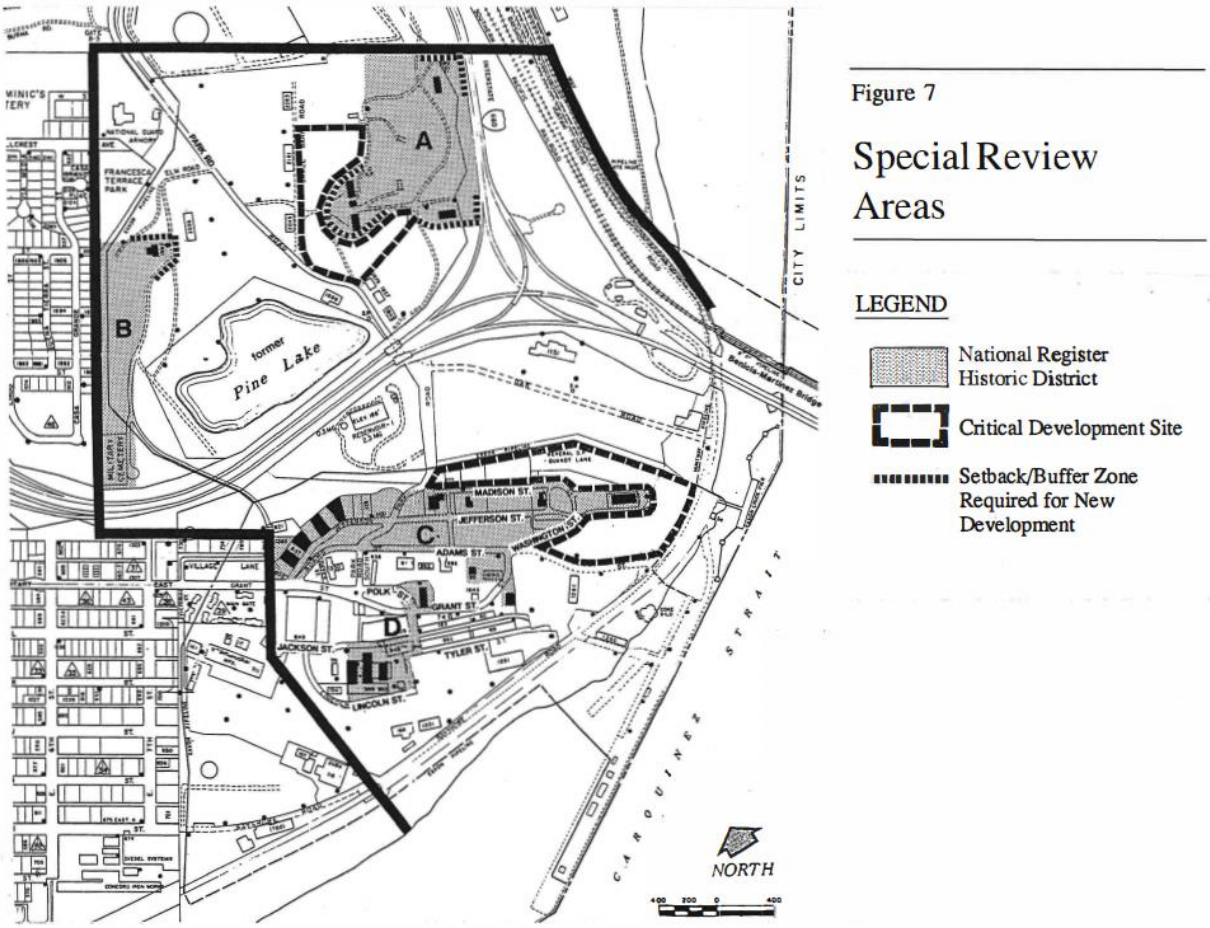


Figure 7

Special Review Areas

LEGEND

- National Register Historic District
- Critical Development Site
- Setback/Buffer Zone Required for New Development

SR 112

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